

AMENDING THE PROTOCOLS FOR KOALAS

Dailan Pugh 30 September 2023

This is a review of Environment Protection Authority (EPA) documents produced in response to a notice to produce (SO52) by The Greens' Sue Higginson. It relates to the EPA's attempts to amend the Protocols of the Coastal Integrated Forestry Approval (CIFOA) - a component of the logging rules - to protect Koalas within the Great Koala National Park (GKNP). It clearly shows that despite the EPA's intent to make relatively minor amendments to the Protocols since at least May 2023, they have made no progress, with the Forestry Corporation only agreeing to very minor voluntary measures. This is despite the Forestry Corporation concurrently claiming in court that the EPA can quickly change the Protocols whenever they consider it necessary.

As early as April 2023 the FCNSW were adamant that the EPA cannot unilaterally alter the Protocols: *"FCNSW reiterated their position: FCNSW does not agree that the EPA can amend protocols (or conditions) without the consent of both Ministers."*

The EPA began proposing to the Environment Minister Penny Sharpe in May that she amend the CIFOA to provide better protection for Koalas, recommending (EPA 23/5/23):

Ministers can jointly amend the IFOA to:

- *restrict forestry in certain habitat for refuge*
- *increase the amount of koala trees to be retained, or*
- *reduce logging intensity in koala habitat*

The EPA can amend several IFOA Protocols to:

- *increase the size of koala feed trees to ensure the largest trees are being retained;*
- *increase the proportion that should be preferred feed tree species; and,*
- *require koala habitat to be preferentially retained in permanent protected areas (clumps)*

The EPA warned that the risk of their changing the protocols was:

FCNSW (and industry) dispute that EPA can make Protocol amendments and may legally challenge the changes – Government support may be required to mitigate the legal risks

The EPA did not recommend FCNSW adopting voluntary measures because *"The EPA cannot enforce voluntary measures if they aren't complied with."*

By early July (EPA 4/7/23) there appeared to be agreement to proceeding with amendments to the CIFOA Protocols (for the GKNP), which the EPA were preparing:

- *The precautionary measures seek to increase transparency and accountability, increase koala habitat protection, improve the information on koalas in the area.*
- *The measures should be enforceable (via protocol amendments) where possible ...*
- *...*
- *EPA to draft Protocol amendments for FCNSW consideration and identification of necessary transition needs*

An undated "GKNP precautionary measures – protocol updates" identifies proposed changes to the Protocols to apply throughout the GKNP to a 'precautionary measures area' (proposed to be KHSM modelled high and very high koala habitat, and possibly moderate), including:

- *setting retention of Koala feed trees as 10/ha*

- Koala Feed Trees to be greater than 30 cm DBHOB
- adding Small-fruited Grey Gum as a primary browse tree
- requiring FCNSW to prioritise protection of high value Koala habitat in wildlife habitat clumps
- excluding the 'precautionary measures area' from 'intensive harvesting'.

On the 25 July the Protocol amendments were abandoned in favour of legally unenforceable voluntary measures, apparently involving a meeting between the Forestry and Environment Ministers – no explanation for this was found or record of the Minister's meeting. The EPA (27/7/23) claiming *"the EPA will consider the need to impose these requirements via amendments to existing protocols, particularly if we see FC not operating within the intentions of this letter"*.

Tony Chappel (EPA 4/8/23) then wrote to FCNSW Anshul Chaudhary detailing the proposed voluntary measures, with Chaudhary (FCNSW 11/8/23) responding without committing to many of Chappel's requests, including *"Provide the EPA with the operational plan ... at least three weeks prior to the commencement of the forestry operation"* (rather than 2 days), *"Support the EPA to undertake targeted koala surveys in select areas"*, *"areas where evidence of koalas is identified during broad area habitat searches, or via targeted surveys, are prioritised for retention"*, *"Koala browse tree selection must prioritise trees over 30cm diameter"*, *"increasing the proportion of koala browse trees that are primary browse species"*. Though agreeing to a variety of minor changes such as limiting logging to selective harvesting, retaining 10 Koala browse trees/ha, and preferentially selecting Tallowwood 25-50 cm DBH.

Given the comprehensive rejection of many of the EPA's voluntary measures, it is hoped they will now unilaterally change the Protocols to give Koalas at least the modicum of extra protection they proposed.

It is worth noting that in June 2023 the EPA considered undertaking thermal drone surveys for Koalas in areas proposed for logging, though abandoned the process when it was found to be too expensive. Never-the-less the EPA committed (4/8/23) to *"undertake targeted koala surveys in select areas, where the EPA considers it may be necessary to ensure occupied habitat is better considered in the design of permanent habitat protections."* Pre-logging surveys should be a mandatory requirement.

What is most galling is that in the recent case of NEFA vs Forestry Corporation over Braemar and Myrtle, the Forestry Corporation's barrister repeatedly claimed that the EPA can change the Protocols at their discretion. For example the transcript for 14-15 August 2023 states:

HEMMINGS: --through it quickly. But 5.1 is dealing with protocols. And the approval applies and adopts the protocols as amended, made public and in force from time to time. Now, it is the EPA that makes the protocols. ... They are amended, made public and in force from time to time by the executive of the - executive officer, or the chief environmental regulator publishing them.

So, the way in which the approval operates as a combination of conditions and protocols is one where the carrying-out of forestry operations by my client can change by the EPA making amendments to the protocols that we must comply with. And we must comply with it because in 5.3, my client must apply and comply with a protocol where required by the approval or by another protocol.

...

... the protocols are as enforced from time to time, and we commented upon the fact that the EPA may amend the protocols by publishing them. Condition 23 does not impose on the EPA a consultation or a satisfaction regime in relation to the amendment of protocols. So, although there is a very detailed structured process that must be gone through if you are changing the conditions of the approval, or the objectives that those conditions are to achieve, or the outcomes that the

approval is to achieve, the similar does not apply to the protocols that the EPA may amend and respond to if they think circumstances appropriately require it.

...

If there was a concern that the koala was not adequately being protected because of the way in which the Browse trees were being retained, then that is an easy temporary fix, if I can express it that way, by the EPA, because you can amend protocol 23 and change the way in which we must retain trees for the koalas, and that could be done as an interim protection while there is the iterative process for changes to the condition itself, if that's what's required.

In April 2023 the FCNSW were adamant that the EPA cannot unilaterally alter the Coastal Integrated Forestry Approval (CIFOA) Protocols:



CIFOA Operational Group MINUTES – 21 April



Time: 11:00 am – 12:00 pm

Attendance	EPA: Jackie Miles, Cate Woods, Chris Fraser, Lauren Shone FCNSW: Linda Broekman, Tony Brown, James Jagers
Apology	Steve Orr, Sonya Errington

Item	Action	Responsible	Status UPDATE
Action 1	TORS to be approved by SOG at the next meeting 26 April.	EPA & FCNSW SOG members	
Action 2	a) EPA to provide advice on current settings b) James and Chris to arrange site visits in the next month (North and South)	EPA FCNSW & EPA	
Action 3	EPA to do some internal process mapping, to come back to the group with some ideas for short term improvements.	EPA	
Action 4	FCNSW to submit list of proposed topics.	FCNSW	

Agenda	Raised	MINUTES
2. Finalise terms of reference	EPA	<p>Subject to a minor clarification in the terms of reference regarding how amendments are progressed to protocols and conditions in the instrument, the group is satisfied with the terms of reference and will submit to SOG for approval at the next meeting, 26 April.</p> <p>FCNSW reiterated their position: FCNSW does not agree that the EPA can amend protocols (or conditions) without the consent of both Ministers.</p> <p>The EPA is aware of FCNSW position.</p> <p>Action: Terms of reference to be attached to SOG agenda or 26 April for approval.</p>

EPA advice of 22 May on Pine Creek State Forest advocates changing the protocols for Koalas, though notes FCNSW don't agree they can do it:

SO52 EPA GKNP (b) - 00634



Advice request

Logging at Pine Creek State Forest

Key points

- There are no forestry operations currently planned or occurring in Pine Creek State Forest.
- Forestry Corporation of NSW (FCNSW) has indicated a proposal to harvest in the forest this year, however they are yet to submit their plans to the NSW Environment Protection Authority (EPA) or indicate the timing for this operation. The EPA is closely monitoring proposals for this operation.
- FCNSW is required to comply with the Coastal Integrated Forestry Operations Approvals (Coastal IFOA), which includes specific provisions to identify and protect koala habitat and feed trees.
- Recent media and koala experts have suggested deficiencies in the Coastal IFOA koala protections, primarily associated with the amount, size and species of koala feed trees that should be maintained. There is validity to the issues raised.
- Significant improvements to the Coastal IFOA can only be made jointly by the Minister for the Environment and the Minister for Agriculture. However, there are also a range of options the EPA can progress to increase protections for koalas.

Forestry operations in Pine Creek State Forest

- The Pine Creek State Forest is located between Coffs Harbour and Nambucca Heads on the Mid North Coast, and is within the proposed Great Koala National Park area. The remaining State Forest is predominantly plantation forests, with small pockets of native forest.
- The Mid North Coast was severely impacted by the 2019-20 bushfires. Pine Creek State Forest was not badly impacted by the fires, which means that it is an important refuge, particularly for koalas.
- Forestry operations in this region are strongly opposed by community groups, and this opposition has increased after the 2019-20 bushfires and with the Government's election commitment to establish the Great Koala National Park.
- An examination of the FCNSW Plan Portal confirmed that there are no active or approved forestry operations within the forest; however, there is a native hardwood 'proposed operation' listed.
- A 'proposed operation' means there is no harvest plan developed, so the EPA cannot determine what will be harvested, where harvesting will occur and what environmental protections will be put in place by FCNSW.

What current protections apply to koala habitat in Pine Creek State Forest

- All forestry operations must comply with the requirements set out in the Coastal IFOA. The IFOA includes requirements to retain important koala feed trees, prioritise koala habitat being set aside in permanently protected areas, look for koalas in every tree before felling them, and temporarily protect occupied habitat.
- The IFOA settings were set by the Natural Resources Commission (NRC) in 2018 as a means of balancing koala conservation with the delivery of the State's wood supply agreements on the north coast. The EPA raised concerns at the time that the settings may not adequately protect koalas based on our own research on koala habitat use in 2016.
- NRC, FCNSW and the Department of Primary Industries commenced research into the impacts or otherwise of forestry on koala habitat. The work is yet to be published, but EPA understands that it may indicate some adjustments to the IFOA may be necessary, particularly relating the amount, size and species of feed trees.
- Current scientific evidence also indicates that the Coastal IFOA was not designed to mitigate risks of harvesting in severely fire-affected landscapes, and these landscapes are still in a sensitive state of ecological recovery. The EPA is progressing a briefing note to the Minister's Office on the response to the NRC's report on the 2019/20 bushfires and recommended next steps.

OFFICIAL: SENSITIVE - NSW GOVERNMENT
MD23/2258

[APG]

EPA SO52 GKNP 2023 NP

Options for increasing koala protections in Pine Creek State Forest

- The Coastal IFOA is made of IFOA Conditions, which can only be amended jointly by the Minister for the Environment and the Minister for Agriculture following public consultation processes set out in the *Forestry Act 2012*. In addition, the Coastal IFOA can adopt IFOA Protocols which are amended by the EPA from time to time. This framework provides several scalable options to improve koala protection.
- Powers under the *Protection of the Environment Operations Act 1997* could be explored, however the EPA's position is that such regulatory powers should only be considered if the options below are exhausted.

Option	Action	Opportunities	Risks
Option 1 - Significant improvements to the koala protections via IFOA amendments (recommended)	Ministers can jointly amend the IFOA to: <ul style="list-style-type: none"> • Restrict forestry in certain habitat for refuge • increase the amount of koala trees to be retained, or • reduce logging intensity in koala habitat. 	This approach can also address outstanding actions from the NRC's bushfire advice.	The Act requires a complex public consultation process and will take a few months. The changes may impact on the wood supply agreements.
Option 2 – Modest improvements to koala protections via Protocol amendments (recommended)	The EPA can amend several IFOA Protocols to: <ul style="list-style-type: none"> • increase the size of koala feed trees to ensure the largest trees are being retained; • increase the proportion that should be the preferred feed tree species; and, • require koala habitat to be preferentially retained in permanent protected areas (clumps). 	The EPA is preparing a package of Protocol amendments to ensure their continual improvement, and this can progress with or in advance of these changes.	FCNSW (and industry) dispute that EPA can make Protocol amendments and may legally challenge the changes – Government support may be required to mitigate the legal risks
Option 3 – Interim improvements via Site Specific Operating Conditions (SSOCs) (not recommended)	The NSW Government can ask FCNSW to obtain SSOCs from the EPA in certain areas of koala habitat.	A flexible approach which enables the EPA to design bespoke protections depending on the habitat value and circumstances.	SSOCs can only be imposed by the EPA where FCNSW request them. If they choose to ignore the government's request, there is no regulatory or legal avenue the EPA can pursue.

Option	Action	Opportunities	Risks
Option 4 – Voluntary measures (not recommended)	<p>The EPA can continue working with FCNSW to encourage a precautionary approach to forestry operations in areas of high value koala habitat.</p> <p>This could include voluntary measures, or deferring forestry operations if they are not critical.</p>	N/A	The EPA cannot enforce voluntary measures if they aren't complied with.
Option 5 – bring forward the Coastal IFOA statutory review (not recommended)	<p>The IFOA must be reviewed every five years to ensure its ongoing effectiveness. The first review is due to commence in November 2023.</p> <p>The review could be brought forward to consider improvements to the koala protections.</p>	<p>This approach can also address outstanding actions from the NRC's bushfire advice, and ensure other threatened species settings are fit for purpose.</p>	<p>This review will take-up to a year to finalise.</p> <p>Ideally, this review should occur in tandem with economic analysis for the Great Koala National Park proposal, as they are intrinsically connected.</p>

Contact and approval

Contact officer	Position	Phone
Jackie Miles	Director Regulatory Policy and Reform	0427 386 694
Steve Orr	Director Regulatory Operations	0436 438 221
Approving officer	Position	Date
Carmen Dwyer	Executive Director Regulatory Operations	22/05/2023
Asela Atapattu	A/Executive Director, Regulatory Policy, Initiatives and Advice	22/05/2023
Tony Chappel	Chief Executive Officer, EPA	23/05/2023

By early July (EPA 4/7/23) there appeared to be agreement to proceeding with amendments to the CIFOA protocols:



Advice request

Minutes – EPA + Forestry Corporation of NSW – discussion on proposed precautionary measures in the Great Koala National Park Assessment Area

Meeting details

Date: 4 July 2023, 11:00am – 12:00pm

EPA: Nancy Chang (A/CEO), David Fowler (ED RPES), Steve Orr (A/ED ROR), Jackie Miles (D. Policy)

FCNSW: Daniel Tuan (A/CEO), Dean Kearney (Senior Manager, Planning), Linda Broekman (Senior Manager, Compliance), Joanna Bodley (Manager Communications and Media)

Agenda

- Summary of the government election commitment to establish a Great Koala National Park (GKNP) - EPA
- Summary of objectives of the draft precautionary measures – EPA
- Summary of FCNSW understanding and needs – FCNSW
- Run through of measures proposed in the EPA's draft letter – (Attached) - ALL

Summary of discussions

- The NSW Government has committed to establishing a GKNP in the first term of government.
- Precautionary measures are warranted to ensure an appropriate balance of industry and timber security and maintaining environmental and park values while the government progresses the analysis and consultation to establish the park.
- The precautionary measures seek to increase transparency and accountability, increase koala habitat protection, improve the information on koalas in the area.
- The measures should be enforceable (via protocol amendments) where possible, but factor in any need for piloting, adaptive management and transition needs to ensure FCNSW has time to ensure they can comply with any new requirements.
- FCNSW has identified some areas where further discussion is warranted (see agreed actions and comments in the draft letter attached).

Agreed actions

- FCNSW to provide feedback on the actions, including adjustments that suit FC business processes that will still deliver on the outcomes EPA is seeking (see comments in the draft letter attached for more detail)
- EPA to draft Protocol amendments for FCNSW consideration and identification of necessary transition needs
- FCNSW to provide advice on potential transition needs, to ensure business processes are in place to comply with new requirements
- EPA+FC to arrange field visits to inform next steps on surveys and clump design guidelines

Next steps

- Follow up meeting in two weeks to check in on progress of agreed actions, EPA to arrange.

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DOC23/593125

[APG]

EPA SO52 GKNP 2023 NP

Undated changes to Protocols proposed by EPA:

GKNP precautionary measures – protocol updates

#	Policy intent	Proposed protocol amendment		
1	<p>Amending Protocol 39: Definitions to:</p> <ol style="list-style-type: none">1) Increase the size of koala browse trees to 30cm diameter at breast height over bark to reflect contemporary research that while koalas use a variety of tree sizes, they preference larger sized trees.2) Increase the proportion of koala browse trees that are a primary browse tree species, and include any other species that koalas have shown dietary or shelter preferences for under the Natural Resources Commissions koala research, and3) Specify that koala browse tree prescription 1 must apply to the proposed Great Koala National Park assessment area, meaning there is a higher retention of koala browse trees where they are available.4) Add definition of precautionary measures area with reference to a new spatial layer (and any information about koala prescription)	<p><u>Protocol 39 amendments</u></p> <p>Include as a definition:</p> <table border="1"><tr><td>Precautionary measures area</td><td>An area attributed and mapped as 'precautionary measures area' in the spatial dataset.</td></tr></table> <p>Insert after point 1 of the definition of <i>koala browse tree</i>:</p> <p>2. In the precautionary measures area, means a live tree which may be selected for retention under condition 65 of the approval that is:</p> <ol style="list-style-type: none">(a) greater than 30cm at DSHOB;(b) live and healthy; and(c) of the following tree species:<ol style="list-style-type: none">(i) primary browse trees – Tallowwood (E. microcorys); Swamp Mahogany (E. robusta); or Red Gums (E. tereticornis, glaucina, seeana + hybrids); [Small-fruited grey gum (E. propinqua)]; or(ii) secondary browse trees – Grey Gums (E. biturbinata, punctata, canaliculata) Grey Box (E. moluccana, largeana); Peppermints (E. radiata, acaciaformis); Sydney Blue Gum (E. saligna); Ribbon Gum (E. nobilis, viminalis);	Precautionary measures area	An area attributed and mapped as 'precautionary measures area' in the spatial dataset.
Precautionary measures area	An area attributed and mapped as 'precautionary measures area' in the spatial dataset.			

		<p>Messmate (E. obliqua); Snow Gum (E. pauciflora); Mountain Gum (E. dalrympleana); or New England Blackbutt (E. andrewsii, campanulata).</p> <p><u>Other amendments</u></p> <p>Amend the 'Koala_Browse_Tree_Prescriptions' spatial dataset to include all areas of the precautionary measures area as koala browse tree prescription 1.</p>
2	<p>Amending Protocol 22: Wildlife habitat and tree retention clumps to:</p> <ul style="list-style-type: none"> Require FCNSW prioritise the protection of high value koala habitat, and areas with evidence of koala habitat, in wildlife habitat clumps (required under condition 50 of the CIFOA). Prioritise the inclusion of koala habitat in the design and permanent retention of wildlife habitat clumps, including references to supporting guidance to support this design. 	<p>Amend clause 22.2(3)(a) to:</p> <p>(a) Establishing wildlife habitat clumps that include valuable habitat, including koala habitat in the precautionary measures area; and</p> <p>Insert after clause 22.2(4)(d):</p> <p>(e) the selection of koala habitat in tree retention clumps within the precautionary measures area must consider:</p> <ol style="list-style-type: none"> (i) any evidence of Koala found during a broad area habitat search of the precautionary measures area; and (ii) any additional supporting guidance prepared and updated from time to time by the EPA. <p>(f) the selection of koala habitat in wildlife habitat clumps within the precautionary measures area must consider any additional supporting guidance prepared and updated from time to time by the EPA.</p>
3	<p>Only selective harvesting in accordance with condition 46 of the IFOA be undertaken, and intensive harvesting (as per condition 45) must not</p>	<p>Under clause 34.6(7), the EPA can replace a spatial dataset following consultation with FCNSW.</p>

	be conducted unless otherwise agreed to by the EPA in writing	Propose the EPA to: <ul style="list-style-type: none"> • update the 'intensive harvesting' area mapped in the 'Harvesting_Zone' spatial dataset to exclude the precautionary measures area in accordance with cl 34.6(7), • add a note at the end of the definition of intensive harvesting zone specifying that the EPA replaced the spatial dataset for intensive harvesting zone on [X] date, and • Publish text on EPA website describing that the new spatial map for intensive harvesting excludes the precautionary measures area.
4	Ensure broad area habitat searches include searching for koala scats and scratches on koala browse tree and shelter tree species. Where evidence is identified, these trees or areas of habitat are prioritised for retention as koala browse trees or in tree retention clumps.	Addressed in issue 2 above
5	Transition arrangements	Amend protocol 40 to: <ul style="list-style-type: none"> • [FCNSW to propose additional changes]

Voluntary actions – no protocol updates for now but EPA to keep a watching brief on if there is ongoing non-compliance:

- Operations Register and Plan of Operations services to be updated weekly to reduce discrepancies between FCNSW planning portal information and service information
- Provide the EPA with the operational plan for a forestry operation at least three weeks prior to the commencement of the forestry operation (instead of the current two business days) to ensure opportunities for engagement on these precautionary measures
- Ensure operational plans are also made available to the public at least three weeks prior to the commencement of the forestry operation, and any revisions to the operation plan due to engagement with the EPA or the community are provided within a reasonable timeframe ahead of operations commencing. This is to provide transparency on proposed operations and controls in place.

On the 25 July the Protocol amendments were abandoned in favour of legally unenforceable voluntary measures:

From: Jacquelyn Miles <Jacquelyn.Miles@epa.nsw.gov.au>
Sent: Thursday, 27 July 2023 10:08 AM
To: Lauren Shone <lauren.shone@epa.nsw.gov.au>; Steve Orr <steve.orr@epa.nsw.gov.au>; Sonya Errington <Sonya.Errington@epa.nsw.gov.au>
Cc: EPA RSD Regulatory Policy & Reform Mailbox <regulatory.policy@epa.nsw.gov.au>
Subject: GKNP precautionary measures - URGENT

Lauren

Note what Tony has agreed to – highlighted below.

Can you please turn the precautionary measure letter into a final, but removes the protocol amendments section. Instead say the EPA will consider the need to impose these requirements via amendments to existing protocols, particularly if we see FC not operating within the intentions of this letter. Can I get this by COB today.

Please save it as a different CM9 version, so we have a record of the changes.

Hit hold on the protocol amendments, but I expect we may end up there in time, so it's not wasted effort.

Steve and Sonya - FYI, this will mean there will need to be some hand holding in the operational planning and mark upstages, and ensuing compliance checks are ahead of operations. In GKNP areas. We will need to advance some guidelines to support this.

J

From: Tony Chappel <tony.chappel@epa.nsw.gov.au>
Sent: Tuesday, 25 July 2023 4:29 PM
To: Anshul Chaudhary <Anshul.Chaudhary@fcnsf.com.au>
Cc: Daniel Tuan <daniel.tuan@fcnsf.com.au>; Nancy Chang <Nancy.Chang@epa.nsw.gov.au>;
Ann Denlow <ann.denlow@fcnsf.com.au>
Subject: RE: EPA+FC precautionary measures meeting

Anshul no problem – let's progress the voluntary measures in the interim

Best wishes
Tony

From: Anshul Chaudhary <Anshul.Chaudhary@fcnsf.com.au>
Sent: Monday, 24 July 2023 5:22 PM
To: Tony Chappel <tony.chappel@epa.nsw.gov.au>
Cc: Daniel Tuan <daniel.tuan@fcnsf.com.au>; Nancy Chang <Nancy.Chang@epa.nsw.gov.au>;
Ann Denlow <ann.denlow@fcnsf.com.au>
Subject: Re: EPA+FC precautionary measures meeting

Hi Tony,

Further to our discussion last week, I understand from our Minister that she wants to discuss this with Minister Sharpe first. Please postpone this meeting after our Ministers have had the chance to have their discussion.

Thanks, Anshul.



Our ref: DOC23/665386

Mr Anshul Chaudhary
Chief Executive Officer
Forestry Corporation of NSW
PO BOX 100
BEECROFT NSW 2119

By email: anshul.chaudhary@fcnsw.nsw.au

Dear Mr Chaudhary

Precautionary approaches to harvesting in the proposed Great Koala National Park assessment area

As we discussed at the NSW Environment Protection Authority (EPA) and Forestry Corporation of NSW (FCNSW) Senior Officers Group meeting on 29 May 2023 and in subsequent meetings and discussions, the EPA is requesting FCNSW immediately implement additional precautionary measures in koala habitat within the proposed Great Koala National Park (GKNP) assessment area.

Noting that FCNSW is required under the *Forestry Act 2012* (the Act) to carry out forestry operations in accordance with the Coastal Integrated Forestry Operations Approval (CIFOA), there is flexibility in the Act and the CIFOA's design and operation to enable greater identification and protection of high value koala habitat in alignment with the principles of ecologically sustainable forest management.

As the process for assessing the area for the proposed GKNP is being established, the EPA will consider all forestry operations in the proposed GKNP assessment area as high risk. We have adjusted our inspection program to match the increased risks. Should any non-compliances be identified, the EPA will take enforcement action as appropriate.

The EPA requests FCNSW implement the following precautionary measures in the proposed Great Koala National Park assessment area:

1. Planning, reporting and public transparency

- Update the FCNSW planning portal within the next two weeks, and monthly thereafter, to remove, or register as completed, any forestry operations where there is no intention of commencing or re-commencing forestry operations in the next 12-months. This is to ensure records of current and proposed harvesting activities are accurate and stakeholders have visibility of planned and completed operations. I understand FCNSW have already progressed this measure.
- Operations Register and Plan of Operations services provided on epa.mapservices.fcnsw.net/arcgis/services to be updated weekly to reduce discrepancies between FCNSW planning portal information and service information. The EPA and FCNSW spatial teams will meet to facilitate an improved process for data exchange to deliver this measure in early August.

Phone 131 555
Phone 02 9995 5555
(from outside NSW)

TTY 133 677, then
ask for 131 155

Locked Bag 5022
PARRAMATTA
NSW 2124

6&8 Parramatta
Square 10 Darcy
Street
PARRAMATTA NSW
2150

info@epa.nsw.gov.au
www.epa.nsw.gov.au
ABN 43 692 285 758

- Provide the EPA with the operational plan for a forestry operation at least three weeks prior to the commencement of the forestry operation (instead of the current two business days) to ensure opportunities for engagement on these precautionary measures. Where this is not possible for urgent logistical reasons, the EPA expect FCNSW to notify the EPA as soon as possible in advance of forestry operations commencing.
- Ensure operational plans are also made available to the public at the earliest opportunity prior to the commencement of the forestry operation, and any revisions to the operation plan due to engagement with the EPA or the community are provided within a reasonable timeframe ahead of operations commencing. This is to provide transparency on proposed operations and controls in place.
- Work with the EPA and the Department of Primary Industries to deliver a communications strategy that provides public transparency and accountability of operations, and factual information that can be disseminated on such activities. This should extend to information on the establishment and management of plantations in the area.
- Publish a dedicated information web page on the FCNSW website to inform the community about forestry operations in the proposed GKNP assessment area and the steps taken by FCNSW to protect koalas, koala habitat and environmental values that will contribute to the proposed GKNP.

2. Strategic design of permanent habitat protections

- FCNSW prioritise the protection of high value koala habitat, and areas with evidence of koala habitat, in wildlife habitat clumps and tree retention clumps. The EPA will issue FCNSW guidelines to support this, and to ensure other important habitat such as tree hollows are being retained.
- EPA and FCNSW to undertake field-based meetings to discuss clump design, and the application of 'Protocol 22: Wildlife habitat and tree retention clumps' and supporting guidelines.
- Only selective harvesting in accordance with condition 46 of the IFOA be undertaken. If there is an environmental or forest health need to conduct intensive harvesting (as per condition 45), it must first be agreed to by the EPA in writing to ensure key park and environmental values will be maintained.

3. Application of koala browse tree protocols

- Apply koala browse tree prescription 1 to all forestry operations, resulting in a higher retention of koala browse trees where they are available.
- Koala browse tree selection must prioritise trees over a 30cm diameter at breast height over bark to koala browse trees to reflect contemporary research that koalas use a variety of tree sizes. Where this size is not available, then the next largest tree(s) should be selected.
- Increase the proportion of koala browse trees that are a primary browse tree species where they are available and prioritise the retention of secondary browse tree species that koalas have shown dietary or shelter preferences for under the Natural Resources Commissions koala research. The EPA will provide further guidelines to FCNSW on these measures.

4. Monitoring and quality assurance

- Support the EPA to undertake targeted koala surveys in select areas, where the EPA considers it may be necessary to ensure occupied habitat is better considered in the design of permanent habitat protections. This includes the provision of any necessary research permits, scientific licences, animal ethics approval and logistics and field assistance if it is required.
- Ensure that areas where evidence of koalas is identified during broad area habitat searches, or via targeted surveys, are prioritised for retention as koala browse trees or in tree retention clumps.

We request these measures are implemented immediately and be applied until the NSW Government has completed the establishment of the proposed GKNP assessment area, or until the EPA otherwise advises of new arrangements. We will provide a data layer showing the indicative location of the proposed GKNP assessment area to guide FCNSW's implementation of these precautionary measures.

The EPA will continue to regulate activities in the proposed GKNP assessment area to ensure the rules in place to protect biodiversity and the environment are adhered to. Regulatory action may include issuing notices for information and records, issuing orders or directions and taking compliance action in respect of breaches.

As we have discussed, the EPA will closely monitor all harvesting operations in the proposed GKNP assessment area and may require adjustments to the Coastal IFOA Protocols if adherence to these measures is not demonstrated, or become otherwise required, and will consult with you on proposed amendments if these are deemed necessary.

If you have any further questions about these measures, or would like to discuss additional ideas, please contact Jackie Miles, Director Policy and Strategy, EPA, on PI or at jacquelyn.miles@epa.nsw.gov.au.

Sincerely



TONY CHAPPEL
Chief Executive Officer

4 August 2023

cc: Daniel Tuan, General Manager Hardwood Forests Division, FCNSW via email Daniel.Tuan@fcnsw.com.au



Forestry Corporation of NSW ASN 43 141 857 613
Corporate Office
121-131 Oratava Ave West Pennant Hills NSW 2125
(PO Box 100 Beecroft NSW 2119)
T 02 9872 0111
F 02 9871 6341
www.forestrycorporation.com.au

11 August 2023

Reference Number: DOC23/665386
Our Ref: COUT23/0011

Mr Tony Chappel
Chief Executive Officer
NSW Environment Protection Authority
Via email: epa.chiefexecutive@epa.nsw.gov.au

Dear Mr Chappel

Timber harvesting in the proposed Great Koala National Park assessment area.

I refer to the letter from the Environment Protection Authority (EPA) to Forestry Corporation of NSW (Forestry Corporation) dated 4 August 2023, requesting that Forestry Corporation implement precautionary measures in relation to the proposed Great Koala National Park (GKNP) assessment area.

As you are aware, Forestry Corporation has approval to carry out forestry operations in the Coastal Integrated Forestry Operations Approval (IFOA) Region, including within areas of koala habitat on the NSW mid-north coast, in accordance with the conditions of the Coastal IFOA. The Coastal IFOA contains a range of settings that are intended to provide habitat retention to support viable and resilient populations of koalas across their range and minimise potential for direct impacts to individuals. Consequently, the koala is listed in Protocol 31 of the Coastal IFOA as a fauna species protected by the application of a species-specific condition.

We note the NSW Government's commitment to create a GKNP and understand that the development will be informed by expert scientific advice and independent economic assessment, as well as a consultation process with stakeholders. Forestry Corporation looks forward to participating in this process. However, as this process is yet to be undertaken, the precise size and location of the GKNP is not yet known. We confirm that you will provide a data layer showing the indicative location of the proposed GKNP assessment area and we note that the precautionary measures referred to in your letter and any measures discussed below are intended to apply to that area.

1. Harvesting extent and public information

We acknowledge that, while the koala continues to be protected by the settings in the Coastal IFOA, some stakeholders are concerned about harvesting activities within State forests that may ultimately be revoked to establish the GKNP. In recognition of these concerns, Forestry Corporation intends to implement (or has already implemented) the following measures:

- The rate at which forests are harvested will not exceed 10 per cent of the net harvest area of each Coastal IFOA management zone per year; and during the assessment period, harvesting operations in the assessment area will be restricted to selective harvesting.

- Continue to update Forestry Corporation's Plan Portal so that operations that are no longer intended to be undertaken are removed, expected commencement dates are updated and those operations that have been completed are recorded as such. This work is well underway and is expected to be published by the end of August.
- Provide improved web content in relation to the planned timing, location, and extent of operations for both hardwood plantations and native forests in the proposed GKNP assessment area, in order to improve community information and transparency. This page is under development and is anticipated to be published on Forestry Corporation's website in the coming weeks.
- Enhance information on the Forestry Corporation website in relation to how koala habitats are protected during timber harvesting. This page has been published at <https://www.forestrycorporation.com.au/operations/about-our-harvesting-operations/koalas-on-the-nsw-north-coast>
- Adhere to the requirement for publishing approved harvest plans two days prior to operations commencing and endeavour to do so in advance of this timeframe wherever possible, noting that there are a range of reasons why this may not always be possible. In this regard we note that areas proposed for harvesting in the upcoming months are listed on the Plan Portal even if the plan is not yet approved, thereby providing advance notice and transparency to the EPA and other stakeholders.
- Engage with the EPA spatial team to discuss provision of Plan of Operations information.
- Provide regular information to the Minister for Agriculture on upcoming operations which can then be shared more broadly within Government as relevant.
- Work with the EPA and the Department of Primary Industries to further improve communications and public transparency in relation to forestry operations.

2. Environmental measures

Contemporary research shows that koalas continue to utilise both reserved corridors and harvested areas following timber harvesting operations conducted under the Coastal IFOA settings. In recognition of the heightened community interest in relation to areas of koala habitat and koala feed trees, Forestry Corporation intends to implement (or has already implemented) the following precautionary measures within the proposed GKNP assessment area during the assessment period:

- On average, exclude 40 per cent of any operational area from tree-falling.
- Prioritise areas where koala browse prescription 1 or koala browse prescription 2 would otherwise apply for inclusion in new wildlife habitat clumps, without contravening the Coastal IFOA requirements to include other habitats.
- Prioritise areas containing high numbers of koala browse trees for inclusion in new tree retention clumps, without contravening the Coastal IFOA requirements to include other retained trees and habitat features.
- Increase the retention of koala browse trees to a minimum of 10 per hectare. This doubles the feed tree protection rate that is specified in the Coastal IFOA for most operational areas, resulting in additional protection for koala habitat.
- Ensure that contemporary, peer reviewed research is applied when selecting koala browse trees. This will result in preferential selection of tallowwoods with a diameter at breast height between 25 centimetres and 50 centimetres where available, without contravening the Coastal IFOA requirement to select scattered trees.

In order to ensure that any additional precautionary measures complement our existing obligations to comply with the Coastal IFOA Forestry Corporation will need to take a thorough and structured approach to their implementation. In this regard, we note that we will need to undertake the following:

- operational plans will require amendment;
- procedures will need to be updated and rolled out;
- staff and contractors will require training in the new requirements;
- the script that calculates the required number of koala browse trees must be redeveloped; and
- monitoring procedures will need to be updated prior to any new precautionary measures being implemented.

Consequently, we expect that the new measures will be fully implemented across the assessment area as quickly as possible over the coming months, noting that some of them are already in place. This is subject to the spatial data referred to above indicating the location of the proposed GKNP assessment area is provided within sufficient time to allow this work to be undertaken.

If your team has any questions about these measures, please have them contact our Senior Compliance Manager, Linda Broekman, at linda.broekman@fcns.wa.gov.au or phone PI

Sincerely



Anshul Chaudhary
Chief Executive Officer