

**Submission
No 1**

**INQUIRY INTO LOCAL LAND SERVICES AMENDMENT
(MISCELLANEOUS) BILL 2020**

Organisation: Coffs Harbour City Council

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**SUBMISSION BY COFFS HARBOUR CITY COUNCIL TO THE INQUIRY INTO THE
LOCAL LAND SERVICES AMENDMENT (MISCELLANEOUS) BILL 2020
January 2021**

General

This submission has been prepared by Council officers at the Coffs Harbour City Council, for lodgement with the NSW Legislative Council's Portfolio Committee No. 7, as a response to the Inquiry into the *Local Land Services Amendment (Miscellaneous) Bill 2020*. The consultation period closes on 5 February 2021.

The Coffs Harbour Koala Plan of Management 1999 was the first LGA wide, or comprehensive, koala plan of management (KPoM) endorsed under the now repealed *State Environmental Planning Policy No 44—Koala Habitat Protection* (SEPP 44). The Coffs Harbour Koala Plan of Management 1999 has been instrumental in preserving koala habitat in the Coffs Harbour LGA and Council commenced a review of the plan in late 2018 to ensure the continued survival of this iconic species in the local area. Unfortunately, the changing legislation and lack of certainty has resulted in this project being delayed. Council is now redrafting a new KPoM under *State Environmental Planning Policy (Koala Habitat Protection) 2020* and wishes to convey the importance of legislative certainty to this inquiry.

In summary Council makes the following points:

- Core habitat in existing and new KPoMs should continue to be excluded from Private Native Forestry (PNF) and that additional resources are made available for compliance of PNF and unauthorised vegetation removal more generally.
- Dual consent issue for PNF should be a matter for each Council to consider via Local Environmental Plans in recognition of the variability within regions. Of particular concern is the impact on land zoned Zone E2 Environmental Conservation and Zone E3 Environmental Management where allowing PNF to occur is contrary to the zone objectives.
- Extending the PNF approval period to 30 years is not supported. Ecological assessments and approvals in other pieces of legislation are generally considered invalid, or at least time damaged, if more than 5 years old.
- Without local scale mapping core koala habitat is not being identified via PNF approvals. The reliance on adopted KPoM 'core habitat' or a record in BioNet is not an effective mechanism to demonstrate threatened species presence/absence. Site surveys should be required prior to PNF approvals.
- The PNF Review should be allowed to be concluded prior to significant changes to the PNF framework.
- To assist the Inquiry, details of how many times and where the Threatened Species prescriptions in the PNF Code have been triggered, implemented and monitored for effectiveness should be requested from Local Land Services.
- The option for Councils to continue to require content for vegetation removal in environmental zones for agricultural activities via the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* should be retained.
- Both core and potential koala habitat should cause land to be mapped as 'regulated' as part of the Native Vegetation Regulatory Map, and that given the threatened species status of koalas, that approval under the *Local Land Service Act 2013* be required rather than the use of self-assessable codes of practice.
- The Native Vegetation Regulatory Map should be finalised.

- The feed trees in schedule 2 of the SEPP be expanded to reflect the full suite of feed trees used by koalas across the state.
- Any use of landscape scale mapping should be tempered with flexibility or the ability to allow finer local scale data to be utilised where agreed to by the Department.
- Guidelines produced as to the content of KPoMs should allow for departures based on local requirements or emerging technology where this is agreed to by the Department.
- Impacts on koala habitat should be listed as serious and irreversible as discussed in the 2016 Independent Review into the Decline of Koala Populations.
- Partnerships with local government and community organisations are effective models to deliver funding for landholders and should be considered alongside programs delivered by the Biodiversity Conservation Trust which some landholders find too complex and limiting.
- Landholders can find the legislative framework in NSW difficult to navigate and that this is further exacerbated by changing policy positions, i.e. the Bushfires Legislation Amendment Bill 2020 which appears to have been passed without understanding impacts to threatened species.

Objectives and impact of the Local Land Services Amendment (Miscellaneous) Bill 2020

Objective (a) of the Bill was to remove the application of the *State Environmental Planning Policy (Koala Habitat Protection) 2019* from land to which Parts 5A and 5B of the *Local Land Services Act 2013* (LLS Act) applies, except for core koala habitat in a select number of local government areas that already had an adopted KPoM.

Part 5A of the LLS Act is titled 'Land management (native vegetation)', and in simplified terms governs where clearing of native vegetation is either not regulated, regulated, subject to the Land Management (Native Vegetation) Code, or subject to additional restrictions on account of its sensitivity. This section also describes allowable activities, that being those activities where landholders can clear vegetation without any approval, e.g. clearing for fence lines.

The Bill has the effect of only allowing koala habitat to be category 2-regulated land, and therefore subject to tighter vegetation clearing restrictions, if it is within one of five existing approved KPoMs. The Coffs Harbour Koala Plan of Management 1999 is one of these plans however is now more than 20 years old and is need of review. If the Bill was to be passed Council would be faced with the difficult decision of retaining a plan prepared 20 years ago that provides protection from additional clearing under the LLS Act for existing mapped core koala habitat, or revising the plan to meet current standards in science and mapping. If the Bill was to be passed and Council proceeded with a new plan it would be with the knowledge that core koala habitat in any new plan would not be classified as category 2-regulated land, could be cleared under certain provisions of Part 5A of the LLS Act and cleared for Private Native Forestry (PNF).

Part 5B of the LLS Act is titled 'Private Native Forestry' and governs the authorisation of PNF, the making of codes, and enforcement.

Council notes that the 2016 Independent Review into the Decline of Koala Populations refers to the Private Native Forestry Code of Practice several times throughout the report as being the appropriate regulatory tool for governing PNF in koala habitat. It has been the experience of Coffs Harbour City Council that the Code fails to protect koala habitat as its interpretation

is too limited, there is a failure to adhere to the prescriptions and there is limited resources for compliance. This is further demonstrated by the issue that prescriptions in the code for threatened species are rarely, if ever, triggered as there is no site survey requirement. The reliance on adopted KPoM 'core habitat' or a record in BioNet is not an effective mechanism to demonstrate threatened species presence/absence and is not accepted in applications for vegetation removal of a similar scale such as through development applications or planning proposals. Site surveys should be required prior to PNF approvals.

To assist the Inquiry, it is recommended that Local Land Services be asked to provide details of how many times and where the Threatened Species prescriptions in the Code have been triggered, implemented and monitored for effectiveness.

Analysis of Coffs Harbour City Council's records has revealed that of the almost 19,370 hectares of koala habitat in the Local Government Area, up to 23% are covered by PNF approvals. It is noted that Council only receives notification that a PNF approval has been granted on a property and does not receive mapping data to indicate how much of that property is covered by the approval. However, given the PNF approval usually covers the vegetated areas, and that these same areas are koala habitat, the figure is likely to still be representative.

The 2016 Regional State of the Environment Report for the North Coast Region of New South Wales also noted that *'during consultation with councils in the reporting region in 2012, a number reported that they considered private native forestry to be the biggest threat to biodiversity'*. With additional issues relating to PNF being raised in 2016 including, *'Approvals being issued on land designated as koala habitat'* and *'Failure to adhere to the PNF Code of Practice'*. Council urges the inquiry to recommend that core habitat in existing and new KPoMs continue to be excluded from PNF and that additional resources are made available for compliance of PNF and unauthorised vegetation removal more generally.

The intent of objective (b) of the Bill was to remove any dual consent for PNF under Council Local Environmental Plans (LEP). This state wide approach does not recognise variability within regions nor does it allow for any land use zones to be managed differently according to their values. Council is particularly concerned about the impact of this objective in land zoned Zone E2 Environmental Conservation and Zone E3 Environmental Management. The objectives for these zones (as per the Standard Instrument LEP) are:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Allowing PNF to occur within these zones is contrary to the zone objectives and allowing PNF to occur with no opportunity for Council to mitigate impacts or to apply local knowledge could lead to irreversible environmental harm in the most sensitive of ecological areas. In assessing development applications Councils also consider matters outside the PNF process such as traffic and impacts on adjoining land holders. It is noted that Environmental Zones do not prohibit clearing from occurring but that any clearing would need to be appropriately authorised. Council believes that the dual consent issue should be a matter for each Council to consider via Local Environmental Plans.

The intent of objective (c) of the Bill was to extend the maximum duration PNF approvals from 15 years to 30 years.

Council is greatly concerned of the potential impact of PNF to the koala population of Coffs Harbour. As stated in the most current 2016 Regional State of the Environment Report for the North Coast Region of New South Wales, '*since 2007, private native forestry in the North Coast region has increased significantly. Of the 2,916 PNF agreements approved in NSW between 2007 and June 2015, 69.4% were in the reporting region, covering 49.7% of the total area under PNF agreements in NSW (EPA Public Register 2016)*'. The Regional State of the Environment Report 2016 goes on to say that '*the area under PNF agreements for the North Coast region as at June 2015 was 266,727 hectares*' however the report also points out that only a fraction of these approvals have been enacted. The current approval period of 15 years already means that the impact and legacy of these approvals cannot be underestimated. In sensitive environments an approval without further analysis for 15 years is already inappropriate. This is demonstrated by survey work and assessments older than 5 years being deemed, in general, to be time damaged in evaluations undertaken under the *Biodiversity Conservation Act 2016*. As such Council does not support extending the approval period to 30 years.

It is further noted that the Bill pre-empts the outcomes of the PNF Review that should be allowed to be concluded prior to significant changes to the PNF framework.

Objective (d) of the Bill required the Minister for Agriculture and Western New South Wales to consult with the Minister administering Part 7A of the *Fisheries Management Act 1994* and the Minister administering the *Forestry Act 2012* before making a Private Native Forestry Code of Practice. Council supports effective, inclusive consultation and is supportive of this inclusion with the understanding that the existing requirement for the concurrence of the Minister administering the *Biodiversity Conservation Act 2016*, is retained.

Objective (e) of the Bill was to allow native vegetation clearing in certain circumstances on land that is used for agricultural purposes without the need for authorisation under other legislation. Similarly to the comments on objective (b), a state wide approach does not recognise variability within regions. It is also concerning that this objective is not linked to a land use zone but instead references the broad land use of agriculture. Council is particularly concerned about the impact of this objective in land zoned Zone E2 Environmental Conservation and Zone E3 Environmental Management in which many Councils currently require consent for vegetation removal. The option for Councils to continue to require consent for vegetation removal in environmental zones via the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* should be retained.

The operation and effectiveness of the 1995, 2019 and any potential new draft Koala SEPPs in protecting koalas and their habitat

For the Coffs Harbour LGA the *State Environmental Planning Policy No 44—Koala Habitat Protection 1995* (SEPP 44) has been very effective at conserving koala habitat and guiding development to avoid impacts. However, Council is also aware that for many areas of NSW the feed trees in schedule 2 do not represent the trees utilised by koalas. While this is not the

case for Coffs Harbour this incomplete list is currently preventing true koala habitat being classified as core habitat under the SEPP and therefore lacks protection via the planning system. Council urges to inquiry to recommend that the feed trees in schedule 2 be expanded to reflect to full suite of feed trees used by koalas across the state.

Coffs Harbour City Council had commenced drafting a new KPoM under *State Environmental Planning Policy (Koala Habitat Protection) 2019* and the associated Guideline prior to the SEPP being repealed. Overall Council appreciated the new approach and in particular the updating of the definitions of core koala habitat, and the increased tree species list that more accurately reflected the wider range of feed trees. The consideration of other types of habitat (other than only core) and the role of linkages and buffers that are all important for the long-term survival of koala populations, were also positive additions.

Council did raise concerns regarding the accuracy of the maps that were based on landscape based data and that there was no flexibility or use of local scale data to inform the mapping except through a formal amendment of the SEPP. The use of regional or state scale data leads to inaccuracies at the local scale that can undermine the trust and the effectiveness of the SEPP and therefore KPoMs. Although the Development Application Map was removed in the final version of the 2019 SEPP in favour of site assessments, the Site Investigation Area Map was retained. Council believes that this map could be replaced by a schedule of LGAs similar to the approach used in SEPP 44 that would remove the need for the much critiqued state scale mapping in favour of local scale data.

Any use of landscape scale mapping should be tempered with flexibility or ability to allow finer local scale data to be utilised where agreed to by the Department. Requiring approval by the Department allows for an appropriate level of oversight and still allows the best available science and mapping to be utilised in order to meet the aims of the SEPP.

Council also noted that the 2019 SEPP and accompanying guidelines were very prescriptive in relation to consultation requirements, survey methods and even the structure of the KPoM. Council believes that there should be some allowance for departures based on local requirements or emerging technology where this is agreed to by the Department.

Council notes that the *State Environmental Planning Policy (Koala Habitat Protection) 2020* essentially mirrors SEPP 44 and that a new policy has been mooted. Coffs Harbour City Council has been trying to finalise a new KPoM since mid-2019 but has been delayed by changing legislation. Council is now redrafting the plan in line with *State Environmental Planning Policy (Koala Habitat Protection) 2020* and wishes to convey the importance of legislative certainty to the inquiry.

Current and potential incentives and challenges facing rural landholders who seek to protect koalas and their habitat on their land

While the introduction of the Biodiversity Offset Scheme has created a markets for landholders seeking to protect koala habitat, for many this system is complex and requires substantial upfront investment prior to any funding being received. The Biodiversity Conservation Trust is developing alternative approaches such as Fixed Priced Offers however many landholders still find such approaches administratively complex. For these programs to be successful on

ground resources in the form of staff to assist with the administration, and create community linkages, is essential.

Many landholders also do not want to put what they perceive as restrictive covenants on their land but are willing to undertake fencing and replanting projects that over time are very effective. Coffs Harbour City Council has funded the Orara River Rehabilitation Project for over 20 years which has achieved significant improvements in channel structure, stock management; reductions in density and distribution of major target weed species; and revegetation, mostly without restrictive covenants and by working with the community. Partnerships with local government and community organisations such as Landcare are effective models to deliver funding and achieve substantial on ground improvements.

The mechanisms by which biodiversity values are assessed on private land when land use changes

A change in land use may occur via a change in zoning or via a change in the land use, i.e. agriculture uses to a residential use. A change in land use zone is administered via a planning proposal which requires a comprehensive assessment of the impacts to biodiversity values. A change in the permitted uses may require a similar assessment if the new land use requires consent, for which most agricultural uses do not. While Council has no wish to change this approach for extensive agriculture there is a need to protect koala habitat in agricultural areas to ensure that both uses are preserved for the future. A 2006 review in the effectiveness of the Coffs Harbour Koala Plan of Management 1999 found that the greatest area of habitat loss occurred in rural zoned land which accounted for over 70% of the overall area of habitat loss.

Most vegetation loss in rural land is administered by the *Local Land Services Act 2013*, which refers to the Native Vegetation Regulatory Map. Council advocates that both core and potential koala habitat should cause the land to be mapped as 'regulated' as part of the Native Vegetation Regulatory Map, and that given the threatened species status of koalas, that approval under the *Local Land Service Act 2013* be required rather than the use of self-assessable codes of practice. Council urges the inquiry to recommend finalising the Native Vegetation Regulatory Map. Council also supports including impacts on koala habitat as serious and irreversible as discussed in the 2016 Independent Review into the Decline of Koala Populations by the NSW Chief Scientist and Engineer Professor O'Kane.

The impacts of current regulatory regimes on private landholders

Council notes that landholders can find the legislative framework in NSW difficult to navigate and that this is further exacerbated by changing policy positions. Another recent example of uncertainty policy implications is the Bushfires Legislation Amendment Bill 2020. The Bushfires Legislation Amendment Bill 2020 refers to a yet to be released Rural Boundary Clearing Code however, it is Councils understanding that 50m of vegetation (25m either side of a boundary fence), with potentially no provision for threatened species or Koala Plans of Management, could be removed in rural areas for the purposes of bush fire hazard reduction. In areas like Coffs with both sensitive vegetation and many small lots (and therefore many boundaries), this impact could have a disastrous impact on the koala population.

The impact on local government's ability to manage koala populations in their Local Government Area and koala plans of management.

For Coffs Harbour the biggest recent impact in effectively managing koala populations has been the lack of legislative certainty, however as discussed earlier in this submission PNF remains one of the biggest concerns. Council has substantially progressed a new Koala Plan of Management and has developed a new draft map of core koala habitat. The NSW Code of Practice requires that PNF is not permitted within known core habitat, and that where evidence of koala activity has been established that a set number koala feed trees must be retained. However, based on the updated draft Coffs Koala Habitat Map, there are (as at December 2020) 65 properties with core koala habitat, under the revised mapping, that have a PNF approval. This highlights that without local scale mapping core koala habitat is not being identified via PNF approvals. This issue is not confined to only koala habitat as prescriptions in the code for all threatened species are rarely, if ever, triggered as there is no site survey requirement. The reliance on adopted KPoM 'core habitat' or a record in BioNet is not an effective mechanism to demonstrate threatened species presence/absence. Site surveys should be required prior to PNF approvals.

Council intends on progressing a new KPoM in 2021 as it is a proven and effective way to conserve koala habitat and thereby protect the species.

Conclusion

Council urges the inquiry to deliver legislative certainty, and take actionable, positive steps for the long term survival of koala populations and habitat in New South Wales. Council hopes that this submission assists in outlining some of the issues relevant to Coffs Harbour, but also NSW more broadly.