

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

Organisation: Local Government NSW

Date Received: 5 February 2021

Submission on the Local Land Services Amendment (Miscellaneous) Bill 2020

February 2021

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to provide input into the review of the Local Land Services Amendment (Miscellaneous) Bill 2020.

Councils are strong advocates for working collaboratively and transparently with all levels of government, regional bodies, industry and the community to deliver positive outcomes for the environment. Clear legislation that enables and supports that collaboration is vital, as is the commitment from the NSW Government to transparently oversee, administer and implement the legislation.

LGNSW is deeply disappointed that local government was not consulted prior to the introduction of the legislation to Parliament, as the legislation has implications for councils and how they plan for and manage their local government areas.

This submission has been developed with input from affected councils in NSW.

Background

Local Government has an important role in biodiversity management. Councils have key responsibilities as consent authorities for local development, as active land managers, through strategic planning and in influencing future development and planning decisions.

The 2019-2020 bushfires in NSW had a devastating impact on the natural environment and the community. The NSW Bushfire Inquiry details that initial estimates from NPWS (provided 1 April 2020) were that the bushfires affected the habitat of at least 293 threatened animals and that more than 25% of the most suitable koala habitat in eastern NSW was within fire affected areas.

Finding 10 of the Upper House Koala Inquiry report (June 2020) was that 'There has been a substantial loss of both suitable koala habitat and koalas across New South Wales as a result of the 2019-2020 bushfires. An estimated 24 per cent of koala habitat on public land has been severely impacted across the State, but in some parts there has been a devastating loss of up to 81 per cent.' Further, the inquiry found that koalas will become extinct in NSW before 2050 without urgent government intervention.

The proposed purpose of the LLS Amendment (Miscellaneous) Bill 2020 was to support and strengthen the Local Land Services Act while ensuring that the State Environmental Planning Policy (SEPP) Koala Habitat Protection 2019 applies where it is needed most. Local Government NSW (LGNSW) is concerned that if enacted in its current form, the Bill will have unintended implications for local government in NSW and will lessen the protection of koalas and koala habitat.

Key changes proposed by the Bill include changes to the interaction of the State Environmental Planning Policy (Koala Habitat Protection) 2019 (Koala SEPP), environmental zones and dual consents for private native forestry.

Response

The Portfolio Committee 7 resolved that submissions to the inquiry address six key issues. LGNSW's response to each of these issues is outlined below.

1. The objectives and impact of the Local Land Services Amendment (Miscellaneous) Bill 2020

Objective (a): to remove the application of *State Environmental Planning Policy (Koala Habitat Protection) 2019* to land to which Parts 5A and 5B of the *Local Land Services Act 2013* (LLS Act) apply, while preserving the application of *State Environmental Planning Policy no 44 – Koala Habitat Protection* to certain core koala habitats in the local government areas of Ballina, Coffs Harbour, Kempsey, Lismore and Port Stephens.

Category 2 Land

Part 5A of the LLS Act primarily outlines land management and clearing of native vegetation requirements. Under the proposed changes, Category 2 - regulated land will only apply to Ballina, Coffs Harbour, Kempsey, Lismore and Port Stephens LGAs in areas identified as core koala habitat in their existing Koala Plans of Management (KPoMs) approved under the repealed SEPP44.

There are no provisions to include other LGAs, despite a number of councils having either draft KPoMs underway or awaiting approval (including the approved Bellingen KPoM and the Campbelltown KPoM, which has been endorsed by DPIE). There are also no provisions for Category 2 land to be applied to areas that are identified in updated KPoMs, which in most cases will be more scientifically up to date and contain more accurate records and mapping. The Coffs Harbour KPoM is a good example of this, being more than 20 years old and currently under review. Further, the Bill would not require (and does not contain provisions for) land identified under the new Koala SEPP to be designated Category 2 – regulated land.

LGNSW does not support this proposed change due to its restrictive nature and implications to councils who have not yet finalised their KPoM or need to update their KPoMs, as it will essentially remove regulatory controls on land clearing in koala habitat in rural areas.

Allowable Activity Land

The Bill introduces the concept of 'allowable activity land' being land that at some time has been rezoned from rural zoning to environmental zoning. The inclusion of this provision would allow the clearing of native vegetation for allowable activities, without approval, in environmental zones, therefore removing councils' assessment and authorisation provisions.

LGNSW does not support this change; Environmental Zones are intended to provide protection to land that is identified as warranting protection due to its environmental values. 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. (E2 & E3)
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values. (E2)

Environmental zones do not prohibit clearing, but rather ensure that any clearing is appropriately assessed and authorised and therefore the introduction of allowable activities in environmental zones without the requirement for assessment is not supported.

Private Native Forestry

Part 5B of the LLS Act is titled 'Private native forestry' (PNF). It governs the authorisation of PNF, the making of codes and enforcement. If passed, the Bill would remove local councils' ability to assess private native forestry operations by removing the requirement for development consent and also removing the ability for councils to restrict forestry operations through other environmental planning instruments. This is discussed in further detail below.

Objective (b): to remove requirements imposed by other legislation, including the requirement for development consent under the *Environmental Planning and Assessment Act 1979*, in relation to carrying out private native forestry that is authorised by a private native forestry plan under Part 5B of the Act.

The intent of this objective was to remove any dual consent for Private Native Forestry (PNF) under Council Local Environmental Plans (LEP). Under the proposed changes the Bill will prevent local environment plans from requiring development consent for PNF, doubles the duration of PNF plans from 15 years to 30 years and pre-empts the outcomes of the PNF review. These are significant changes and should not be implemented until the outcomes of the PNF review are finalised. Local government is a key stakeholder in PNF as local land managers and through the provision of local infrastructure.

As outlined in the Koala populations and habitat in New South Wales Report 3:
"Along with land clearing and urban development it [PNF] is a key cause of koala habitat fragmentation and loss on private property."

Recommendation 31 of the Upper House Koala Inquiry was "That the NSW Government assess the interaction between legacy Private Native Forestry plans and koala plans of management to ensure core koala habitat is protected". The Government's response to this recommendation was "As part of the Private Native Forestry (PNF) review, the Government will consider how to balance koala habitat protection and the sustainable development of private native forestry in NSW".

Allowing PNF to occur with no opportunity for councils 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. The dual consent issue should be a matter for each council to consider via Local Environmental Plans. Councils need to know where PNF sites are being approved in relation to other planning overlays, and where and when active operations will occur in order to ensure impacts on the community are minimised.

LGNSW supports private native forestry activities across NSW that balance regional, social and economic development objectives and environmental considerations. However, the removal of native vegetation through private native forestry should be subject to development control and assessment conditions as would apply to other industries to minimise ecological impacts.

Objective (c): to extend the maximum duration of private native forestry plans made under Part 5B of the Act to 30 years.

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*.

LGNSW does not support this amendment to extend the approval period to 30 years. As outlined above these are significant changes which should not be implemented until the outcomes of the PNF review are finalised.

In addition, these proposed changes do not relate to the stated reason for the Bill – the interaction between land clearing rules under the LLS Act and the Koala SEPP.

Objective (d): to require 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.

LGNSW 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): to allow native vegetation clearing in certain circumstances on land that is used for agricultural purposes without the need for authorisation under other legislation.

A state wide approach does not recognise variability within regions. It is concerning that this objective is not linked to a land use zone but instead references the broad land use of agriculture. Of particular concern is the impact of this objective in land zoned E2 Environmental Conservation and E3 Environmental Management in which many Councils currently require consent for vegetation removal. The amendments are considered an over-reach and provide unnecessary risk to koalas and their habitat given the current existing use rights, existing provisions under the Land Management (Native Vegetation) Code 2018 and consent required under *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

2. The operation and effectiveness of the 1994, 2019 and any potential new draft Koala SEPPs in protecting koalas and their habitat

State Environmental Planning Policy No 44—Koala Habitat Protection 1995 (SEPP 44), while enabling some protection for koalas, was out of date and its review and update was widely supported by councils.

Consistent issues reflected on by councils and others included the limited definition of core koala habitat, the limited number of listed relevant tree species utilised by koalas and the need to align the SEPP with updated science, policy, mapping, legislation and to be in line with key recommendations from detailed studies and reports. In particular, SEPP44 was seen to provide limited protection for koalas, with the current trajectory indicating that without urgent government intervention that koalas would become extinct in NSW before 2050 due to the key impacts of habitat loss and fragmentation.

State Environmental Planning Policy (Koala Habitat Protection) 2019 was introduced following a review of SEPP44 (without consultation on the final version) and commenced operation on 1 March 2020, before the public consultation of the Draft Guidelines, which underpin Koala SEPP 2019, were finalised.

SEPP 2019, as initially adopted, was seen to include some improvements including an improved definition of core koala habitat, the increased tree species list that more accurately reflected the wider range of feed trees, a stated aim to ensure no net loss of koala habitat and the inclusion of principles and criteria to guide the preparation and assessment of development applications. 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.

Despite these improvements a number of key issues remained outstanding including the reliance on regional scale mapping, the 1ha limit, and over-reliance on modelled habitat mapping without the flexibility or ability to allow finer local scale data to be utilised where agreed to by the Department.

The subsequent amendment to the Koala SEPP and guideline in October 2020:

- Changed the process for assessing and determining development applications,
- Amended the definition of core koala habitat, and
- Increased the consultation requirement for the preparation of KPOMs

These changes resulted in:

- An additional 'stop the clock' process resulting in a potential 150 day consultation period
- The requirement for councils to conduct on-ground surveys at their own expense if requested by a landholder, and
- A less robust Tier 1 assessment process (not requiring site inspection).

These proposed (and adopted) amendments are likely to increase the cost burden on councils and will also make the preparation of KPOMs more resource intensive, whilst simultaneously significantly reducing their value through the proposed exclusions and allowable activities for core koala habitat.

Local Government supports the protection and enhancement of koala habitat to ensure the viability of the species through good planning decisions and management. The approach to achieve more consistency in assessment decisions through a revised SEPP is broadly supported. The utilisation of the findings of the Upper House Inquiry into koalas and koala habitat is also supported.

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

Opportunities exist for rural landholders seeking to protect koalas and their habitat including management support programs and voluntary statutory protection for example through the Biodiversity Offsets Scheme. However, some landholders may see these systems as complex, particularly the administration side. For these programs to be successful, continued on-ground resources and support are required.

As well as statutory support, other programs also exist including partnerships with local government and community organisations such as Landcare. Many landholders have a strong interest in protecting koalas and their habitat on private land, however the level of interest often exceeds the support available. Ongoing programs and increased investment and an extension

of support available for land management assistance programs would increase the amount of koala habitat that is protected.

LGNSW supports ongoing programs and opportunities to support rural landholders to protect koalas and their habitat on their land, and advocates for continued funding and varied opportunities to further support them in the future.

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

The existing mechanisms for assessing biodiversity values are dependent on the proposed land use changes and whether they trigger an assessment under Part 4 of the EP&A Act or approval under the *Local Land Services Act 2013*. Given the current extinction trajectory for koalas in NSW due to the key impacts of habitat loss and fragmentation, there is a need to review the approval process to ensure that it offers the required assessment process required to protect this iconic species.

The proposed Bill seeks to further undermine the existing mechanisms by removing key approval and assessment provisions as outlined above as well as by:

- removing the ability for a SEPP or LEP to require development consent for the clearing of native vegetation in rural zones
- extending the provisions for allowable activities (unregulated clearing) into all SEPPs on land to which the LLS Act applies (coastal wetland, littoral rainforest and environmental zones).

LGNSW is supportive of the Koala populations and habitat in New South Wales Report 3, Recommendation 26, “That the NSW Government, in finalising the *State Environmental Planning Policy (Koala Habitat Protection) 2019* framework, strengthen the ability of consent authorities to protect koala habitat.” LGNSW advocates that this recommendation be extended to the current review and in developing the “policy to protect koalas and the interest of farmers” in 2021. The proposed LLS Amendment Bill is considered to be inconsistent with this recommendation as it will reduce and not strengthen the ability of councils to protect koala habitat and therefore is not supported by LGNSW.

Koala SEPP (2019) and Koala SEPP (2020) do not consider the subdivision and rezoning stage of development, where impacts on habitat can be significant. In the absence of an approved KPoM, once a subdivision occurs, development of land with an area of less than 1ha is not subject to further assessment. If an amended SEPP is developed as an outcome of this review, LGNSW recommends that the process be amended to ensure that subdivisions and rezoning’s are subject to a detailed assessment of impact on koala habitat, and thereby ensure that they do not lead to further loss of koala habitat.

5. The impacts of current regulatory regimes on private landholders

Landholders can find the legislative framework in NSW difficult to navigate, which can be further exacerbated by changing policy positions. The recent passing of the Bushfires Legislation Amendment Bill 2020 is a good example, with the yet to be released Rural Boundary Clearing Code.

Some councils have also reported an increase in the cases of clearing under the guise of 'allowable activities', most often not for the legitimate purpose of establishing or maintaining rural infrastructure, rather as pre-emptive of development applications for rural dwellings.

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

As major land planners, land owners and land managers, councils are at the forefront of biodiversity conservation with the responsibility, opportunity and resources to protect and enhance significant threatened populations, communities and their habitats.

LGNSW's key concerns with the LLS Amendment Bill are as outlined previously in this submission and specifically that:

- it will remove local councils' ability to assess private native forestry operations by removing the requirement for development consent and also removing the ability for councils to restrict forestry operations through other environmental planning instruments. Private native forestry operations can change traffic conditions and impact on local roads, generate noise and local amenity issues. Councils need to know where PNF sites are being approved in relation to other planning overlays, and where and when active operations will occur in order to ensure impacts on the community are minimised.
- allowable activities (such as clearing) will be permissible on allowable activity land, including land zoned for environmental protection, without approval, therefore removing councils' assessment and authorisation provisions.
- it will prevent the inclusion of core koala habitat as identified by an approved Koala Plan of Management (KPoM) from being designated as category 2 regulated land under the LLS Act (and therefore allow land clearing of core koala habitat in rural areas). If clearing of identified core koala habitat is to be allowed, this significantly devalues any council efforts to prepare or update KPoMs.

Councils are generally supportive of developing KPoMs and in particular having a standardised structure to them. However, councils have raised the need for some flexibility to respond to local requirements in developing these plans, to ensure that they come to fruition and are not burdened by prescriptive requirements which may not add value. Developing KPoMs, particularly the consultation requirements, can be a resource intensive process for councils and at times politically challenging. The sheer volume of work required of a council preparing a KPoM is challenging and additional resources and support would be needed in most councils.

Local government is ideally placed to concurrently perform the role of consent authority seeking to balance the protection of koala habitat with development, whilst also developing and implementing effective conservation and recovery strategies. Local government can effectively achieve these roles on behalf of, and in partnership with, other levels of government and community organisations. This can be effectively achieved with leadership and commitment from state government through stronger habitat protection laws and financial support for the implementation of recovery and conservation strategies.

Conclusion

Local Government NSW welcomes the opportunity to provide input to the review of the Local Land Services Amendment (Miscellaneous) Bill 2020, particularly given the review process was confined to an online questionnaire, with the exception of targeted stakeholders.

LGNSW and its member councils are committed to working with the State Government and other stakeholders to ensure the long-term viability of koala populations in NSW.

The proposed Local Land Services Amendment (Miscellaneous) Bill 2020 is not supported by LGNSW as it will further reduce the protection of koalas and their habitat in NSW and erodes council oversight of private native forestry operations and activities that impact on the local community. It pre-empts the outcomes and recommendations of a number of key reviews undertaken in recent years that should inform changes to both the Koala SEPP and any required amendments to the *LLS Act 2013*.

As outlined in this submission, the development of a revised Koala SEPP needs to be comprehensive, based on scientific evidence, include extensive consultation with stakeholders such as councils and be consistent with the findings of the NSW Upper House Inquiry into koalas and koala habitat, 2019 findings of the NSW Audit Office, the independent review of the land management framework conducted by the Natural Resources Commission in 2019 and the Private Native Forestry Review.