

**Submission
No 14**

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

Organisation: Ecological Consultants Association of NSW Inc.

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ECOLOGICAL CONSULTANTS ASSOCIATION of NSW Inc.

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Ms Cate Faehrmann
Committee Chair
Portfolio Committee No. 7 – Planning and Environment
Parliament House, Macquarie Street
Sydney NSW 2000

Email: PortfolioCommittee7@parliament.nsw.gov.au

5 February 2021

Dear Ms Faehrmann,

Re: Inquiry into the Local Land Services Amendment (Miscellaneous) Bill 2020

I write to you on behalf of the Ecological Consultants Association of NSW (ECA NSW) www.ecansw.org.au. We are a membership body that develops and helps to maintain professional standards in the NSW ecological consulting industry through training (workshops, conferences), distribution of relevant information to our members (biannual journal, social media, email newsletters), liaison with Federal and State agencies, university researchers and related industry bodies. We also have strong ties with similar associations in other States. As ecological consultants, our members work daily with various environmental and planning legislation documents, including but not limited to the *Biodiversity Conservation Act 2016* (NSW), *Environmental Protection & Biodiversity Conservation Act 1999* (Cth) and various State Environmental Planning Policies.

There has been much discussion (and confusion) among members this last year relating to Koala assessment, and views on the legislation's effectiveness and requirements are varied across geographic areas of NSW. Particular concerns relate to definitions in the various Koala SEPPs of Core Koala Habitat and Potential Koala Habitat, and the adequacy of the prescribed survey methods and effort required to identify these habitat types in relation to a proposed development or land rezoning. ECA NSW would like to relay this information from members to the upcoming inquiry relating to the *Local Land Services Amendment (Miscellaneous) Bill 2020*. If ecological practitioners who work with these laws and planning instruments are confused about how they should be applied to landscape planning and Koala habitat management, then that confusion must also be widespread in the broader community.

The ECA NSW is glad that the *Local Land Services Amendment (Miscellaneous) Bill 2020* has been referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report. It is our hope that some of the fundamental issues with the amendment are dealt with before there are changes to the legislation. Our main concern is that the changes to the Bill appear to have no scientific basis, and conflict with the intended outcomes of sustainable land management practices. Reports suggesting the extinction of the Koala in the near future, the increase in land clearing since State environmental legislation was overhauled in 2016, and current issues surrounding the ability of the Biodiversity Offsets Scheme to achieve its intended purpose, all point to the need for greater environmental protections. The proposed Bill does nothing but weaken these protections and is based on political negotiation rather than sound science. We agree that there needs to be improvements to environmental assessment legislation in NSW, but the proposed changes will be a step backwards, placing the Koala, and many other threatened species which share the same habitats, at greater risk of extinction.

The *Local Land Services Amendment (Miscellaneous) Bill 2020* has five objectives:

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

All five of these weaken consideration of environmental impacts and leave the assessment of biodiversity value in the hands of those with no appropriate qualifications to assess it. Agricultural landowners would not allow someone without knowledge of farming practices to come in and tell them when to harvest or how many head of stock to sell on any given date. Similarly, if the State of NSW truly seeks to ensure a future for the Koala (and stem biodiversity loss), we need to leave assessment of impacts on threatened biodiversity to trained ecologists who are experienced at assessing how these impacts can be avoided or minimised.

Clearing of native vegetation on rural lands should not be any different to any other land tenure.

As an example, much of the Koala habitat on the Central Tablelands/Western Slopes exists in an agricultural matrix. An ecological assessment completed recently in this region by one of our members identified critical Koala habitat on a small riparian strip of vegetation that preserved movement through a predominantly cleared landscape. This land is subject to Federal referral under the Environment Protection & Biodiversity Conservation Act 1999. Had the assessment been conducted by someone with no knowledge of the environmental legislation at state or federal level, the habitat would likely have been cleared. This is a perfect example of how the proposed changes would undermine environmental protection and result in net loss to Koala habitat in the State. There are no laws that prohibit clearing of Koala habitat, only laws that state that if clearing is proposed, the impacts on Koalas and other threatened species are assessed more rigorously. This includes impacts from alternative options (e.g. relocation or reducing the footprint of the proposed development, biodiversity offsetting). The aim of this more rigorous impact assessment is to determine a means by which a proposed development or activity can avoid or minimise significant impacts on the status of Koalas and their habitats on both private and public land.

The proposed amendment appears to contradict one of the stated objectives of the *Local Land Services Act 2013*:

(f) to apply sound scientific knowledge to achieve a fully functioning and productive landscape,

The ECA NSW supports this LLS Act objective and strongly opposes the bill because this objective is overlooked by the proposed amendment.

State Environmental Planning Policy (SEPP) relating to Koala

Over the last 12 months, ecological consultants have had to work with four different versions of Koala assessment SEPPs. The original SEPP44 (on which the new 2020 SEPP is based) was developed in 1994. It used best available data at the time, but is now very outdated in relation to our knowledge of Koala and its habitat. The ECA NSW welcomed changes that actually incorporated additional known food tree species from the Koala Recovery Plan developed by DECC in 2008. *State Environmental Planning Policy (Koala Habitat Protection) 2019* (versions 1 and 2) were not, however, without their drawbacks. Few (if any) ecological consultants were consulted in the development of the policy, and there were difficulties with implementation of the SEPP. Ecological consultants are implementing this legislation on a daily basis and are best placed to identify issues in achieving stated objectives. Individual ECA NSW members have raised the issue that each version of the SEPP has varied in its effectiveness in protecting important Koala habitat, according to which NSW region they have been applied. While we welcome mandated survey effort, there is a lack of flexibility in the system to account for differences in survey efficiency in different regions.

Some consultants have raised significant concerns about the effectiveness of the primary survey technique (Spot Assessment Technique) in identifying the presence of Koalas on a

site. This survey technique has also been criticised in the scientific literature. This is not to say it is wrong, simply that it may need modification to be applied across regions.

In areas of lower tree density (such as the western slopes) this technique is much less efficient at identifying Koala occupation of a site than spotlighting. It is also very time-consuming and a costly exercise to perform, for limited assessment outcome, which has led to some landowners objecting to the need for a comprehensive environmental assessment in relation to their development proposal, especially in rural areas. The ECA NSW supports the use of more cost-effective survey techniques, such as, but not limited to, the use of trained sniffer dogs to search for Koala scats, drones that are fitted with thermal cameras, along with more traditional methods like spotlighting and call playback.

In areas of greater tree density such as the Southern Highlands/South Coast, known movement corridors do not meet the definition of “Core Koala Habitat” and the need for their protection. These areas of low occupation are still integral to persistence of Koala in fragmented landscapes, yet do not meet criteria for protection.

The policy only applies under certain approval pathways (Part 4 of the *Environmental Planning and Assessment Act 1979*), which is likely to be a contributing factor in the decline of the Koala in NSW. If the *Local Land Services Amendment (Miscellaneous) Bill 2020* was to be enacted, it would further contribute to the decline of Koalas in NSW because impact assessment would be arbitrarily waived on a category of land that encompasses a significant portion of the State.

In summary, ECA NSW supports the concept of a koala habitat protection SEPP, but would like to be a consulted stakeholder in the development of such policy to ensure it can be effectively implemented and achieve stated objectives. In order to ensure persistence of Koala into the future, the policy (or at least some other form of Koala impact assessment) should be implemented across all land tenures when it comes to development and/or modifications to native vegetation.

Protection and assessment of Koala on rural landholdings

In terms of practical examples, consider the assessment of impact on Koala from two developments; a) clearing relating to a house on a 5-acre bush block, and b) clearing of trees on agricultural land.

In the first instance, clearing of 0.5 ha will likely result in ecological assessment of \$5,000, not including additional surveys and reporting relating to Koala occupation under the now repealed *Koala Habitat Protection SEPP 2019*. Koala assessment could be another \$2,000 even if it is not “Core Koala Habitat”. If they clear enough to trigger the Biodiversity Offsets Scheme (BOS), they could be up for an additional \$50-100,000 of offsetting credits. This is the case many consultants work with on a daily basis, and the idea of the BOS is to encourage people to build in areas of lower biodiversity value as it will be cheaper. User pays, and the final cost of assessment could be as much as \$14,000/ha. A Koala assessment alone equates to \$4,000/ha minimum.

Now consider the second scenario where a large rural landholder wants to clear 50 ha of trees for grazing/crop production. This is regulated by the *Local Land Services Act 2013*. Assessment for “Core Koala Habitat” may involve an assessment and reporting up to \$7,000

including travel and accommodation in a regional location. In a large number of cases the land is identified as not being “Core Koala Habitat”, as is often the case on smaller landholdings too. Due to economies of scale with surveying larger areas, the total assessment cost for clearing of 50 ha is in the order of \$140/ha. This cost is just another expense of conducting business, and considering the land is being used to generate wealth will be recouped in time.

Koala habitat protection is not mutually exclusive of alternate land uses and development. There simply needs to be assessment of what is there, and careful consideration of how the two can be managed alongside each other. The role of the ecological consultant is to provide advice on how a development can proceed with minimum impact on biodiversity values. Sometimes this could involve rejecting a proposal, but more often than not simply requires some modification to it. Rural landholders should note that they have the option of generating income via offset credits if they have threatened species on their land. Legislative bodies, environmental impact assessors and consent authorities should note the need for ecologically-sustainable development. There is a balance that needs to be struck, but the proposed *Local Land Services Amendment (Miscellaneous) Bill 2020* does not present a balanced outcome, and contradicts objective (e) of the LLS Act (*to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development*).

In conclusion the ECA NSW objects strongly to those changes proposed by the *Local Land Services Amendment (Miscellaneous) Bill 2020*, and welcome any involvement in developing improved Koala (and broader biodiversity) assessment frameworks in the future.

Thanks for your consideration.

Kind regards,

President,
Ecological Consultants Association of NSW Inc.