

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

Organisation: Wingecarribee Shire Council

Date Received: 5 February 2021

Our ref: 5453/4.1
Contact: Margot Law



Friday, 5 February 2021

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The Director
Portfolio Committee No. 7 – Planning and Environment
Parliament House
Macquarie Street
Sydney. NSW. 2000.

Dear Sir / Madam

Thank you for the opportunity to make a submission to the inquiry into the Local Land Services Amendment (Miscellaneous) Bill 2020.

Wingecarribee Shire supports one of the largest and healthiest Koala populations in Southern NSW, and in 2014 we established the highly successful and award-winning Southern Highlands Koala Conservation Project. Since 2014, the project team has undertaken hundreds of spotlight surveys and habitat assessments throughout the Shire, with official estimates now putting the koala population at over 3,000 individuals, making it the largest koala population in southern NSW and representing around 10% of the total koala population in the State (estimated prior to 2019-2020 bushfires).

Whilst the majority of the higher quality koala habitat in the Shire escaped the direct impacts of the 2019-2020 NSW Bushfires, habitat fragmentation and land clearing remains a significant impacts affecting the long term viability of Koalas in the Shire.

Wingecarribee Shire is seriously concerned about the ongoing lack of progress and stability in NSW Legislative and Planning Instruments required for effective protection of our national icon. The proposed Local Land Services Amendment introduces new, unworkable complexities and adversely impacts on our ability to deliver effective conservation initiatives necessary to protect Koala Habitat into the future.

Yours sincerely

Ian Perkins
Natural Resource Projects Coordinator

Working with you

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WINGECARRIBEE - A COAL MINING FREE SHIRE

Wingecarribee Shire Council submission to the NSW Legislative Council's Portfolio Committee No. 7 Inquiry into the Local Land Services Amendment (Miscellaneous) Bill 2020

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

The current objective of this act is to allow harming of koala habitat on current and past rural zoned land because "the clearing of native vegetation on rural land is not effectively regulated and managed"¹. The impact of the Bill will:

- **add complexity and confusion** towards and within Council when it carries out its functions under the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* in Environmental zoned (non-rural) lands. That is, there is no reasonable method to determine 'land' that 'was' a rural land use zone – and this relates to the definition² of the proposed 'allowable activity land'. Such situations will relate to advice, assessments, decisions and compliance. See case study (below) of the proposed Bill impact on Wingecarribee's *Great Western Wildlife Corridor*³;
- **undermine the land zone objectives** of E2, E3 and E4 land;
- **restricts the inclusion of Koala habitat identified in the future Wingecarribee KPOM**⁴ as category 2 regulated rural land;
- **disrupt existing Council processes**, resourcing, website content, training, publications, etc. that have been constructed post Biodiversity Reforms; and **impose additional cost** to reconstruct new processes etc.

Without Council access to digital spatial versions of maps showing every rural zoning land back in time, we are unable to comment on the full extent of Koala Habitat that could be impacted by this bill due to the expansion of the definition of "Allowable Activity Land" to include E-zoned land that 'was' rural zoned land in historic / repealed Local Environmental Plans. Wingecarribee Shire is particularly vulnerable to this new definition because most of the land with Koala Habitat in our shire is currently E-zoned.

¹ Conclusion from [NSW Auditor General's Report into Managing Native Vegetation, 2019](#)

² Schedule 1[2]: "Allowable activity land is defined to mean a landholding that—

(a) is in an area of the State to which Part 5A applies, and

(b) is or **was** wholly or partly in a **rural land use zone** and the whole or part of which has been rezoned as Zone E2, Zone E3 or Zone E4, and

(c) is used for primary production."

³ The Great Western Wildlife Corridor is one of the most significant Regional Wildlife Habitat Corridors in the Wingecarribee Shire and is identified in the Wingecarribee Local Environmental Plan 2010

(<https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2010-0245/maps#NRS>)

⁴ Schedule 1[4]: Wingecarribee Shire Council does not have a KPOM that was in force from the 6 October 2020

Overall, the Bill introduces further unnecessary complexity to the NSW Land Management and Biodiversity reforms that were promoted as simplifying and streamlining land management and biodiversity conservation in the State.

Case Study: Local Land Services Amendment (Miscellaneous) Bill Impact on Koala habitat in Wingecarribee Great Western Wildlife Corridor

The [Wingecarribee Great Western Wildlife Corridor](#) (GWWC) is a 40km key corridor in the Great Eastern Ranges located between Bullio and Bungonia, linking the Southern Blue Mountains with Morton National Park (see Figure 1 – outlined in yellow).

The GWWC contains valuable Koala habitat (for example the new Guula Ngurra National Park that was purchased for Koala Conservation) and is a rare un-burnt refuge for wildlife following the 2019-20 bushfires.

The Southern Highlands Koala Conservation Project⁵ estimates that this corridor has a minimum carrying capacity of 390 koalas (~10% of Wingecarribee's Koala pre 2019-20 bushfire population).⁶

It is recognised as a regional wildlife corridor in [the Wingecarribee Local Environment Plan \(WLEP\) 2010](#)⁷, but not the previous [WLEP 1989](#)⁸. The WLEP 1989 classifies almost all the GWWC as Rural (Figure 1 - red hatching) and the new WLEP 2010 introduced the GWWC and changed the zoning to Environmental (Figure 1 - green solid colour).

Currently, Council manages vegetation clearing applications and compliance in the GWWC because it is E-zoned, however the LLS Amendment (Miscellaneous) Bill 2020 has the potential to put all vegetation, including Koala habitat, at risk of being "Allowable Activity Land" managed by Local Land Services if the landholder is a primary producer. "Allowable activity land" can be [legally cleared without approval for many reasons](#) which are not permitted on E-zoned land.

As well as undermining the objectives of an E-Zone, this Bill adds unnecessary complexity and confusion to who is the responsible consenting authority for vegetation management. There is no clear process for data sharing between Council and LLS on who is responsible for which property and how that can change over time (e.g. primary producer status changing).

⁵ Collaborative project managed by Wingecarribee Shire Council with funding and support from NSW Government Saving Our Species Program.

⁶ Calculated using the 2019 Wingecarribee Koala Density Habitat Map (SCIVI)

⁷ 2010 is the current Wingecarribee Local Environment Plan

⁸ 1989 Wingecarribee LEP is the only publicly available historic land zone mapping available on the WSC website.

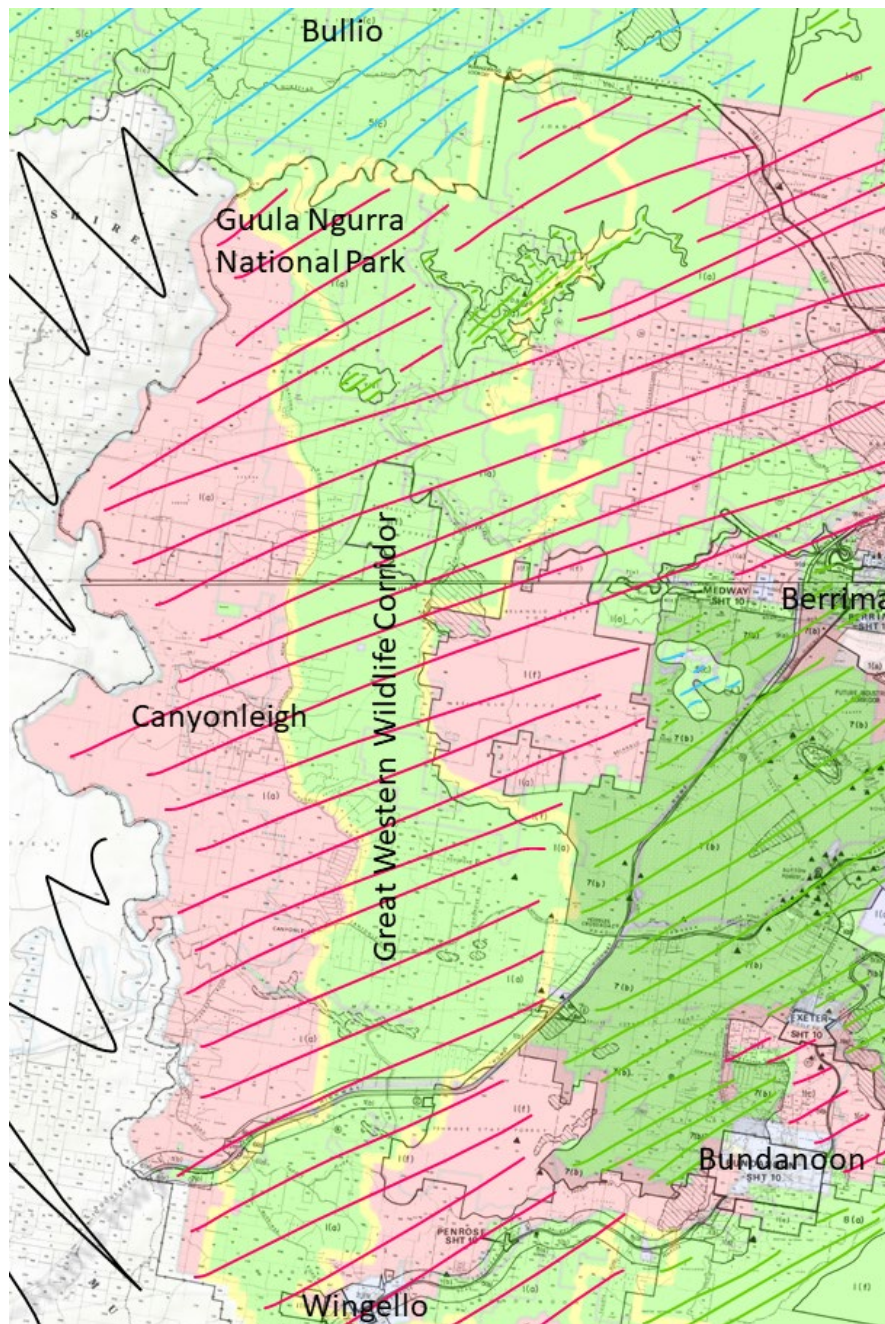


Figure 1. Approximate overlay of Rural and Environmental zones from 1989 WLEP (cross hatch) and 2010 WLEP (solid colour).

Legend:

- Green** (hatching and solid colour) indicates Environmental zoned land;
- Red** (hatching and solid colour) indicates Rural zoned land;
- Yellow** outline is Great Western Wildlife Corridor as described in WELP 2010.
- Blue** (hatching) is Special Uses – Water Catchment zoning.

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

Wingecarribee Shire Council and our community are passionate about Koala conservation, but we are frustrated by the lack of effective and operational legislation to protect our national icon. Council has committed to producing a Comprehensive Koala Plan of Management once the Koala SEPP finalised.

You can read Wingecarribee Shire Council's detailed submissions on SEPP44 and Koala Habitat Protection SEPP (2019) in the appendix.

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

We have not been made aware of any challenges for rural landholders to protect Koala habitat, except for landholders who wish to subdivide or develop their property. We can see no other reason for this amendment besides landholders looking for development and subdivision opportunities.

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

The mechanism by which biodiversity values are assessed is under the Planning and Assessment Act (1979). All land use changes go through public consultation, where landholders have an opportunity to comment on the impact that it may have on their land.

5. The impacts of current regulatory regimes on private landholders

No known impacts on current landholders.

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

- The removal of Koala SEPP from lands to which Part 5A of the LLS Act applies (as the Bill intends) is excessive – considering that the Koala SEPP applies to Part 4 of the EP&A Act (development consent) – and that Part 5A of the LLS Act is not subject to development consent. In other words, the removal of the Koala SEPP from rural lands would seem to only benefit developers in rural lands using Part 4 of the EP&A Act.
- There is little to no direction from State Government on how to manage Development Applications that have been submitted in 2020 based on 4 different versions of the Koala SEPP and associated guidelines (SEPP44; Koala Habitat Protection SEPP 2019 with draft guidelines; Koala Habitat Protection SEPP 2019 updated guidelines; Koala Habitat Protection SEPP 2020)
- A mapping product is essential for efficient, effective and fair implementation of a Koala SEPP. However, the mapping product must be an interpretation of the definition of Koala habitat (unlike the NSW Government Koala Development Assessment Map).
- In the absence of clear, timely and robust leadership from NSW Government Legislators, Council is collaborating with our neighbouring Wollondilly Shire Council to dissect the Koala SEPP to ensure the best possible future for the Bungonia Koala ARKS which straddles both our LGAs.

Appendix - Wingecarribee Shire Council submission on Koala Habitat Protection SEPP (2019)

Our ref: 5453/4.1
Contact: Margot Law

30 March 2020

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RE: Wingecarribee Shire Council submission on Koala Habitat Protection SEPP (2019)

To whom it may concern,

Wingecarribee Shire Council's Southern Highlands Koala Conservation Project would like to congratulate the Department of Planning, Industry and Environment on the new Koala Habitat Protection SEPP. It is a vast improvement on the previous SEPP and addresses much of our feedback on Koala habitat protection which we outlined in our 2017 submission for the SEPP44 review, however we do have some concerns that we would like to see addressed.

The Southern Highlands Koalas are one of the few populations in NSW that are expanding, and we need strong planning legislation to protect their habitat from development pressure. Over \$12 million has already been invested by the NSW Government, Wingecarribee Shire Council and our residents in conserving Koalas in the Southern Highlands and we want to make sure that this investment is not wasted.

We have outlined our concerns, comments and questions on the new Koala Habitat Protection SEPP (2019) and hope that you incorporate them into a timely update of the SEPP Guidelines. If you have any questions about our analysis of the SEPP, please contact the Wingecarribee Shire Council Koala Officer, Margot Law, on 4868 0819 or margot.law@wsc.nsw.gov.au.

Kind regards,

Barry Arthur
Manager, Environment and Sustainability.

Working with you

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1. New definitions of core koala habitat

Summary of Issues Raised by Council:

- *The new definition is much more workable than previous SEPP*
- *Using historic koala records and habitat quality to identify core koala habitat is suited to low density koala populations that we find in the Southern Highlands*
- *We are reassured that historic sightings and habitat quality can be used as a safety net to protect habitat if no koalas are sighted in koala presence survey*

We welcome the move towards defining “core koala habitat” using historic koala records and assessing habitat quality. This method is more suited to the low-density koala population that we have in the Southern Highlands. With this definition, we can use our fine scale PCT mapping and BioNET koala records to create a mapping product for our WSC planners to assess development applications where landholders choose not to use the “Koala Development Application Map”.

The survey requirements to establish *koala presence* at a site will be difficult to assess in a low-density Koala population like we see in the Southern Highlands, but we are reassured that landholders are directed to assess habitat quality and historic koala records as a safety net if no koalas are present at the time of the survey.

Wingecarribee Shire Council, in collaboration with Illawarra DPIE threatened species team, have invested significant funds, time and effort into creating a koala habitat map using a systematic spotlighting method. What most concerns us about the new definition is that there is not a clear way that our survey (spotlight) data can be used to identify “Core Koala Habitat” because it is not accompanied with scat or dog surveys. This potentially invalidates our work. Even using Appendix B for Shire Wide habitat assessment, we still run into the issue of identifying “Core Koala Habitat” without using scats/dogs principally.

2. Koala Development Application Map

Summary of Issues Raised by Council:

- *Fine-scale local Koala habitat mapping produced by DPIE should replace coarse state-wide Koala habitat mapping produced by DPIE*
- *At least 9,500ha of WSC Koala habitat is not protected by this SEPP*
- *24,000ha of land is included in the Koala DA Map which is not WSC koala habitat – this will cause unnecessary conflict between Council and community with little benefit to koalas*
- *The online map could be updated to improve user experience*
- *The Koala DA map needs to include a feedback mechanism to stay relevant and up to date*

2.1 Map methodology

Council believes that there should be an alignment between Koala habitat maps that are produced by DPIE at State and LGA scales. The Koala Information Base product produced by DPIE at a state scale, but at the same time DPIE have also produced local koala habitat mapping products (Illawarra DPIE threatened species team lead by James Dawson, 2019). We suggest that this local data

produced by your department be used to customise the *Koala Development Application Map* for our LGA. Additionally, if the local product is determined as NOT an appropriate replacement for the State product, then a clear explanation is requested and would like to be discussed.

Additionally, it is unclear why the *Koala Development Application Map* uses the Information Base as the basis for developing their map instead of focusing on the definition of core koala habitat in the SEPP. For example, the Part B definition (highly suitable habitat and koalas recorded in the last 18 years) could be mapped using fine scale PCT data and BioNET records.

We found the map on the DPIE [SEED database](#) – but it is unclear if this dataset is exactly what is available on the [online map](#). The metadata available on SEED is the only place we could find any details on how the *Koala Development Application Map* was produced. The metadata for the *Koala Development Map* says that land is included if it “provides critical connectivity between class 1 and class 2 habitat in fragmented landscapes”, but there are no details for us to evaluate this except by comparing it to our maps.

2.2 Review and feedback process for Koala Development Assessment Map

There are no details in the Koala Habitat Protection SEPP Guidelines on the process for how the *Koala Development Application Map* is reviewed or updated. “Core Koala habitat” survey results should feedback and update the *Koala Development Assessment Map* to ensure that the map is current and to be fair to future landholders.

2.3 Disputed koala habitat

2.3.1 WSC Koala Density Map habitat missing from *Koala Development Application Map*

Overall, 13,941 hectares in WSC of Koala habitat from the Wingecarribee Koala Density Map (produced by DPIE Illawarra Threatened Species Team) is missing from the *Koala Development Application Map* (version published on 6/2/2020) (Figure 1, Table 1; highlighted red). Of this, 1,156ha of Rank 1 koala habitat (14% of all rank 1 habitat in WSC) is not covered by the *Koala DA Map*.

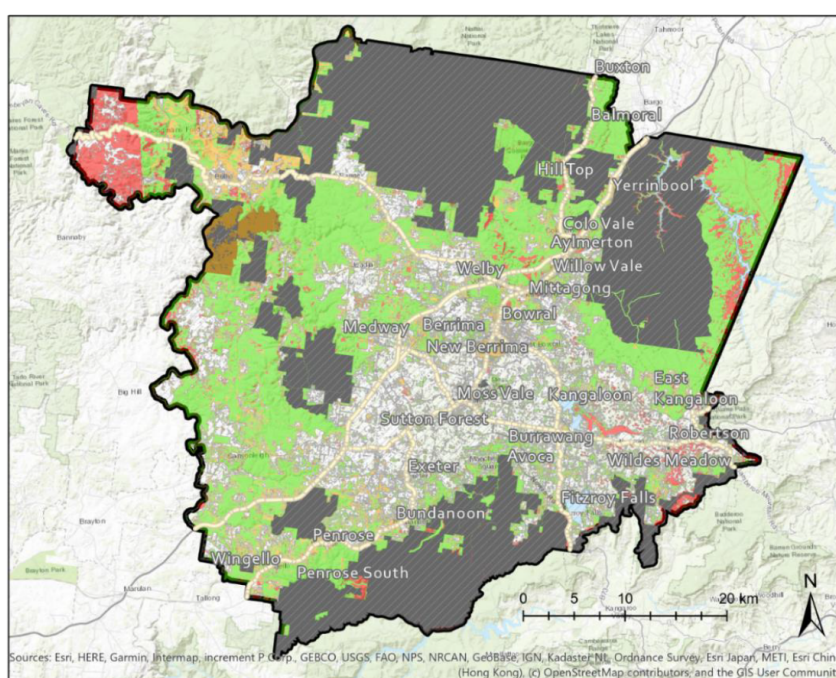
Some (30%) of this disputed area (highlighted red) between the two mapping products can be resolved by clipping the Wingecarribee Koala Density Map to the “Tree Cover” in [Native Vegetation Extent](#) and removing polygons that are less than 0.5ha.¹ However, this still leaves 9,500 ha of WSC mapped koala habitat of koala habitat that is still in conflict with the *Koala Development Application Map* (Figure 2). Most of this koala is classified as “Rank 3 Koala Density” - this rank includes the majority of under sampled vegetation types, some of which are likely to be upgraded to rank One or Two once sufficient sampling is undertaken (Koala Habitat and Fragmentation of Wingecarribee LGA: Methods, 2019). Using the precautionary principle, this habitat should be protected. Specific examples of our concern between the map conflict are:

¹ This is a stop gap measure while we wait for the NSW Government to publish the PCT map for the Wingecarribee Shire, until then we are relying on the SCIVI dataset to calculate our Koala density per vegetation type. This is the only dataset that allows us to include vegetation and spotlighting data across LGA boundaries. The [SCIVI dataset](#) was last revised in 2011 and is a coarser dataset than PCT.

1. Rank 1 Koala density Habitat is excluded from the *Koala Development Application Map* South of Robertson – our data shows that Escarpment Foothills Wet Forest can support 0.54 koalas per hectare (Figure 3a)
2. The *Koala Development Application Map* excludes koala habitat in the majority of Wombeyan Caves in the West of the Wingecarribee Shire, with a straight line boundary that follows approximately 150.04°E. Most of this habitat is “Rank 3 Koala Density” and is under surveyed and should be included using the precautionary principle (Figure 3b)

Table 1. Analysis of overlap and mismatch between the Koala Development Application Map and the WSC Koala Density Map.
Colours correspond to legend in Figure 1. *This area is further investigated in Figure 2

	Included in SEPP <i>Koala DA Map</i>	Excluded from SEPP in <i>Koala DA Map</i>
Included in WSC Koala Density Map	74,153 ha	13,941 ha*
Excluded from WSC Koala Density Map	23,930 ha	157,056 ha



Koala DA Map comparison with WSC Koala Density Map



Figure 1. Comparison of the Koala Development Application Map (version dated 6/2/2020) with the Wingecarribee Shire Koala Density Map.

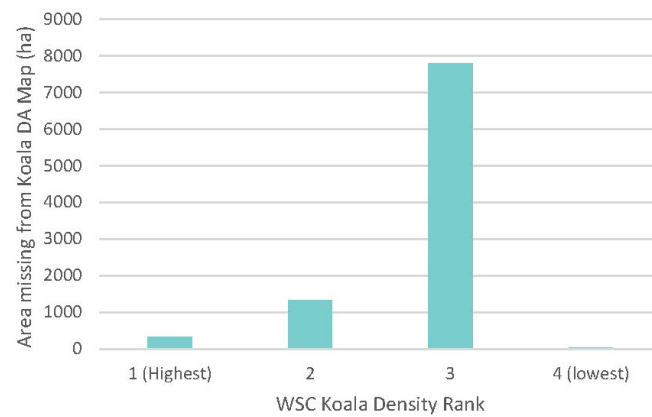


Figure 2. Area of WSC Koala Habitat that is excluded from the Koala Development Application Map, with cleared land and patches of <0.5ha excluded.

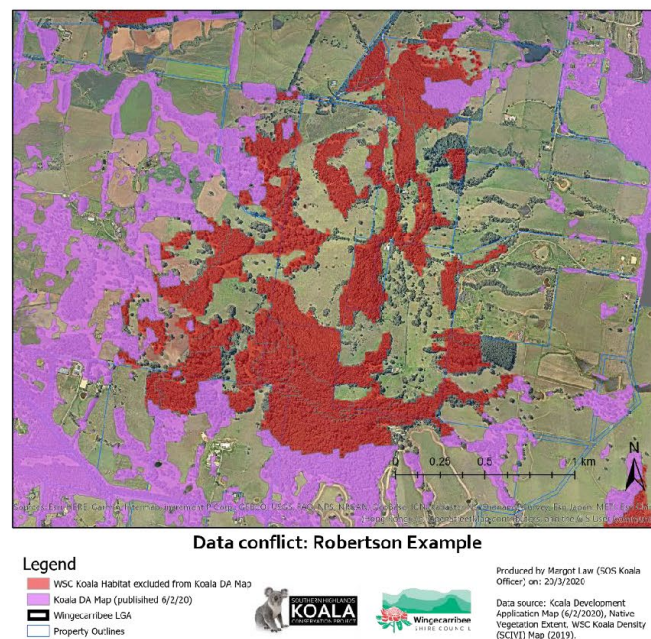


Figure 3a. Example of “rank 1” Koala Habitat (WSC Koala Density Map) excluded from *Koala DA Map* at Robertson.

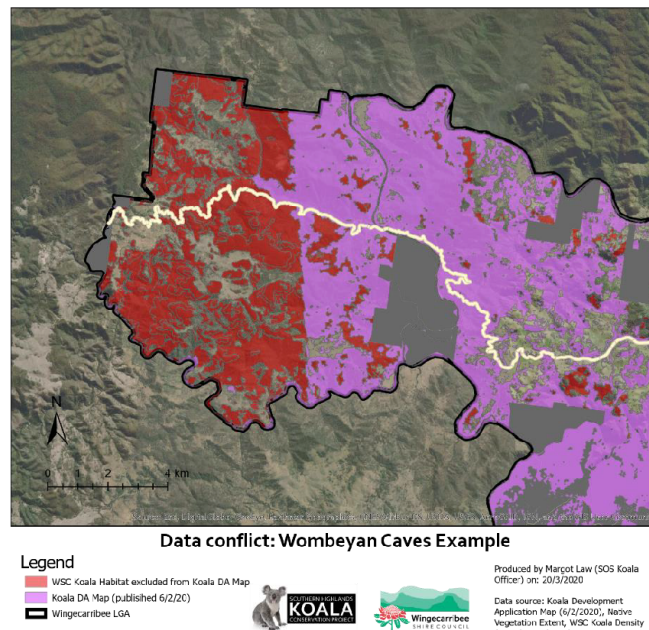


Figure 3b. Example of “rank 3” Koala Habitat (WSC Koala Density Map) excluded from *Koala DA Map* at Wombeyan Caves.

2.3.2 Habitat that is included in the *Koala DA Map*, but not in *WSC Koala density map*

23,930ha of additional land is included in the *Koala Development Application Map* that is not mapped by the Wingecarribee Koala Density Map (Figure 1, highlighted orange). Most of this additional land is tiny patches of highly fragmented agricultural (e.g. Sutton Forest, Figure 4a) and urban land (e.g. Burradoo, Figure 4b) in the centre of our Shire. Inclusion of additional habitat will cause unnecessary conflict between Council and residents with little benefit to Koalas.

The inclusion of this additional land may be due to the methodology of the map, where critical connectivity is added but there are no details on this process (outlined in submission section 2.1).

Not all excluded land has been removed from the *Koala Development Application Map*. For example, Tugalong Station which was purchased by National Parks and Wildlife Service has not been excluded.

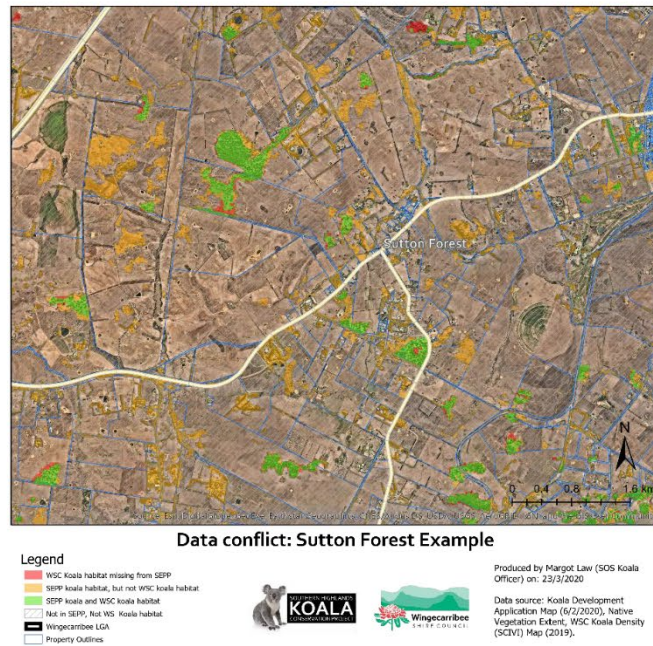


Figure 4a. Agricultural landscape example in Sutton Forest where Koala DA Map includes Koala Habitat that the WSC Koala Density Map does not (orange).

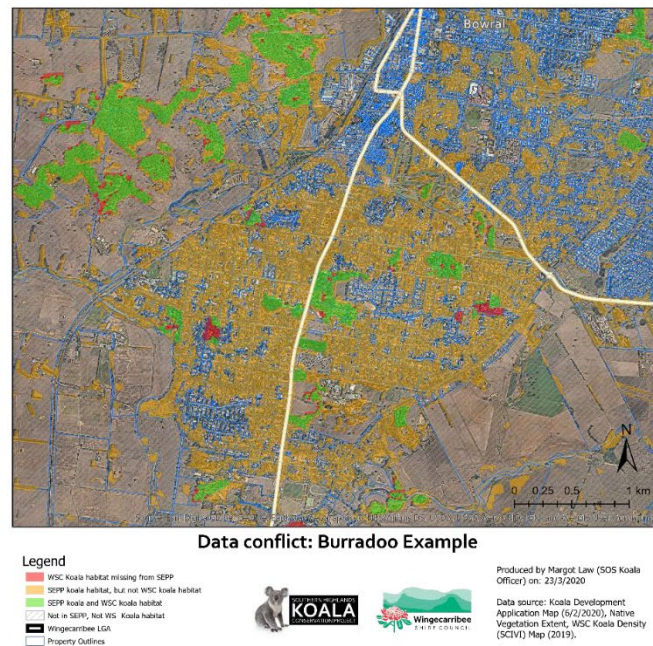


Figure 4b. Urban/Peri-urban landscape example in Burradoo where Koala DA Map includes Koala Habitat that the WSC Koala Density Map does not (orange).

2.4 Online Map

The [online map view](#) is a fantastic opportunity for our residents to be able to understand how the SEPP applies to their property, but the user experience could be streamlined by:

- Configuring pop-ups to help property owners understand how the SEPP applies to them (e.g. 1ha property and koala habitat development map = SEPP applies). A good example of how a complex policy can be explained by a web map is the award winning [Wingecarribee Backyard Burning Map](#).
- Turning lot boundaries on as default
- Turning off Koala site investigation for koala plans of management map as default to reduce confusion from community
- Including date or version of data upload – there is have no way of knowing if offline data is the same as publicly available data

3. Development assessment process under new SEPP

Summary of Issues Raised by Council:

- Koala SEPP need to apply before any subdivision to account for all impacts of proposed development
- Council requires additional support to meaningfully evaluate koala assessment reports

3.1 Sub-division

- The guidelines are unclear if subdivision should be processed under Tier 1 or Tier 2.
- The Koala SEPP needs to be assessed *before* subdivision is approved and include effects of all associated infrastructure (e.g APZs, internal roads, building footprints)

3.2 Koala Assessment Reports

- There are no details on how a Koala Assessment Report should be evaluated by Council development assessors and on what grounds that it could be rejected or approved.
- In lieu of a Koala Plan of Management for the Wingecarribee LGA, how can we use our fine scale koala mapping to make informed decisions about conserving koala habitat?
- Many of the criteria of the Koala Assessment Report are beyond the ability of Council development assessors to meaningfully evaluate, especially when there is no state-wide monitoring program for koalas or baseline data to assess impacts on Koala populations
- Koala Assessment Reports should be saved in a central depository and be used to evaluate the effectiveness of the SEPP at a State, KMA and LGA scale and record cumulative impact. For example, a quarterly report card on how much Koala habitat was lost, compromised or saved from development.

3.3 Koala habitat is protected in all land zones

We support the decision to make the Koala SEPP equally applicable across all land zonings. This recognises that koala habitat across the landscape and is often in conflict with human development.

4. Koala Plans of Management

Summary of Issues Raised by Council:

- Current WSC scale koala data cannot be used to establish “koala presence” because Spotlighting is the only survey method used to develop our mapping products (not scats or dogs)

- *KPOMs are still considered voluntary under the SEPP and there are no incentives to create one*

4.1 Utilising previous LGA scale Koala research

Council's major concern on the process of creating a KPOM for the Wingecarribee Shire is how our last 5 years of koala research can contribute to identifying core Koala Habitat.² This is a significant issue not only in terms of methodology and delivery, but also the possibility that our existing spotlight based survey and analysis to date (underpinning our project) would be deemed inadequate to determine koala presence under the SEPP.

Unless we can get the definition of "Core Koala Habitat" correct and inclusive of the Southern Highlands Koala Conservation project data, then Wingecarribee Shire Council is going to seriously struggle with developing a KPOM (which is our intent, and which is identified in the DPIE South East and Tablelands Regional Plan (2017)). We will need to resample all of our 700+ sites (for scat detection). With the additional beforementioned complication that "area of land" which is assessed under the Guidelines is inadequate for a Shire Wide KPOM driven survey.

The new SEPP does not assist Wingecarribee to utilise the value of its survey and modelling work adequately, and this aspect is unacceptable.

4.2 KPOMs are still considered voluntary

We are concerned that Koala Plans of Management for LGAs are still voluntary – there is little detail on what support or resources is given Councils to develop a KPOM

5. Koala tree species list

Summary of Issues Raised by Council:

- *New species list is far superior to previous species list in SEPP but 7 tree species are missing from the koala tree use list in the Central Coast KMA*
- *Recommend moving to a "Koala supporting" PCT approach rather than tree species*

5.1 Assessing Koala Habitat as an Ecosystem

We welcome the expansion of the tree species list that covers most of the koala use species in our LGA. This is a great improvement on the previous SEPP. However, we suggest a transition to a whole of ecosystem approach to koala conservation rather than a simple list of tree species that koalas use. Highly suitable Koala habitat is more complex than a list of tree species and a transition to using "koala supporting" PCTs could be more appropriate because this considers factors like soil fertility.

Additionally, there is no notes on how the koala tree species list are selected and what mechanisms are in place for reviewing the species list to incorporate new research.

² As outlined in section 1 and 2, our current shire-wide mapping products are based on extensive systematic spotlighting surveys which calculates a koala density for each vegetation type.

5.2 Missing Tree species

If the SEPP is going to continue using tree species, then there are 7 missing tree species from Central Coast KMA that used by koalas in the Wingecarribee Shire LGA from [A review of koala tree use across NSW \(OEH, 2018\)](#):

- Brittle gum (*E. mannifera*) – high use
- River peppermint (*E. elata*) – significant use
- Narrow-leaved peppermint (*E. radiata*) – significant use
- Broad-leaved peppermint (*E. dives*) – irregular use
- Messmate (*E. obliqua*) – irregular use
- Argyle apple (*E. cinerea*) – low use
- Gully gum (*E. smithii*) – low use