

**Submission
No 23**

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

Organisation: Port Macquarie-Hastings Council

Date Received: 5 February 2021

**SUBMISSION BY PORT MACQUARIE-HASTINGS COUNCIL TO THE INQUIRY INTO
THE LOCAL LAND SERVICES AMENDMENT (MISCELLANEOUS) BILL 2020
February 2021**

General

This submission has been prepared by Council's Ecologist at Port Macquarie-Hastings 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.

Port Macquarie-Hastings Council has three small Comprehensive KPoMs that were developed and approved under the now repealed *State Environmental Planning Policy No 44—Koala Habitat Protection* (SEPP 44), these are King Creek KPoM (Developed in 1999 for the King Creek Urban Investigation Area), Area 13 KPoM (Developed in 2008 for the Thrumster area 13 Urban Investigation Area), Area 14 KPoM (Developed in 2012 for the Area 14 Master Planning Area between Lake Cathie and Bonny Hills).

Port Macquarie-Hastings Council drafted two Coastal or Comprehensive Koala Plans of Management that covered the majority of the Coastal area of the LGA under SEPP 44. Neither of the two draft KPoM's were endorsed by council.

The now repealed SEPP (Koala Habitat Protection) 2019 that replaced SEPP 44 come into force 1 March 2020. Just prior to the commencement of SEPP (Koala Habitat Protection) 2019 Council was provided a very short timeframe to finalise the then Draft KPoM under SEPP 44. Council officers prepared a detailed update for Council to assess the implications of the now repealed SEPP (Koala Habitat Protection) 2019 and differences with SEPP 44. At the Ordinary Meeting of Council on 12 August 2020 Council resolved:

RESOLVED: Alley/Dixon

That all recommendations listed in the block resolution be adopted by Council.

CARRIED: 7/0

FOR: Alley, Dixon, Griffiths, Hawkins, Intemann, Pinson and Turner

AGAINST: Nil

1. Note the information provided in the report regarding the hierarchy of legislation which has a direct impact on the draft Coastal Koala Plan of Management.
2. Note the information provided in the report regarding the new State Environmental Planning Policy (Koala Habitat Protection) 2019 and its implications for Council's draft Coastal Koala Plan of Management.
3. Note the information provided in the "Management of Koala Populations in Options Paper" (Attachment 1).
4. Not proceed to finalisation of the draft Coastal Koala Plan of Management in its current form.
5. Request the General Manager to commence a review of the adopted Koala Recovery Strategy.
6. Request the General Manager to write to the NSW Member for Port Macquarie, the Hon Leslie Williams, requesting that she write to the NSW Minister for Energy and Environment, the Hon. Matthew Kean MP in support of the findings of the recent Parliamentary Inquiry (30 June 2020) into Koala populations and habitat in New South Wales and in particular the key finding (Finding No. 2) which stated: *"That, given the scale of loss to koala populations across New South Wales as a result of the 2019-*

2020 bushfires and without urgent government intervention to protect habitat and address all other threats, the Koala will become extinct in New South Wales before 2050”.

A review of the Port Macquarie-Hastings Council Koala Recovery Strategy is scheduled for the 2021-2022 Operational Year.

Unfortunately, the changing legislation has resulted in uncertainty as such Council will not be pursuing a KPoM at this time and requests the New South Wales Government provides certainty and consistency in protecting Koala and their Habitat.

The review of the Port Macquarie-Hastings Council Koala Recovery Strategy and actions undertaken by the New South Wales State Government will inform the direction for any potential to propose a new Koala Plan of Management under the legislation that may proceed the now in force SEPP (Koala Habitat Protection) 2020.

Port Macquarie-Hastings Council officers have reviewed the *Local Land Services Amendment (Miscellaneous) Bill 2020* and conclude the proposal has implications for koala and their habitat in the Port Macquarie-Hastings LGA.

In summary Council Officer make 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 by the New South Wales State Government for compliance of PNF and unauthorised vegetation removal more generally. This would include compliance with existing KPoMs and unauthorised clearing of vegetation that may impact on Koala and their Habitat.
- Dual consent for Private Native Forestry (PNF) should be a matter for each Council to consider via Local Environmental Plans. 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. Forestry is currently prohibited on E-Zoned lands under Port Macquarie-Hastings Council LEP 2011.
- Port Macquarie-Hastings Local Environment Plan 2011 currently requires development consent for Forestry in RU1 and RU2 zoned lands. Therefore currently PNF on RU1 and RU2 lands requires assessment as per the requirements of the Environmental Planning and Assessment Act 1979 (EP&A Act). In addition, development applications made in accordance with Part 4 of the EP&A Act must also comply with the provisions of Part 7 of the BC Act.
- 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. This survey methodology should be comprehensive and using the same methodology as would be required for Development Consent under the EP&A Act.

- Port Macquarie-Hastings Council commissioned a Koala Habitat and Population Assessment report in 2013 (Biolink). This assessment recorded koala activity across all land tenures but most commonly from private land and national park estate, least commonly from State Forests. This supports the importance of protecting Koala habitat on private land in order to ensure that koala may persist in the wild for the long term.
- Data from the Biolink 2013 study supports an assertion that the long-term logging of tree species preferred by koalas is having an effect on koala carrying capacity in these forests, the mean dbh of key food trees such as Tallowwood being significantly smaller in State Forests when compared to other land tenures. This knowledge has implications for koala management on freehold lands where PNF operations can also be expected to target tree species such as Tallowwood and Grey Gum, more so in areas of Secondary (Class B) koala habitat wherein smaller size class Tallowwood and Grey Gum (i.e. those below about 350mm dbh) will be essentially unpalatable to koalas.
- 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.
- 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 (Koala Habitat Protection) 2020 be expanded to reflect the full suite of feed trees used by koalas across the state. This would be more consistent with the now repealed SEPP (Koala Habitat Protection) 2019 and the Port Macquarie-Hastings Council Development Control Plan list of koala food and habitat trees.
- 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. Therefore more consistency is required.

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.

If the Bill was to be passed and Council proceeded to prepare a new Comprehensive KPoM it would be with the knowledge that core koala habitat in any new plan would not be classified as category 2-regulated land, therefore 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.

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.

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.

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

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.

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.