

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

**Organisation:** Wollondilly Shire Council

**Date Received:** 5 February 2021

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*Our Reference: 1255#1127*

Mr Sam Griffith  
Director Committees  
Legislative Council Regulation Committee  
NSW Parliament  
[c/o portfoliocommittee7@parliament.nsw.gov.au](mailto:c/o_portfoliocommittee7@parliament.nsw.gov.au)

5 February 2021

Dear Mr Griffith,

**INQUIRY INTO THE LOCAL LAND SERVICES AMENDMENT BILL - FORMAL SUBMISSION**

Wollondilly Shire Council is pleased to lodge its Submission on the Local Land Services Amendment Bill.

The Wollondilly Local Government Area (LGA) is comprised of a diverse range of natural, cultural and rural landscapes of noted importance to the local community. The proportion of the Wollondilly excluding Drinking Catchment Areas and National Parks estate is comprised of approximately 88% of land that is zoned Rural or Environment Protection.

A significant feature of Wollondilly is a major disease free koala population and important koala corridors that extend into the adjoining Campbelltown (to the north) and Wingecarribee (to the south).

The importance that Council places on agricultural activity in the Wollondilly LGA is reflected in its adopted Local Strategic Planning Statement (LSPS) and recently exhibited Rural Lands Strategy. However, the changes proposed by the Local Land Services Amendment Bill (LLS Bill) are viewed as potentially resulting in the removal of important protections for koala habitat and facilitating extensive and inappropriate land clearing. The proposed changes are also viewed as having wider significant adverse implications for the protection of the biodiversity aesthetic and cultural values of Wollondilly.

**The LLS Amendment bill is consequently not supported by Wollondilly Shire Council.**

The major concerns detailed in Council's submission are listed below:

- Vegetation clearance not directly related to or ancillary to development presents significant impacts to its biodiversity as well as complementary aesthetic, landscape and cultural values.
- Council is strongly concerned that the largest disease free koala population in NSW is not currently protected by an Integrated Regional Koala Conservation Plan that conserves habitat corridors across the region. The LLS bill is viewed as likely exacerbating unregulated clearing of native vegetation.
- Current significant shortcomings in the resourcing of the LLS and associated Native Vegetation Panel is of concern in the future implementation of the LLS Bill.

- Council's planning instruments, strategies and policies being compromised by the LLS Bill given the additional unregulated clearing that would be permitted in the E4 zone for allowable activities.
- The proposed Bill is viewed as having strong inconsistencies with a number of proposed objectives and actions of Council's strategic documents including the Local Strategic Planning Statement and Biodiversity Strategy.

The proposed changes proposed by the LLS Bill are consequently viewed as potentially resulting in the removal of important protections for koala habitat and facilitating extensive and inappropriate land clearing.. Council has strong concerns over the intent of the LLS Bill, which will incorporate the assessment of vegetation clearance on land that is zoned Environment Protection into the Land Management Code.

Recommendations for the Committee in regard to the Biodiversity and the Land Management framework are:

- Investigate alternate mechanisms to the proposed Bill. (Which is viewed as increasing threats to biodiversity values), that reduce threats to biodiversity value and protect and enhance these and complementary values.
- Mechanisms to enhance the personnel and financial resources of the *Local Land Services Act 2013* and associated Native Vegetation Panel.
- Investigate any restriction the LLS Bill may place over the application of planning mechanisms to protect areas of high biodiversity value on rural land

Council expects that submissions provided by other individuals and organisations are likely to raise similar concerns. It is of Council's opinion that the Committee should critically review and consider the implications of matters detailed in this submission. Council also expresses its interest to present at the upcoming Public Hearing.

Yours faithfully

Michael Malone  
**Director**  
**INFRASTRUCTURE & ENVIRONMENT**



# **Submission on the Local Land Services Amendment Bill**

## **Introduction**

The Wollondilly Local Government Area is comprised of a diverse range of natural, cultural and rural landscapes of noted importance to the local community. The area of the Wollondilly outside Drinking Catchment and National Parks estate is comprised of approximately 88 percent of land that is zoned Rural or Environment Protection.

A significant feature of Wollondilly is a major koala population and important koala corridors that extend into the adjoining Campbelltown (to the north) and Wingecarribee (to the south).

The importance that Council places on agricultural activity in Wollondilly and responding to concerns and views of rural landholders is reflected in its adopted Local Strategic Planning Statement (LSPS) and recently exhibited Rural Lands Strategy. The changes proposed by the Local Land Services Amendment Bill (LLS Bill) are viewed as potentially resulting in the removal of important protections for koala habitat and facilitating extensive and inappropriate land clearing. The proposed changes are also viewed as having wider significant adverse implications for the protection of the biodiversity, aesthetic and cultural values of the Wollondilly LGA.

**The LLS Amendment bill is consequently not supported by Wollondilly Council.**

The Committee is requested to note that the timing of the deadline for comments has prevented the consideration and adoption of a formal position regarding the LLS Bill at a meeting of Council.

This submission provides comments on the proposed LLS Bill based on applicable issues of specific relevance to Wollondilly. It is broadly structured on the issues requested by the Chairman of the Committee to focus on in correspondence from the NSW Legislative Council. The submission is divided into three broad components comprised of:

- **Part A:** Background information on the biodiversity values, threats to these values, Council's applicable strategic framework as well as Council's position and experiencing in regard to the applicable State statutory and strategic framework.
- **Part B:** General comments on the LLS Bill.
- **Part C:** Comments on issues that the Chair of the Committee has requested submissions to focus on (largely in relation to koalas), as well as more broadly given the considered wider application of the LLS Bill.

Council staff have held discussions with Wingecarribee Shire Council over the LLS Bill in terms potential implications to local biodiversity (including koalas) and difficulties created by current uncertainties regarding Koala State Environmental Planning Policies (SEPPs). Wingecarribee Council has expressed similar common concerns over the weakening of land management and biodiversity management framework as well as the adverse implications of the Bill to the protection of biodiversity and complementary features in a local and broader context. Wingecarribee and Wollondilly Councils are collaborating and sharing resources on the Koala SEPP to ensure the best possible outcomes for their protection and management.



## **PART A: BACKGROUND INFORMATION**

### **1) Context of the submission based on previous Council submissions**

This submission is consistent with a range of Council Planning Instruments, Policies and Strategies, particularly the Local Strategic Planning Statement (LSPS). The comments are consistent with previous applicable submissions listed below and associated resolutions of Council.

- Terms of Reference for review of the biodiversity and land management framework dated October 2015.
- Draft Biodiversity Conservation Act, Explanation of Intended Effects for the State Environmental Planning Policy (Vegetation in Non Rural Areas) and amended draft Local Land Services Act dated June 2016.
- Explanation of Intended Effects for a revised State Environmental Planning Policy (Koala Habitat Protection) 2019 dated June 2018.
- The Commonwealth Fauna Inquiry and response to the review of the Commonwealth Environment Protection and Biodiversity Conservation Act dated September 2018.
- Draft Guideline accompanying the State Environmental Planning Policy (Koala Habitat Protection) 2019 dated March 2020.
- NSW Legislative Council Inquiry into Koala Habitat dated July 2019.

### **Biodiversity values of the Wollondilly Local Government Area and threats relevant to the LLS Bill**

#### *i) Biodiversity values of the Wollondilly LGA*

The Wollondilly LGA contains three Critically Endangered Ecological Communities (CEECs) listed under the *Biodiversity Conservation Act 2016* (BC Act). These are the Shale/Sandstone Transition Forest (SSTF), Cumberland Plain Woodland (CPW) and Sydney Turpentine-Ironbark Forest (STIF). There are 5,111 hectares of CPW and 12,645 hectares of SSTF in Wollondilly based on available broad scale mapping (Tozer et al. 2010). Council has not considered biocertification of any of the Wollondilly LGA in large part due to insufficient detailed vegetation mapping.

57 species of threatened flora and 76 species of threatened fauna have been recorded within Wollondilly. These are spread across the area with higher proportions of records in association with the existing native vegetation areas, riparian corridors, areas of high biodiversity values and threatened ecological communities.

The Wollondilly landscape has a number of vegetation types that are considered to provide high quality koala habitat supporting primary corridors along the Nepean River, Allens Creek and Cataract Creek. Secondary corridors also link the Nepean with the Georges River corridor with a large percentage of koala habitat located on rural land. Council is in the process of preparing a Comprehensive Koala Plan of Management with the objective of managing threats to koalas through conservation of core habitat areas.

The above overview highlights that the biodiversity of Wollondilly has a high level of significance and diversity. This biodiversity is concentrated in the non-residential zoned land occupying approximately 88 percent of the Wollondilly LGA, excluding Drinking Catchment and National Parks estate. This biodiversity value is complemented by a number of other values of noted importance to the local community including rural setting and aesthetics.

#### *(i) Overview of Council position regarding protection of koalas and their habitat*



Council has strongly advocated on behalf of the community, serious concern over the loss and potential loss of koala habitat and movement corridors. Council lodged a submission to the NSW Parliamentary Inquiry on Koala Habitat that detailed its position regarding koalas, issues associated the strategic framework and requested areas of investigation (Attachment 1). Key statements in this submission for consideration by the Parliamentary Committee are:

- The NSW Department of Planning and Environment (now Department of Planning, Industry and Environment) has been undertaking land use planning adversely impacting on the survival of koalas within the Wollondilly LGA without strategic direction as a consequence of continuing shortfalls in baseline data and research.
- Council is strongly concerned that the largest disease free koala population in NSW is not currently protected by an Integrated Regional Koala Conservation Plan that conserves habitat corridors across the region.

(ii) *Threats to biodiversity values in the Wollondilly LGA*

An overview of the key threats to biodiversity values in Wollondilly relating to the impacts of urbanisation such as clearance of habitat, fragmentation of habitat connectivity and vegetation clearance is summarised below

Development pressure

Pressure associated with development is recognised as not being of direct relevance to the Inquiry given the LLS Bill only directly relates to vegetation clearance currently permitted under the State Environmental Planning Policy (Vegetation in Non-Rural Areas) (Vegetation SEPP) and on rural zoned land. However, impacts associated with development proposals is viewed as having relevance to the Inquiry on the following grounds:

- A number of incidents when large scale full vegetation clearance has occurred on a development site prior to the lodgement of the development application.
- Map 1 presented in Attachment 2 indicates that the location of a significant number subdivision approvals over the last two years are within identified koala corridors.
- The LLS Bill is viewed as having potential implications to mechanisms included in Determinations issued by Council to protect biodiversity values on a development site.

Vegetation clearance not directly related to or ancillary to development

This form of vegetation clearing presents significant impacts to biodiversity as well as complementary aesthetic, landscape and cultural values of the Wollondilly LGA. In this regard, Council was approached by Local Land Services and the (then) Office of Environment and Heritage in 2016 to develop a program to reduce unauthorised vegetation clearance given that the LGA was in the top 5 of LGA's in NSW for such clearance.

Council advised in its submission on the land management reforms in June 2016 that "*the role of the Local Land Services (LLS) as the regulatory authority for development and/or vegetation clearance on rural zoned land would be satisfactory to Council subject to demonstrated significant increases in its current staff and financial resources*". The Committee is requested to note that feedback received from landholders and the experience of Council staff indicates current significant shortcomings in the resourcing of the LLS and associated Native Vegetation Panel.

(iii) *Implications of the LLS Bill to the biodiversity values in Wollondilly*



A key feature of the Wollondilly LGA is the significant occurrences of CEECs and important koala habitat on privately owned rural land, (with rural and Environment Protection Zoning). Detailed involvement and collaboration with rural landholders is therefore an important component of Council activities as well as implementation of development control, planning instruments, strategic documents. Council has concerns that the implementation of the Bill will exacerbate the existing threats as a result of the removal of assessment requirements for vegetation clearance on such land and shortcomings in the existing land management framework.

The Committee is requested to undertake the following activities to obtain an understanding of the biodiversity values of Wollondilly potentially impacted by the LLS Bill:

- Obtain an understanding of the substantial biodiversity value and complimentary social and economic benefits on rural landholdings and potential impacts of the LLS Bill to these values.
- Obtain an understanding over the significance of koala populations both locally within Wollondilly and in a broader context involving Wingecarribee and Campbelltown LGAs as well as potential impacts of the LLS Bill to these values based on current research.

## **2) Council Strategic framework of relevance to the Bill**

A number of Council strategies/instruments and policies have relevance to aspects of the LLS Miscellaneous Bill with the key document being the adopted LSPS. The intent of the Bill is considered particularly inconsistent with the following Planning Priorities of this document.

- Planning Priority 13 – Protecting Biodiversity and Koala Habitats
- Planning Priority 16 - Enhancing and Protecting the Diverse Values of the Metropolitan Rural Area

A further key strategy of relevance to the LLS Bill is Council's draft Rural Strategy, exhibited during mid-2020, given its application to land zoned rural and E4 (Environmental Living). Council is concerned about the intent of a number of actions being compromised by the LLS Bill given the additional unregulated clearing that would be permitted in the E4 zone for allowable activities.

In addition, the Committee is requested to note that Council is in the process of finalising the updating of its *Biodiversity Strategy* and *Comprehensive Koala Plan of Management* (planned to be completed by June 2021). **The proposed Bill is viewed as having strong inconsistencies with a number of proposed objectives and actions of both these documents as well as imposing significant constraints to their implementation given the dominance of biodiversity on land to which it applies within Wollondilly.**

Council has undertaken rigorous and extensive community consultation during the preparation and exhibition of its strategic documents. The major common themes received in this feedback was a general strong need for the retention of the current rural landscape of Wollondilly. More information can be provided to the Inquiry upon request.

Staff from Wingecarribee Shire Council have expressed their concerns over adverse implications to the implementation of the above and achievement of outcomes for their strategic documents. **Council staff would appreciate a joint discussion with Wingecarribee Shire representations over these implications.**

**The key legislative and policy framework applicable to the LLS Bill**



The following provides an overview of Council's position regarding adverse implications of applicable legislation and policies to the Inquiry to biodiversity and complementary values and requested areas of investigation by the Committee.

(i) *Reforms to the Biodiversity and Land Management framework*

Council lodged a detailed submission on the Discussion Paper for this reform and subsequent draft Act and Regulation that can be presented to the Committee upon request. The Executive Summary is presented in Attachment 3 of this submission. The Committee is requested to note that Council resolved at its meeting on 16 March 2015 to "write to the Minister for the Environment outlining the concerns over the protection and management of biodiversity as recommended by the Final Report on the Review of Biodiversity Legislation in NSW".

The following provides an overview of current issues experienced with the components of this framework and requested areas of investigation by the Committee.

Biodiversity management framework

o *Broad Council position*

Council's submission expressed support for a number of aspects of this framework including the strong ecological basis of the Biodiversity Assessment Methodology that underpins the Biodiversity Offset Scheme (a key feature of the Vegetation SEPP discussed below). However, strong opposition was expressed to a number of aspects that included provisions that allowed for a less rigorous version of the Methodology to be followed and weakening of the statutory biodiversity outcome from the previous "Conserve and enhance biodiversity" to "No Net Loss of Biodiversity in NSW".

o *Issues associated with the framework of relevance to the Inquiry*

The following identified relevant issues are provided for consideration by the Committee:

- Significant areas of vegetation has been removed in accordance with the framework with resulting adverse implications to biodiversity, canopy cover and rural landscape.
- A number of complications for applicants have been observed due to the Biodiversity Value Map being based on a desktop analysis that does not sufficiently represent the vegetation on the development
- Vegetation clearance where the Native Vegetation Clearance threshold is activated (0.25 to 0.5 ha and above of native vegetation) has not been able to adequately identify native vegetation based on the definition within the *Local Land Services Act 2013*.

State Environmental Planning Policy (Vegetation in Non Rural Areas) 2017

o *Broad position regarding the SEPP*

Council broadly support the approach and objectives of the Vegetation SEPP in instances of vegetation clearance where the Biodiversity Offset Scheme is not activated. (The aspects supported include provisions that enable Council to define classification of native vegetation on a localised scale and list of exemption criteria. Representatives from Wingecarribee Shire Council are noted to have expressed a similar level of support to these aspects.

The full removal of exemptions previously covered by Routine Agricultural Management Activities (RAMA's) within the *Native Vegetation Act 2003* in the initial version of the



Vegetation SEPP in terms of protecting areas of biodiversity value was supported in principle. However, the effectiveness of the SEPP in achieving its stated objectives has been observed to be weakened as a result of on-going exemptions for such activities in certain circumstances.

- *Issues associated with the framework of relevance to the Inquiry*

The Second Reading on the Bill is noted to include the statement “*as the name of the vegetation SEPP makes clear, it is designed to regulate native vegetation in non-rural areas — which are trees in peri-urban environments*”. This statement is considered to have a high level of contradiction to the following aims of this SEPP:

- *To protect the biodiversity values of trees **and other vegetation** in non-rural areas of the State, and*
- *To preserve the amenity of non-rural areas of the State through the preservation of trees **and other vegetation**.*

### *(iii) Land Management Framework*

Council has had limited experience in the application of this framework given that Council does not have any regulatory or assessment responsibilities for land zoned rural. However, the Committee is requested to note Council's submission to the NSW Legislative Council Inquiry on Koala Habitat expressed the following concerns which are of relevance to the LLS Bill:

- *Council Staff are of the view that the reform package does not contain sufficient adequate provisions to manage and regulate native biodiversity occurring on private land within a local and broader context.*
- *There are concerns that the proposed risk based and largely self-assessment approach adopted will result in biodiversity losses on a localised scale due to identified shortcomings in the assessment process (discussed below) and adequate regulation.*

A review of the land management framework, conducted in early 2019 by the Natural Resources Commission was noted to conclude that “*clearing rates have increased almost 13-fold from an average rate of 2,703 ha a year under the old laws to 37,745ha under the new laws and that biodiversity in 9 out of 11 regions is now at risk*”. This conclusion is viewed as providing a level of validation to the above comments contained in Council's submission.

### **Requested areas of investigation by the Committee in regard to the Biodiversity and Land Management framework**

- Mechanisms to enhance the effectiveness of the Biodiversity Offset Scheme considering Council's submissions on the BC Act, the NSW Legislative Council Inquiry into Koala Habitat and applicable strategies and research studies.
- The most effective role of a Vegetation SEPP in protecting areas of biodiversity (trees and other vegetation) whilst not adversely affecting the undertaking and profitability of agricultural activities.
- Alternate mechanisms to the proposed Bill (which is viewed as increasing threats to biodiversity values), that reduce threats to biodiversity value and protect and enhance these and complementary values.
- Mechanisms to enhance the personnel and financial resources of the *Local Land Services Act 2013* and associated Native Vegetation Panel.



(i) *Potential implications of the Cumberland Plain Conservation Plan*

The draft Cumberland Plain Conservation Plan (CPCP), exhibited in late 2020, provides the biodiversity management framework for vegetation clearance associated with defined Growth Areas and the management of biodiversity offsetting for this clearance. The Strategic Conservation Areas, which are priority areas identified for offsetting under the Plan, cover approximately 30% of Wollondilly excluding Catchment Areas and National Parks estate.

The attention of the Committee is drawn to the intention of the Plan to place an E2 Zoning over identified biodiversity offset sites (labelled Conservation Areas). This approach is considered to have a high level of inconsistencies with the overall intent of the LLS Bill. In this regard, mapping secured under a Confidentially Agreement with DPIE has identified that approximately 1500 ha of proposed Conservation Lands has a Primary Production Rural Zoning. **The investigation of this inconsistency and implications of the Bill as proposed to the intended offsetting approach of the CPCP is requested.**

The Committee is also requested to note that Council received feedback from a number of landholders expressing a range of concerns over the proposed E2 zoning by the CPCP. Council's submission recognised the benefits of application of Environmental Protection zoning in protecting biodiversity values but that such application must involve detailed consultation at all stages of the process and be based on sufficient evidence.

Council acknowledges its responsibilities to meeting growth targets set by the State Government. However, in meeting these responsibilities, Council expects that all viewpoints of the community are adequately responded to and that growth areas are designed with multiple positive environmental and non-related outcomes. The concern is that the Bill will facilitate vegetation clearance in land directly and indirectly covered by the CPCP that will significantly impede the achievement of these outcomes.

## **PART B: GENERAL COMMENTS ON THE LOCAL LAND SERVICES AMENDMENT BILL**

### **1) Overall intent of the LLS Bill**

The understood intent of the LLS Bill is to address expressed frustrations by rural land holders over aspects of the implementation of the land management framework and Vegetation, and Koala SEPP's. Council views the advocacy of the concerns of landholders and importance of rural activity very highly. However, the existence of a resourced detailed consultation program in association with an assessment framework that can be readily understood and implemented by all rural landholders is necessary to achieve positive outcomes as well as positive biodiversity and related outcomes. In relation to this matter, a number of rural landholders are noted to have expressed a strong interest in protecting biodiversity and for the development of a personalised consultation program.

A further primary intent of the LLS Bill is understood to involve the decoupling of requirements for landowners undertaking agricultural activities from the Vegetation SEPP and enshrine them in the *Local Land Services Act 2013*. Such decoupling would not be opposed in principle, provided that deficiencies in current regulatory regimes in this Act in achieving demonstrated positive biodiversity outcomes detailed in previous sections of this submission are addressed to the satisfaction of all applicable stakeholders.

### **2) Inconsistencies of the LLS Bill with applicable studies/inquiries**

The policy settings underpinning the LLS Bill appear to be inconsistent with the following studies/reports that have identified shortcomings in the adequacy of the current biodiversity and land management framework at the State and Commonwealth level:



- **A NSW Parliamentary Upper House inquiry into koala populations and habitat in NSW:** The Committee's report found *"it is clear that frameworks regulating clearing on private land play a vital role in koala habitat protection and therefore in preventing the extinction of the koala in NSW and must be strengthened"*.
- **Report of the Independent Biodiversity Review Panel:** This Report recommended a *"level playing field for agricultural development and land management activities by treating all forms of development in a consistent and fair way, by integrating the assessment and approval of all forms of agricultural development that involve clearing of native vegetation into the Environmental Planning and Assessment Act 1979"*.
- **Review by the Audit Office of NSW (Audit Office) in 2019:** This Review concluded that the new land management framework may not be responding adequately to environmental risks whilst permitting landholders to improve agricultural activities and identified significant delays in compliance and enforcement activity to address unlawful clearing.
- **The Final Report into the Review of the Environment Protection and Biodiversity Conservation Act 1999:** This recently released Report is noted to conclude *"the EPBC Act is in effective. It does not enable the Commonwealth to effectively protect environmental matters that are important to the nation. It is not fit to address current or future environmental challenges"*.

### 3) Timing of the introduction of the Bill

The introduction of the LLS Bill is considered to have pre-empted the outcomes of a number of studies of relevance to the Inquiry at the State and Commonwealth level that included:

- The three-year review of the land management framework
- Initiatives contained in the Government's response to the NSW Legislative Council Inquiry that includes:
  - The scheduled five yearly review of the *Biodiversity Management framework*
  - The Government's targeted three-year review of the implementation of the land management and biodiversity conservation (LMBC) framework will examine the biodiversity impacts of parts of the Land Management Code.
- State Environmental Planning Policy (Koala Habitat Protection) 2021
- The Commonwealth's response to the Final Report into the EPBC Act and identification of the relevance/implications of this response to relevant NSW Legislation.

The above reports and studies are viewed as important science based documents intended to achieve a suitable biodiversity management framework applying to non-urban areas that provides positive outcomes for landholders and the environment. There are strong concerns that the timing of the enactment of the Bill without due consideration of these strategies and reports may significantly constrain and potentially such positive outcomes being achieved. **The Committee is strongly requested to examine the potential implications for enactment of the Bill preceding the above reports and studies to both landholders and biodiversity.**

### 4) Implications of the LLS Bill to the biodiversity values of the Wollondilly LGA



Part A of this submission referred to the extensive and significant biodiversity values of Wollondilly and the dominance of these value on land zoned rural and Environment Protection. The adverse potential implications of the LLS Bill to these values is highlighted by the attached Maps showing the occurrence of CEECs and identified koala habitat corridors (primary, secondary and tertiary) in comparison to these zonings in Maps 2 and 3 respectively (Attachment 5). An analysis of the Mapping highlighting the significance and diversity of biodiversity of relevance to the LLS Bill is provided in Table 2 for the information of the Committee.

**Table 2: Biodiversity value of land zoned rural and with Environment Protection Zoning**

	Rural Zoning	Environment Protection Zoning
Threatened Ecological Communities	11,384	1800 ha
Koala	36,214	33,164ha (98 percent of the total Environmental Protection Zoning)

Council has strong concerns over the potential impacts to biodiversity and particularly important wildlife corridors (especially koala corridors) as a consequence of the LLS Bill based on the analysis contained in Table 2. Staff from Wingecarribee Shire Council are noted to have expressed similar concerns.

## **PART C: MATTERS REQUESTED FOR SUBMISSIONS TO FOCUS ON**

Comments within this part of the submission are restricted to those of direct relevance to Council's responsibilities within Wollondilly and do not refer to issues associated with forestry operations. As a general comment, the matters requested for submissions to comment on are largely related to koala habitat protection and issues associated with the various versions of the Koala SEPP. The protection of koalas and their habitat is of utmost importance to Council and the local community that it represents. However, in accordance with previous sections of this submission, this Bill is viewed as having significant wider adverse ramifications to the protection of biodiversity values in general as well as the implementation of Council strategies and undertaking of Council activities. These strong concerns are incorporated into the comments below.

### **The objectives and impact of the Local Land Services Amendment (Miscellaneous) Bill 2020**

#### *i) Objective 1 of the LLS Bill:*

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.

#### **Removal of the application to which Parts 5A and 5B of the LLS Act apply**

An analysis on the likely level of impact associated with the LLS Bill to Category 2 Regulated Land has not been able to be undertaken due to Council not being able to receive a digital version of this mapping. However, there are strong concerns over the incorporation of assessment requirements for vegetation clearance on such land within the Land Management



Code based on observed shortcomings in the Code and the Analysis in Table 2. The following statement regarding this matter in the Environmental Defenders Office (EDO) submission is therefore supported.

*The Bill will not require land identified under the new Koala SEPP to be designated category 2 regulated land. This essentially 'freezes in time' the identification of koala habitat identified for the purpose of designating category 2 regulated land. It means that any future identification of koala habitat will not be required to be designated category 2-regulated land. It will also prevent any koala habitat from being identified category 2 – sensitive regulated land (see cl 108(2) (b) of the Local Land Services Regulation 2018 (LLS Regulation). We do not support this change.*

#### Restriction to certain Local Government Areas

The existence of adopted Koala Plans of Management in the listed LGAs and the value and necessity of protecting koala habitats in these LGAs, (particularly after the high impact from the 2019/20 bushfires), is acknowledged. However, the proposed restriction of the application of the Koala SEPP under the LLS Bill to these LGAs is viewed as being without any ecological basis and is opposed.

The Committee is requested to note that Council fully supports the following position and comments of the EDO regarding the restriction

*We do not support this change. It essentially means that land clearing on koala habitat (except that already identified) in rural areas will not be regulated. Many councils are still to develop and finalise plans of management identifying koala habitat (this was a requirement under the former SEPP 44 that continue under the new Koala SEPP 2019). This is not an appropriate policy setting given that the koala is listed as a threatened species in NSW and loss, modification and fragmentation of habitat is a key threat to the koala; 8 and a recent NSW Parliamentary Inquiry found that without effective intervention, koalas will become extinct in NSW by 2050.*

The Committee is requested to note in this regard that Council is in the process of finalising its draft Comprehensive Koala Plan of Management for the Wollondilly LGA. The LLS Bill is viewed as having significant potential adverse implications to the implementation of this Plan.

#### Objective 2 of the Bill

*To allow native vegetation clearing in certain circumstances on land that is used for Agricultural purposes without the need for authorisation under other legislation.*

There is an absence of definition in the available information associated with the LLS regarding the term 'certain circumstances'. The term has been interpreted for the purposes of this submission as relating to the current transition measures within the Vegetation SEPP that permits vegetation clearance based on exemptions within the former *Native Vegetation Act 2003* where the land is utilised for agricultural activities.

The need for exemptions to avoid adverse implications associated with vegetation clearance and operation of rural landholdings is recognised. **However, a list of exemptions based on agricultural activities and circumstances such as safety, bushfire or for installation of infrastructure is suggested as an improved approach for investigation by the Committee.**

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



Council recognises the value and need for a SEPP that specifically provides for the protection of koala habitat from development and as well as an overall management framework. The following provides an overview of the experiences of staff and requested areas of investigation for the various versions of this SEPP as well as the understood future Koala SEPP 2021.

*(i) State Environmental Planning Policy No 44*

Aspects of this Policy supported by Council include detailed requirements within Planning Circular for site specific Koala Plans of Management and a trigger for identifying when such a Plan for a development site is required. Council lodged a submission on the exhibited Explanation of Intended Effects for the revised Koala SEPP in March 2015. The submission recognised the SEPP as an important document and welcomed its review as a means of addressing the following experienced shortcomings in its operation that are viewed as remaining valid:

- The list of koala tree species does not reflect up-to-date knowledge regarding the habitat and movement of koalas.
- The current definition of 'Core Habitat' for koalas does not adequately capture the significance of a site proposed for development in terms of a site specific and landscape context.
- Reports accompanying development applications have almost unanimously been observed to state that SEPP 44 does not have any implications to the proposed development largely based on the absence of koala recordings on a site proposed for development and are often based on poor assessment methodology of lack of data.
- The preparation of specific Koala Plans of Management has occurred on an extremely rare basis due to a combination of factors including the non-identification of 'core koala' habitat on site and expenses incurred and timeframe involved in the preparation of such plans.

The Chairman of the Committee is noted not to have requested comments specifically in regard to the Koala SEPP 2020 which is currently in force. The above comments over SEPP 44 are requested to be read as for SEPP 2020 given their identical features apart from a (supported) additional measure applying to fire impacted dwellings.

*(ii) State Environmental Planning Policy 2019*

The Committee is requested to note that Council does not support the process of exhibiting an Explanation of Intended Effects for a revised or new SEPP. The government is requested to further note that staff view the process of the introduction of this SEPP involving gazettal on 22<sup>nd</sup> December 2019 three years after the EIE without the Guideline that informed the SEPP as unsatisfactory from a procedural key improvement was the expanding of listed tree species from SEPP 44 to reflect current scientific knowledge. However, shortcomings in this Guideline was raised in Council's submission dated March 2020:

- The adequacy of the scientific basis of the Koala Habitat Protection Guidelines.
- The relationship of the SEPP and Koala Habitat Protection Guidelines with the Cumberland Plain Conservation Plan (CPCP).
- Absence of measures over the funding of Comprehensive Koala Plans of Management as well as the preparation of these Plans
- Absence of detailed for the preparation of Comprehensive Koala Plans of Management.



Difficulties encountered in the operation of the original version of the Guideline (March 2020) largely related issues associated with the Development Appli identified shortcomings of the Guideline in protecting koala habitat was the addressing of cumulative impacts and recognising the importance of small areas in providing habitat and connectivity within corridors as a consequence of the SEPP applying to sites greater than 1 hectare in area. A further identified issue was the absence of compulsory development requirements for Comprehensive Koala Plans of Management. The inclusion of such requirements is important stipulations are included in SEPP 2021.

The revised SEPP Guideline made available on DPIE's website during October 2020 was viewed as being an effective document and in large part addressed experiences with the former Guideline and issues raised in Council's submission. However, staff had very limited experience in the application of this Guideline prior to it being superseded by the introduction of the Koala SEPP 2020 on 30 November 2020.

*(iii) Future SEPP*

The application of the wording "potential new koala SEPP" to the Koala SEPP 2021 or an alternate SEPP in the above request from the Chairman is uncertain. In broad terms, the Committee is requested to note that Council would expect that a future SEPP be broadly based on the original SEPP 2019 Guidelines, as amended, to reflect scientific research and all issues raised in applicable submissions listed at the commencement of this submission.

**Requested areas of investigation regarding the Koala SEPP by the Committee**

- The importance in the retention of a Koala SEPP to mitigate impacts associated with for development and planning proposals on a local and broader context on land with rural and/or Environment Protection Zoning.
- Appropriate and mechanisms controls based on scientific research to achieve protection of koala habitat in a local and broader context without adversely affecting operations on rural landholdings.
- The development of strong and readily interpreted and implemented criteria for core habitat, (or equivalent), that would trigger greater assessment.
- Assessment of social and economic positive and negative implications to rural landholders and the undertaking of their operations from the implementation of a Koala SEPP as well as rural style properties absent of such operations.
- Consultation provisions for inclusion in a SEPP that would ensure sufficient consultation associated with site specific and comprehensive Koala Plan of Managements whilst not impeding the preparation of these documents or the development/planning process.

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

The following provides an overview of observed current challenges facing rural landholders as well as suggested incentives within the viewed broader application of the LLS Bill.

*(i) Current incentives and challenges*

The following provides a summary of anecdotal feedback received for consideration and response by the Committee:



- The current land management codes are weighted in favour of a narrow subset of agricultural uses and are not viewed as adequately considering the interests of landowners in peri-rural and small-lot agricultural region.
- There is perceived poor regulation/compliance in regard to the Land Management Code given its voluntary nature leading to a reduction in biodiversity values and frustration to neighbouring landowners.
- There is a general absence of sufficient knowledge for rural landholders to adequately identify biodiversity values of a property required by the Code. As an example, it is understood the Code involves landholders assessing whether a threatened ecological community occurs on a site. Council requires that such an assessment occur by a suitably qualified ecological consultant.

In relation to this matter, Council is aware of two example's that would appear to indicate an absence of process/legislative requirements that would prevent vegetation clearance as part of an activity requiring consent receiving approval under the LLS Act. This viewed with concern due to the adverse implications to Council's responsibilities under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

**The Committee is requested as a priority to examine appropriate means of addressing this matter under current legislation and by the LLS Amendment Bill.**

Council is also aware of a number of instances where vegetation clearance has occurred without the necessary approval or authority for reasons such as establishing a rural lifestyle on smaller lots (such as less than 10ha) and prior to the lodgement of development applications. Council staff have participated in a program with DPIE and LLS to address this form of vegetation clearance and intend to seek the reactivate this program.

**The Committee is requested to investigate suitable programs and statutory mechanism to reduce this level of vegetation clearance and associated impacts to biodiversity.**

(ii) *Potential incentives and challenges*

The attention of the Committee is drawn to the ***Boosting NSW's peri-urban biodiversity credit supply to offset losses from urban development*** Project being coordinated by the University of Technology (UTS). The broad aim of Project is to investigate constraints in rural landholders establishing Biodiversity Stewardship sites on their property and the addressing of these constraints. Wollondilly Shire Council has been on a Working Group for this Project with representatives from LLS and DPIE. This Study is considered to have relevance to the Inquiry given a number of rural landholders were surveyed during its preparation. Staff understand from membership of this Group that the Final Report on the Project is due for release in the first part of 2021. Contact details for the UTS staff involved in the Project can be provided to the Committee upon request

In addition, there is a need for mechanisms and programs that would adequately consider the financial interests of rural landholders looking to diversify their properties to include retained areas managed for conservation purposes. Council is are aware of landowners that would like to receive funding for conservation measures within the *Biodiversity Conservation Act 2016* to introduce koalas to their properties. **The investigation over suitable procedures and mechanisms that would allow for diversification of activities on rural properties by the Committee is requested.**

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



The term 'land use change' has been interpreted for the purposes of this submission as being when the current land use activity on land to which the Bill is proposed to apply changes. The following provides an overview of the mechanisms that Council staff implement to protect biodiversity on land covered by the LLS when assessing applications that involve changes and requested areas of investigation by the Committee.

#### Review of planning proposals

A key process of Council in assessing a planning proposal is to firstly identify the biodiversity value of a site based on a range of criteria including presence of threatened species and ecological communities and connectivity with important wildlife corridors detailed in a submitted ecological report. Depending on the outcomes of this review process, a range of planning mechanisms are then considered and implemented to protect areas of biodiversity value that may include the application of Environmental Protection Zoning if viewed as appropriate. **The Committee is requested to investigate any restriction the LLS Bill may place over the application of planning mechanisms to protect areas of high biodiversity value on rural land. The Committee is also requested to note the strong concern of council staff over the potential associated adverse impacts to the biodiversity values of Wollondilly associated with such a restriction.**

#### Review of development applications

Council currently utilises a range of mechanisms to protect areas of identified biodiversity value from impacts associated with development proposals. A high number of single dwelling and subdivision applications assessed by Council as well as Environmental Living (E4) Zoning. Mechanisms utilised at the assessment process to protect areas of biodiversity value involve reviewing the adequacy of received biodiversity related reports and their consistency with the applicable legislative and policy framework.

The Committee is also requested to note that Council staff utilise a range of mechanisms at the determination stage to protect biodiversity values including consent conditions and, where viewed as appropriate, site restrictions such as Protective Covenants. The Committee in this regard is requested to investigate any adverse implications of the LLS Bill to these mechanisms associated with both approved and future development applications from a from a legal and biodiversity perspective.

#### **The impacts of current regulatory regimes on private landholders,**

##### Regulatory regimes for land that is zoned rural

Feedback \ received from rural landholders has identified issues over the complexity of the Code and need for succinct guidelines to assist in their understanding. As a broad comment, the current regulatory regime for rural zoned land is viewed as being of insufficient strength and inadequately resources based on the significant level of increase in vegetation clearance since its introduction.

##### Regulatory regimes for land with Environment Protection Zoning

Council is the regulatory authority for vegetation clearance on land with an Environment Protection Zoning under the current Vegetation SEPP where the Biodiversity Offset Scheme is not activated. Council's draft Vegetation section within its Development Control Plan, ( updated to reflect this SEPP), contains a Tier 2 assessment involving vegetation clearance greater than a nominated threshold. The introduction of such a Tier was viewed as being necessary given the potential for of vegetation being vegetation clearance being up to 0.5 ha



and the Environmental Protection zoning of the site. While only a small number of such applications have been received, broad support from landholders has been received with no issues raised over impacts to land use activities.

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

Council carries out a range of activities in managing koala populations and their habitat as part of their responsibilities under a number of legislatures. The Committee is requested to investigate this item within the wider application of the LLS Bill than koalas and their habitat expressed by this submission. The list of activities of Council activities viewed as being potentially impacted by the LLS Bill within this context is provided in Table 3.

**Table 3: Potential implications of the LLS Bill to Council activities**

<b>Council activity</b>	<b>Implications associated with the LLS Bill</b>
Undertaking of on-ground works using a strategic approach to enhance koala habitat	Council in partnership with LLS liaises with rural landholders to enhance biodiversity on rural properties. There are concerns the effectiveness of this consultation in achieving property scale biodiversity outcomes may be adversely affected by the LLS Bill.
Review of planning and development applications that includes site specific koala Plans of Managements where required	The apparent intent of the Bill to avoid Environmental Protection Zoning on rural properties is considered to have adverse implications for protecting koala habitat on rural land. The Bill is also considered to have adverse implications over the ability of Council to adequately protect koalas and their habitat from impacts associated with development.
Identifying and protecting koala habitat in the review of planning proposals through the application of planning mechanisms	
Preparation and implementation of strategic documents including LSPS and Biodiversity Strategy	The considered increased level of vegetation clearance on rural land resulting from the LLS Bill is viewed as having an adverse impact on retention and enhancement of wildlife corridors identified by these Strategies.
Implementation of community programs to raise awareness and donation of koala feed trees from its Community Nursery.	These programs have a strong reliance on collaborating with landholders to retain areas of biodiversity on rural properties.

**The Committee is requested to investigate the potential implications of the LLS Bill to activities listed in Table 1 and provide recommendations to address these implications.**

Council is in the process of finalising a Comprehensive Koala Plan of Management for Wollondilly. The key objectives this Strategy relate to the identification and protection of key koala habitat and populations. The introduction of the Bill is viewed as having potentially significant adverse implications to the implementation of this Strategy (when completed) and achievement of its objectives given the prevalence of koala habitat and corridors on land to which the Bill applies as detailed in previous sections of this submission.

***3) Proposed amendments to Schedules by the Bill***

The Chair of the Committee is noted to have not specifically requested comments in regard to proposed amendments to Schedules of the existing *Local Land Services Act 2013*. However,



the following comments consistent with previous relevant submissions and this LLS Bill are provided below for the information and response by the Committee.

**Proposed amendment to Schedule 1:** Inserts definitions of *allowable activity land* and primary production into Part 5A,  
For the purposes of that Part and Schedule 5A. *Allowable activity land* is defined to mean a Landholding that:

- Is in an area of the State to which Part 5A applies, and
- 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
- Is used for primary production.

**Proposed amendment to Schedule 2:** *Expands the offence relating to clearing of native vegetation to apply to clearing of native vegetation on allowable activity land and to provide a defence to that offence that the clearing is for an allowable activity authorised under Division 4 of Part 5A and Schedule 5A.*

Detailed comments provided by Council's Strategic Section highlighting a number of concerns regarding both the above proposed amendments to existing Schedules within the LLS Act and requesting clarification over certain aspects of the above proposed amendments to the Schedules are presented in Attachment 6 for consideration and response by the Committee.

**Proposed amendment to Schedule 1[9]** *Provides that an offence is not committed under the Environmental Planning and Assessment Act 1979 in relation to the clearing of native vegetation if the clearing is carried out on allowable activity land and for an allowable activity authorised under Division 4 of Part 5A and Schedule 5A.*

It is assumed that the primary intent of the above proposed amendment is to avoid possible prosecutions for vegetation clearance carried out on allowable activity land and for an allowable activity under the provisions of the Vegetation SEPP. This assumed intent is recognised as having consistency with the overall intent of the Local Land Services Act Amendment Bill. **However, Council staff would be strongly of the view that there be a sufficient regulatory provisions with sufficient resources for their implementation in the event of this Bill being enacted.**

**Proposed amendment to Schedule 1[10]** *Removes the ability for a State environmental planning policy or part of a local environmental plan that adopts a mandatory provision of a standard instrument under the Environmental Planning and Assessment Act 1979 to require development consent or another authorisation only for the clearing of native vegetation in an area of the State to which Part 5A.*

Council will as a matter of course, amend its policies to reflect any changes in statutory requirements associated with vegetation clearance including the restriction of the Vegetation SEPP to urban areas. However Council would strongly request that there be an appropriate assessment process that would ensure the protection of biodiversity values on land previously covered by the SEPP (E zoned land), whilst not adversely affecting the undertaking of agricultural activities in the event of such a restriction being introduced. If the intent of the Bill becomes embedded in legislation, Council staff would expect that such legislation has consistency with this approach.

## CONCLUDING STATEMENT

The importance and support for agricultural activity in the Wollondilly and responding to concerns and views of rural landholders is reflected in its adopted LSPS and recently exhibited Rural Lands Strategy.

, The proposed changes proposed by the LLS Bill will potentially resulting in the removal of important protections for koala habitat and facilitating extensive and inappropriate land clearing. In this regard, an analysis of mapping has identified that approximately 36,000 hectares of rural land contains CEECs and 33,000 hectares of identified koala habitat corridors. The impacts of the LLS Bill will have wider biodiversity implications than koalas as well as associated implications to the aesthetic and cultural values of Wollondilly.

Council has strong concerns over the intent of the LLS Bill, which will incorporate the assessment of vegetation clearance on land that is zoned Environment Protection into the Land Management Code and we understand that Wingecarribee Shire Council share these concerns. These concerns are based on observed shortcomings in the adequacy of this Code and adverse impacts to Council strategies and activities and overall biodiversity values.

Wollondilly Council does not support the LLS Bill and requests a joint meeting with staff Wingecarribee Shire Councils to look for opportunities to improve the Bill in order to maintain and preferably increase the protection of Koalas and the biodiversity values of Wollondilly and Wingecarribee.