

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

Organisation: Save Sydney's Koalas (South West) Inc.

Date Received: 12 February 2021

SAVESYDNEYSKOALAS



Save Sydney's Koalas (South West) Inc
savesydneyskoalas@gmail.com

Submission to the Inquiry into the Local Land Services Amendment (Miscellaneous) Bill

We support the opinion of the Environmental Defenders Office (EDO) that the Local Land Services Amendment (Miscellaneous) Bill will remove important protections for koala habitat and further facilitate inappropriate land clearing.

Further, we note the EDO's concern that the policy settings underpinning the Bill are inconsistent with recommendations made by the NSW Audit Office, the Natural Resources Commission and the NSW Upper House Inquiry into koala populations and habitat in NSW. They also contradict the original recommendations of the Independent Biodiversity Review Panel and preempt the outcomes of other government reviews currently in progress.

As you are no doubt aware, the koala population in NSW is in crisis and will likely become extinct in the wild well before 2050. It faces multiple threats to its habitat from logging, land clearing for agricultural activities and urban encroachment.

The Bill will do nothing to adequately address any of these concerns. It:

1. **Weakens the Private Native Forest (PNF) framework and preempts the recommendations of the PNF Review.** It proposes, for example, that Council's Local Environment Plans (LEPs) be prevented from requiring development consent for PNF. It also allows for the doubling of the duration for PNF plans from 15 to 30 years.

Already the Government has been criticised for not modifying its policies and laws in response to the devastating Black Summer bushfires that destroyed about a third of koala habitat and killed over 5,000 koalas in NSW.

How will the proposed changes to the PNF framework improve the situation for koalas or allow for the Government to respond more quickly in the future to changing circumstances?

2. **Does not address damagingly high land clearing rates.** So far, the introduction of code-based land clearing has led to a [13 fold increase in land clearing](#) approvals in NSW. It's also put [huge swathes of koala habitat at risk](#) because 65% of koalas live on private land and only 1% of this land is now protected. The Auditor-General, Margaret Crawford, was scathing about the environmental impact of these new laws: "The clearing of native vegetation on rural land is [not effectively regulated and managed](#)," she said, and "there is no evidence-based assurance that clearing of native vegetation is being carried out with approvals."

The EDO notes that with respect to land clearing and its impact on koalas, the Bill ignores the recommendations of the NSW Parliamentary Upper House Inquiry into koala populations and habitat in NSW, which made a number of recommendations for strengthening the land management framework under the Local Land Services Act 2013 (LLS Act). Namely:

- Recommendation 33: That the NSW Government amend the Local Land Services Act 2013 to reinstate legal thresholds so that its application improves or maintains environmental outcomes and protects native vegetation of high conservation value.
- Recommendation 34: That the NSW Government review the impact on koala habitat of the application of regulated land and self-assessment frameworks under the Local Land Services Act 2013.
- Recommendation 35: That the NSW Government adopt all of the recommendations made by the Natural Resources Commission in its 2019 Report on Land Management.

By way of example, the Wollondilly Local Government Area, which is part of the Greater Macarthur Growth Area and zoned 88% rural, now has one of the highest levels of vegetation clearance in NSW. In its submission to the above NSW Upper House Inquiry, the Wollondilly Council noted that the cleared areas include koala habitat and essential movement corridors and that some of the vegetation removal was pre-emptive clearance on large proposed residential development sites.

3. **Undermines the environmental values of 'E' zoned land by introducing the concept of 'Allowable Activities.'** The Chief Scientist and Engineer's report, Advice on the protection of the Campbelltown Koala population, April 2020 (CS&E Report) was critical of property developer Lendlease for the inclusion of ancillary functions in its koala corridors in its proposed Mount Gilead Stage 2 biodiversity certification application, noting, for example, that "buffers should not have roads, playgrounds or picnic areas included in their boundaries, and dogs should not be permitted."

Lendlease is now proposing to rezone biobank sites with koala habitat corridors as E2. Will the types of activities mentioned above now be permitted in these important koala corridors?

4. **Freezes the inclusion of newly identified koala habitat in category 2 regulated land mapping.** This amendment undermines both the effectiveness of the Koala SEPP and a local council's Koala Plan of Management (PoM) made under State Environmental Policy No 44 - Koala Habitat Protection (SEPP 44).

It seems to be designed to severely restrict the amount of koala habitat that can be protected by:

- Retaining the requirement for land to be designated category 2 regulated land only if it is:
 - (i) identified as core koala habitat within the meaning of the repealed Koala Habitat SEPP

(ii) subject to a PoM approved on or before 6 October 2020 under the repealed Koala Habitat SEPP and in force on 6 October 2020, and
(iii) located in the local government areas of Ballina, Coffs Harbour, Kempsey, Lismore or Port Stephens.

We would like clarification about whether this means that the Campbelltown City Council's Koala PoM, for example, will still have jurisdiction over category 2 regulated land?

- No longer requiring land identified under the new Koala SEPP to be designated category 2 regulated land. This change essentially freezes in time the identification of koala habitat for the purposes of designating category 2 - regulated land.

One of the main reasons for the introduction of the new Koala SEPP was to expand the definition of koala habitat so that more of their habitat and a greater number of their preferred food trees could be protected. Why wipe out this important and necessary improvement to koala protection?

The Government has already weakened the Koala SEPP, which commenced on 1 March 2020, by gazetting State Environmental Planning Policy (Koala Habitat Protection) Amendment (Miscellaneous) 2020. This was done by:

- **Removing all references to the Koala Development Application Map**

This amendment seems to have been made at the behest of the property industry. Urban Taskforce in its submission to the draft Cumberland Plain Conservation Plan (CPCP), for example, referred to the "[Koala 'pink' mapping debacle](#) (now abandoned by the Government)" and said that its membership "strenuously challenge the voracity of the mapping to date and strongly recommend that further ground-truthing be undertaken of these mapping layers."

The 'pink' mapping debacle was a reference to the DPIE's [Conserving Koalas in the Wollondilly and Campbelltown Local Government Areas](#) (*Conserving Koalas*) (January 2018) report, which estimated that 8,292.46 hectares of land would need to be protected to secure the primary, secondary and tertiary koala habitat corridors in the Greater Macarthur region. Unfortunately, less than a third of this habitat has not been designated for protection in the draft CPCP.

In general, ground-truthing is a very expensive exercise for local councils and is often impeded by restricted access to private land. In all likelihood, councils will be forced to suspend efforts to develop PoMs if they are now need to comply with these new regulations.

- **Introduces the 'stop the clock process.'** This guideline will allow landholders to request an additional 60 days to object to proposed core koala

habitat on their land in addition to the 90 day consultation period provided by the Koala SEPP (recent amendments extended the original time frame from 28 days to 90 days). As the EDO notes, the attenuated time frame is also out of line with other public consultation processes that affect private land, eg. Planning Proposals for rezoning.

Other Points to Consider in relation to the Bill

SSK supports all of the EDO's criticisms with respect to the Bill, the amendments to the Koala SEPP and the final Koala Habitat Protection Guideline.

In addition, we hope the Committee will consider the following issues:

Incentives for landholders to protect koala habitat

We support stronger regulations for the protection of koala habitat and, if necessary, better incentives for landholders to protect habitat on their land so they do not have to engage in private logging or industrial style edge to edge farming practices in order to increase the commercial yield or value of their property.

We note, for example, alarming evidence that the economics of cleared land for cropping makes land-clearing very compelling. A recent investigative report by the Guardian, which accessed real estate records, showed that [cropped land west of Moree sells for \\$2,500 a hectare whereas grazing land only sells for between \\$700 and \\$1,000 a hectare](#). Prime land east of Moree that has already been converted to crops sells for \$6,800 a hectare, three times the value of grazing land.

The application of the Koala SEPP and council's Koala PoMs on land that has been biodiversity certified.

The draft CPCP is being developed to enable the Government to confer biodiversity certification on the Great Macarthur Growth Area. This means that Planning Proposals to rezone land identified as "urban capable" will not be required to prepare environmental impact statements.

The Koala SEPP and the Koala PoM will also not apply to any subsequent Development Applications (DAs) lodged with the local councils. The Government, not the developer, will be responsible for identifying appropriate environmental offsets, which will be primarily funded by Special Infrastructure Contributions levied on developers.

This type of blanket environmental approval for vast swathes of land has already proven to be deeply problematic:

- **The time lag in the delivery of conservation measures to offset the detrimental environmental impacts of urbanisation on koala**

habitat from urbanisation are already alarmingly long. To date, for example, the Growth Centres Biodiversity Offset Program for the North West and South West Growth Centres of Western Sydney, which came into effect in 2008, has [only secured 715 ha of native vegetation from a stated target of 2,400 ha.](#)

Importantly, the NSW Government was only able to receive federal government approval for biodiversity certification in 2012 for the above scheme, under the Environmental Protection & Biodiversity Conservation Act 1999 (EPBC Act), because its *Growth Centres Strategic Assessment* guaranteed that the [conservation fund will be used to secure offsets on the Cumberland Plain as a first priority](#) in order to secure for protection at least 2,400 hectares of Commonwealth-listed Critically Endangered Cumberland Plain Woodland (CPW) or other 'grassy woodland' communities. Only [around six per cent, or around 6,400 hectares,](#) of the original critically endangered Cumberland Plain Woodland (CPW) in Western Sydney still exists.

But to date, not only has the amount of critically endangered CPW set aside for conservation fallen far short of the projected target, but any meaningful future conservation measures for CPW are now in jeopardy because the draft CPCP [acknowledges that 1,014.6 hectares of CPW or around 16% of the remaining 6,400 hectares will be impacted](#) by the release of rural land for urbanisation.

- **The biodiversity certification scheme also does not allow for changing environmental circumstances or catastrophes like the devastating loss of millions of hectares of koala habitat from the Black Summer bushfires.** It also prevents the application of the Koala SEPP and a council's Koala POM when subsequent DAs on the land are lodged. It even precludes a reinvestigation of environmental impacts when new Planning Proposals, ie rezoning changes, are proposed.

In the case of the Figtree Hill estate or Mount Gilead Stage 1, for example, a Gateway Determination for a new Planning Proposal is now pending on land that has already been biodiversity certified. Lendlease wants zoning changes that will increase the density on parts of this 208-hectare housing estate, likely increasing the edge effects, eg. traffic, noise and light pollution, on the koalas and other wildlife.

Unfortunately, the likelihood of the environmental impacts of the Figtree Hill estate being reconsidered is remote, especially because the Government is now allowing the biodiversity certification application for Mount Gilead Stage 2 to be lodged even before a

Planning Proposal to rezone the land from rural to residential has been developed.

Conclusion

Discussing the failure of the EPBC Act to arrest Australia's ongoing environmental decline, Dr Bruce Lindsay, a lawyer with Environmental Justice Australia, said that "part of the issue we've got is the environmental laws within the EPBC Act have really become more about [facilitating development than protecting threatened species](#). It's about development with conditions. The purpose of the laws is not really about arresting and reversing the decline of threatened species."

Fortunately, Graeme Samuel's recent review of the EPBC Act recognises the extent of this problem and has made strong recommendations to stabilise and hopefully reverse Australia's environmental degradation.

But as this Bill highlights, the effectiveness of any positive legislative changes at the federal level could easily be wiped out by counterproductive legislation at the state level, especially if Samuel's proposed national environmental standards are not urgently put in place.