

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

**Organisation:** Ballina Shire Council

**Date Received:** 26 February 2021

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in reply please quote

**LLS Amendment (CM21/16467)**



26 February 2021

Submission - Local Land Services Amendment (Miscellaneous) Bill

[PortfolioCommittee7@parliament.nsw.gov.au](mailto:PortfolioCommittee7@parliament.nsw.gov.au)

Dear Sir/Madam

**Re: Submission by Ballina Shire Council on the Local Land Services Amendment (Miscellaneous) Bill 2020**

Thank you for the opportunity to provide comment on the Local Land Services Amendment (Miscellaneous) Bill 2020. This submission has been prepared by Ballina Shire Council officers from a technical perspective having regard for previous submissions made to the State Government in relation to matters associated with the Bill and Council policy.

Ballina Shire Council has made a number of recent submissions that relate to the content of the proposed Bill. In particular, for the *Draft Private Native Forestry Codes of Practice – Northern NSW (2020)*<sup>1</sup> and the *Inquiry into Koala Populations and Habitat in New South Wales (2019)*<sup>2</sup>. The points raised in these submissions generally presents Council's concerns for; [1] koalas and koala habitat and [2] the assessment, operation, monitoring and compliance of Private Native Forestry within our LGA. These points as they relate to the Bill are reiterated.

Council also notes the findings of the Koala populations and habitat in New South Wales. Council both lodged a submission and presented as a witness to the Upper House Koala Inquiry on the 16 August 2019. There appear to be a number of conflicts between the proposed Bill and the outcomes from this enquiry as well as the State Government's response.

More specifically with respect to the elements of the proposed Bill, the following comments are made.

**The objectives and impact of the LLS Amendment (Miscellaneous) Bill 2020**

1. The 2019 NSW Parliamentary Inquiry set out to provide a multi-disciplinary assessment of the current status of koalas and their habitat. Ballina Shire Council along with 330 other local governments, community representatives, agencies, practitioners, and scientist collectively contributed a wealth of information. Following this, the key findings indicated that current legislation and policies are not adequately providing for the long term conservation of wild koalas in NSW. The proposed amendments do not appear to improve the framework for the conservation of koalas (particularly in relation to impacts assessment, habitat loss and management).

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<sup>1</sup> See Attachment 1

<sup>2</sup> See Attachment 2

2. Various aspects of the Bill appear likely to have the effect of reducing protection for koalas and their habitats. For example,

- **Category 2 Lands** – In the event that Ballina Shire Council amends our approved KPOM to account for updated information/studies etc., there are no provisions for these changes to be reflected across to Category 2 lands.

Further, there is limited clarity as to how the mapping will be practically implemented and received. For example, will there be a checkerboard application of Category 2 lands/ Biodiversity Value mapped areas leading to complexity and difficulty in working with the mapping and provisions.

- **Allowable Activity Land** – This effectively removes Council's assessment and authorisation provisions for clearing of native vegetation within environmental zones. The introduction of allowable clearing activities in environmental zones without the requirement for assessment does not provide for adequate consideration of a variety of impacts such as ecological impacts, soil erosion and sedimentation, visual impacts and cultural heritage impacts..
- **Private Native Forestry** – Extension of licences from 15 years to 30 years has considerable impact given existing shortfalls in adequately assessing impacts and managing and monitoring Private Native Forestry impacts<sup>3</sup>.

Ballina Shire is recognised as a Biodiversity Hotspot. In reference to the last Regional State of the Environment (SoE) report, Ballina Shire was reported to have the lowest vegetation cover and the poorest effective habitat area. Additionally, Ballina has the lowest area of environmental protection with National Parks representing only 2.9% of our LGA and environmental protection zones deferred (Table 9 Page 58). As such most of the extant vegetation exists on private rural holdings.

The SoE report specifically highlighted that Ballina and several other Northern NSW councils should have no new PNF operations approved (Page 48). Within such sensitive environments, an approval without further analysis for 15 years, let alone 30 years is considered to be inappropriate especially in an environment where biodiversity values can change (e.g. long term approvals do not take into account impacts associated with new threats or emerging ecological issues such as population deciles that may occur in future).

Overall, Private Native Forestry is an activity that has impacts and these impacts should be subject to assessment and clear enforceable conditions where clearing is allowed to proceed.

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<sup>3</sup> See paragraph 7.88 and 7.89 of the Legislative Council Koala populations and habitat in New South Wales, Report 3 – June 2020 (page 144).

**Q: Do you agree that the operation of the 1994 and 2019 Koala SEPPs have been adequate and effective in protecting koalas and their habitat?**

3. Concerns relating to the SEPPs addressing koala management are documented in both Ballina's submission and the outcomes of the *Inquiry into Koala Populations and Habitat in New South Wales* (2019)<sup>4</sup>. Whilst some improvements were evident in the 2019 SEPP (and guideline), several key issues of concern remained embedded into the SEPP (namely the retention of the 1ha limit, inadequate home range estimates for defining core koala habitat, reliance on modelling and a lack of strong deterrent in relation to the clearing of core habitat).

**Q: What are the current and potential incentives and challenges facing rural landholders who seek to protect koalas and their habitat on their land?**

4. Multiple benefits can be achieved with respect to the retention of native vegetation across a rural landscape. This includes contributions to agriculture production through climate change adaptation and protecting/improving qualities inherently important to agriculture like pollination services, soil retention, water quality etc. Other elements like tourism, recreation, scenic values and ecosystem services are values attributable to habitat retention.

A key issue in relation to this question is the complexity of the legislative framework which makes it difficult for land owners, regulators and members of the community to determine what the legislation is trying to achieve and what the rules are. Mixed purposes are often evident in the legislation which often results in conflict between instruments and provisions. To date these provisions appear to have had limited benefits in maintaining a long term wild koala population in NSW.

**Q: Do you agree that the mechanisms to assess biodiversity values on private land when land use changes are adequate?**

5. The proposed Bill does not support adequate assessment of biodiversity values and impacts of development in a number of ways including:
- Preventing LEPs from requiring consent for PNF whilst doubling the duration of plans from 15 years to 30 years.
  - Providing for the carrying out of 'allowable activities' on 'rural regulated land' and 'allowable activity land' (any land that has been rezoned from rural zoning to environmental zoning) without authorisation (currently clearing in these zones requires assessment and authorisation).
  - Allowing land clearing on new areas identified as core koala habitat by preventing Category 2 Lands from being applied.
  - Removing the ability for a SEPP or LEP to require development consent for the clearing of native vegetation in certain zones.
  - Extending the provisions for allowable activities (unregulated clearing) in relation to other SEPPs with respect to land to which the LLS Act applies which includes significant habitat like coastal wetland, littoral rainforest and environmental zones.

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<sup>4</sup> See Attachment 2 and refer to the Legislative Council Koala populations and habitat in New South Wales, Report 3 – June 2020.

**Q: In your opinion, what is the impact of current regulatory regimes on private landholders?**

6. No comment is provided in relation to the impact on private landholders. However, mechanisms for the proper assessment of impact associated with development or activity on land is considered to be an important principle regardless of whether the land is rural land or not.

**Q: In your opinion, how effective are local governments in managing koala populations and KPOMs. Please explain your position.**

7. Local government plays a significant role in the conservation and recovery of koalas and their habitat. Local government should be recognised as highly competent and capable partner in koala conservation and recovery, with funding support from the State Government to match.

Currently (and for many years), Ballina Shire continues to contribute to a number of regional initiatives focused on protecting and preserving koalas at a landscape/ regional scale. Local government is ideally placed to support the responsibilities of the NSW State agency for the environment given the responsibility of councils in performing the roles of consent authority and land manager.

Thank you again for the opportunity to provide information for consideration for the proposed Local Land Services Amendment (Miscellaneous) Bill 2020. If you have any enquiries in regard to this matter please contact either myself or Elisha Taylor on telephone 1300 864 444.

Yours faithfully,

Matthew Wood  
Director  
Planning and Environmental Health Division

## ATTACHMENT ONE

in reply please quote

**Draft Private Native Forestry Code of Practice for Northern NSW  
(CM20/35987)**



18 May 2020

Private Native Forestry Review  
Locked Bag 6013  
ORANGE NSW 2800

[pnf.info@lfs.nsw.gov.au](mailto:pnf.info@lfs.nsw.gov.au)

Dear Sir/Madam

**Re: Submission by Ballina Shire Council on the Draft Private Native Forestry Codes of Practice – Northern NSW**

Thank you for the opportunity to provide comment on the draft Private Native Forestry (PNF) Code of Practice – Northern NSW. This submission has been prepared by Ballina Shire Council officers.

With respect to PNF, Council's experience is that the extent of potential impacts that can result from this land use is not matched by a suitable assessment process or comprehensive application of mitigation and compliance measures. In this regard key matters for consideration in formulating the PNF codes include:

- PNF occurs in areas of high local and regional ecological importance. Currently, PNF is enabled within habitat areas occupied by a nationally important koala population, within landscapes containing core koala habitat and in proximity to rainforest communities and other threatened species habitat without a requirement to undertake detailed ecological assessments.
- Assessment of impacts on biodiversity values in the PNF process generally does not align with policy and legislation developed specifically to address such matters. For example, site based quantitative assessments for other forms of clearing as assessed using the Biodiversity Assessment Method (BAM).
- PNF proposals are not currently subject to a requirement for detailed assessment of broader site and locality impacts, including those relating to traffic, noise, and erosion and sedimentation prior to approval. PNF often relies on the use of local infrastructure including formed and unformed roads which can lead to degradation and costly impacts.
- PNF proposals and the associated assessment process appear to have limited reference to local planning and policy instruments.

- In reference to the last Regional State of the Environment (SoE) report<sup>5</sup>, Ballina Shire was reported to have the lowest vegetation cover and the poorest effective habitat area. Additionally, Ballina has the lowest area of environmental protection with National Parks representing only 2.9% of our LGA and environmental protection zones deferred (Table 9 Page 58). As such most of the extant vegetation exists on private rural holdings. The SoE report highlighted that Ballina and several other Northern NSW councils should have no new PNF operations approved (Page 48) and acknowledged that current approvals may be in breach of the present PNF code of conduct.

Overall, PNF proposals should be subject to a higher level of impact assessment in terms of biodiversity and other matters such as traffic, noise, erosion and sedimentation. The current level of assessment is not commensurate with the potential impacts of PNF activity.

More specifically with respect to the draft code for Northern NSW:

1. Exclusion zones for riparian buffers (Table E; Page 14) do not state the exclusion distance required for 4<sup>th</sup> order and above streams or wetlands and estuarine areas. Riparian buffer distances exist across a number of NSW Government planning instruments including the Biodiversity Assessment Methodology (regulated under the *Biodiversity Conservation Act 2016*) and 'Controlled activities on waterfront land – guidelines for riparian corridors on waterfront land (regulated by the *Water Management Act 2000*). To address this, it is suggested that:
  - The table should be consistent with buffers associated with fourth order (40 m) and above (50 m) streams.
  - The table should include buffers associated with exclusion requirements specified elsewhere in the code of Local Wetlands (20 m) and extend to important wetlands and estuarine areas (50 m).
2. To protect the environment, Section 6 of the draft code specifies protocols for old growth forest and rainforest. This includes the reliance on the State Government's environment agency to supply the best available maps, which Council understands are produced at a regional scale.

At this scale, it is unlikely that Rainforest and Old Growth communities would accurately or appropriately be delineated at a site by site property basis. Additionally, the process to refine the mapping appears to be driven by the applicant, should they disagree with the extent of excluded area on their property. Conversely, there is no process to identify areas that are missed or have incorrect line work by the regional scaled map.

Information relied upon by the PNF approval authority should be expanded to incorporate the best available data held by other government departments and site specific assessment.

3. In respect to threatened entities, the code of practice is highly reliant on records submitted into NSW BioNet. This is not suitably reflective of the likely presence of threatened species in forested areas that are utilised for PNF or the impact of habitat loss on flora and fauna resulting from PNF operations.

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<sup>5</sup> North Coast Region State of the Environment Report Working Group 2016. "Regional State of the Environment 2016." Available online via Coffs Harbour City Council

The application process should require site specific threatened species surveys pertinent to contemporary data, literature and methodology. Ecological assessment should be required to have regard for landscape and cumulative impacts associated with PNF.

4. Inconsistent language is used in relation to a number of ecological matters. For example, words like *must exclude* and *must avoid* expresses a stronger directive or an unavoidable requirement, whereas *should* and *if possible* is interpretive and suggestive. Language that expresses necessary action rather than an optional or self-assessable requirement is preferred to define acceptable practices and expectations and enforce compliance if need be.
5. The code of practice needs to address both *State Environmental Planning Policy No. 44 – Koala Habitat Protection* and *State Environmental Planning Policy (Koala Habitat Protection) 2019*. Ballina Shire Council has an approved Koala Plan of Management under SEPP 44 which identifies Core Koala Habitat. Council understands that other Northern NSW local government authorities have Core Koala habitat identified under either legislation. Information like the Primary and Secondary Koala Food Trees as expressed in Table H is inconsistent with the SEPP and does not reflect contemporary data.
6. In relation to Koalas, the requirement of 20 or more koala scats under a tree should be amended to require an exclusion zone where any (one or more) scats are present regardless of the Koala Management Area. Koala scats in the first instance can be difficult to find and may be observable for days, weeks or months depending on the weather conditions. Additionally, species like the Koala utilise habitat at different intervals depending on circumstances and life stage. Any scat under a tree signifies valuable habitat for the species and as such, should be retained.

Reliance on scat identification reinforces the need for site specific ecological assessment as scat identification is a specialised skill.

7. Many of the ecological prescriptions listed in Appendix A rely on a specific record within the forest operation to trigger exclusions, buffers or directives for harvesting. However, as previously noted in the above comments, there is no requirement to undertake surveys. It is unlikely that habitat, sightings and indications of occurrences for many (if not all threatened species) are being observed to subsequently trigger the appropriate prescriptions. For example, observation of koala scats is unlikely if no specific search is carried out.
8. As the local government authority, Council receives limited information on approved PNF. At a minimum, Council should be provided with the PNF operation area to remain informed of the impact of PNF within Ballina Shire. Transparency around the approval process for the broader public could also be improved through the publication of application assessment and decision documentation.
9. PNF can lead to a range of impacts not only to local, regional and state ecological matters but on local infrastructure and residents and other land uses. Consultation with local government and other potentially impacted parties at the assessment stage will likely help address potential impacts more thoroughly.



Thank you again for the opportunity to provide information for consideration in the review of the codes of practice. If you have any enquiries in regard to this matter please contact either myself or on telephone 1300 864 444.

Yours faithfully,

Matthew Wood  
**Director**  
**Planning and Environmental Health Division**

**ATTACHMENT TWO**

<b>Submission No 227</b>
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**INQUIRY INTO KOALA POPULATIONS AND HABITAT IN  
NEW SOUTH WALES**

**Organisation:** Ballina Shire Council  
**Date Received:** 7 August 2019

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in reply please quote

NSW Koala populations and Habitat (CM19/58563)

2 August 2019

Legislative Council Portfolio Committee No. 7  
Planning and Environment

[Portfolio.Committee7@parliament.nsw.gov.au](mailto:Portfolio.Committee7@parliament.nsw.gov.au)



Dear Sir/Madam

**Re: Inquiry into Koala Population and Habitat in New South Wales – Ballina Shire Council Submission**

Thank you for the opportunity to provide comment in relation to the inquiry into Koala Population and Habitat in New South Wales.

The following comments generally relate to the matters raised in the *Terms of Reference*. The matters addressed are not exhaustive, they often interrelate and are not listed in any particular order. The compiled comments have regard to actions, policies and investment that Ballina Shire Council has made for the koala population and koala habitat in our local government area.

For context, in 2016 Council adopted a Koala Management Strategy (KMS) for Ballina Shire inclusive of a comprehensive koala plan of management (CKPoM) which was prepared in accordance with State Environmental Planning Policy No. 44 (SEPP 44). The KMS also identifies and sets out a range of management activities that aim to advance the broad objectives of the strategy.

**State Environmental Planning Policy 44 (SEPP 44)**

1. With respect to the identification of Core Koala Habitat, it is noted that development assessment considerations relate to areas where there is mapped koala habitat and associated presence of koalas (as well as locations where koalas are shown to be present regardless of vegetation type).

Importantly though SEPP 44, and particularly its definitions and development control framework, should recognise that unoccupied koala habitat (at any given point in time) has value as koala habitat. That is, identification and retention of key areas of koala habitat (whether occupied or not at a particular point in time) is important to achieving the objectives of the SEPP. There is an opportunity to recover koala populations where there are areas of habitat for growing populations to move into and reoccupy.

Other concerns surround wording within the SEPP, such as the definition of “potential koala habitat”, ambiguous application of “15% of native vegetation”, and the limited species list in Schedule 2.

2. Understanding that koala ecology and habitat is subject to change or refinement, policy documentation should be structured in such a way that amendments to recognise improved understandings and accommodate new information (such as feed tree species, mapping, habitat trees, hotspots etc.) can be made relatively easily.



3. With respect to any proposed amendments to guidelines that support SEPP 44, it is suggested that the following points be addressed in formulating the documentation:
  - a. Incorporation of a consistent methodology for surveys undertaken to define koala habitat to enhance the application of the SEPP and the potential for achievement of its objectives.
  - b. Incorporation of regional considerations to address area specific factors (such as inland populations and their needs as opposed to coastal populations with other pressures).
  - c. Identification of the ways in which the enforcement of the SEPP, guidelines and methodologies will be achieved and monitored by the State Government.
  - d. The guidelines (Circular B35) currently associated with SEPP 44 are generally difficult to obtain and interpret. Updates to guidelines that support any amendments to the SEPP must be prepared to be publicly accessible in terms of their publication as well as their content and form, along with an opportunity for Council to review and provide feedback prior to their implementation.

With respect to timing, it is desirable to have any amendments to both the SEPP and the guidelines operational from the same date to support each other in achieving the SEPP's objectives.

4. The SEPP (along with other legislation, statutory controls) should recognise that koalas are mobile and utilise not only the specified tree species but a broader landscape of habitat for feeding, shelter, reproduction and movement – as opposed to habitation of defined areas of feed trees only. There is a need for recognition of the importance of connectivity and use of both higher and lower value habitats (in terms of feed quality).
5. Determination of habitat presence should occur by reference to ecological communities and habitat trees rather than property boundaries. Additionally, a statutory mechanism to include all known koala food trees and shelter trees in line with contemporary science would likely be beneficial in supporting retention and recovery of koala populations.

#### **Koala habitat on private and public land**

6. Retention of existing populations as well as recovery and improvement in koala numbers is considered to be directly related to available habitat.
7. Land use and clearing activities that result in impacts to koala habitat (both high and low quality) and lag times associated with habitat compensation measures are key considerations. For example, the timing of clearing of koala habitat should be subject to careful consideration of the legal security (land tenure and restrictions) and growth stage of compensatory habitat.
8. The decision-making framework around Private Native Forestry (PNF) approvals and conduct, and especially the lack of impact assessment, is a significant issue in relation to loss of koala habitat and koala population decline. Consideration should be given to how decision making agencies are resourced and increased emphasis on impact assessment in relation to the PNF process to ensure koalas and koala habitat are carefully considered.
9. Key threats to koala populations (aside from habitat loss and fragmentation) such as dog attack, bushfire, disease and vehicle strike require integrated consideration, having regard for both the specific issue as well as overall habitat availability and connectivity require consideration to ensure a holistic response to koala management.



10. Investments or incentives that conserve koala populations or habitat through grants, conservation agreements or stewardship sites are not clear or transparent and do not seem to be coordinated over time. For example, Council cannot easily identify the benefits, investments made, credits generated or sold and generally, circumstances where landholders are assisted financially to manage their land for conservation through Biodiversity Conservation Trust mechanisms in our local government area

If resources exist, communication or accessibility to such information has not been coordinated effectively.

#### **Protected areas**

11. Where land is proposed for incorporation into the public reserve system (e.g. through additions to the National Parks estate), it is important that corresponding resources including expertise and funds are made available for the ongoing management of such areas.
12. Opportunities to invest in Koalas through Conservation Agreements or other statutory protective measures must include adequate and realistic provisions to consult and follow up with Councils and local experts. Lines of communication and transparency in decision-making are unclear to Council. This again goes to the point of coordination of koala management initiatives to generate a complete picture of what is happening with the species and management responses.

#### **Koalas and koala habitat relationship across legislation, policies, plans, codes and agreements**

13. Coordination and communication of impacts to koalas and their habitat remains ambiguous and requires evidence based support for stakeholders. For example, a database and geospatial tool may help capture impacts to koalas and koala habitat at a regional scale across all statutory areas.

Current and updated amendments to various legislation along with ongoing habitat removal compounds the unknown levels of decline to koala populations and koala habitat, adding pressure to Council and the community. Generally, communication or discussion between practitioners, the public and consent authorities is inefficient and when considering a single species like the Koala, navigation across statutory obligations is disjointed.

For example, lose-lose situations can arise where 'allowable' clearing activities (like rural lands, clearing along boundary lines etc.) occur outside Core Koala Habitat. The clearing area is known to support koalas by local wildlife groups, but Local Land Services (the Consent Authority) or the landowner unfortunately do not know this information. Ultimately, provisions under Biodiversity Conservation Act are considered after the clearing has occurred and the evidence of koalas is then, circumstantial only. In this case, Council is only made aware of the situation following complaints or harm occurring to koalas and local koala populations.

Generally, where evidence for koalas is not easily known or available, limited requirements exist for stakeholders including Local Land Services and the landholder to consider local references of koalas.



14. Guidance or a clear pathway to navigate responsibilities in regard to the status of koalas as an "Important Population" of National Significance – recognised under *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) as a Matter of National Environmental Significant (MNES) would be beneficial.

It is also important to recognise that responsibility for local koala populations is not only a matter for local communities and local government. Key State government agencies need to ensure careful consideration of koalas and in particular State plans for koala recovery in their activity.

15. Land zoned for rural purposes or subject to any form of "environmental zone" with an area less than one hectare, should be included in the provisions of SEPP 44 or other statutory items (like the BCT). Habitat loss on smaller lots, such as those within rural-residential style development, can have significant impacts on koala habitat and resident koala populations.
16. Currently, protection or management of koalas and habitat outside Ballina Shire Council Core Koala Plan of Management area is not adequate. The complexities or ambiguity of navigating the myriad of different legislation and ongoing amendments or updates offers little certainty for long-term protection.

Necessary information, like changes in the amount of available habitat and its use by individual koalas, is not readily available. This makes it incredibly difficult for stakeholders to consider changes to habitat at the necessary landscape scale needed to protect koala populations and habitat.

17. The concepts and terminology used in, for example SEPP 44, should align with habitat mapping methodologies across NSW and be consistent across Council areas (e.g. naming and classification of habitat).

Thank you again for the opportunity to provide information for consideration in the inquiry. If you have any enquiries in regard to this matter please contact either myself or [redacted] on telephone [redacted]

Yours faithfully,

Matthew Wood  
Director  
Planning and Environmental Health Division