

**Submission
No 13**

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

Organisation: Bellingen Shire Council

Date Received: 5 February 2021



BELLINGEN SHIRE COUNCIL

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5 February 2021

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

By email: portfolioCommittee7@parliament.nsw.gov.au

Dear Sir/Madam

Bellingen Shire Council Submission to Portfolio Committee No. 7 - Inquiry into the Local Land Services Amendment (Miscellaneous) Bill 2020

I refer to an invitation received from Portfolio Committee No. 7 to make a submission in response to an inquiry into the Local Land Services Amendment (Miscellaneous) Bill 2020.

Council would like to thank the Portfolio Committee for the opportunity to make a submission.

This submission has been prepared by Council Staff, however, also draws from the terms of a Mayoral Minute that was presented to the elected Council on 28 October 2020, and subsequently adopted, that expressed concern with the content of the Local Land Services Amendment (Miscellaneous) Bill 2020 at the time of it being considered by the Legislative Council in 2020. A copy of the resolution of Council with respect to this matter is included as Attachment A to this submission.

This submission will firstly introduce the Committee to the provisions of the Bellingen Shire Comprehensive Koala Plan of Management, and will then address the following issues, as per the request from the Committee.

- The objectives and impact of the Local Land Services Amendment (Miscellaneous) Bill 2020.
- The operation and effectiveness of the 1994, 2019 and any potential new draft Koala SEPPs in protecting koalas and their habitat.
- Current and potential incentives and challenges facing rural landholders who seek to protect koalas and their habitat on their land.
- The mechanisms by which biodiversity values are assessed on private land when land use changes.
- The impacts of current regulatory regimes on private landholders, and
- The impact on local government's ability to manage koala populations in their Local Government Area and koala plans of management.

Bellingen Shire Comprehensive Koala Plan of Management

The Bellingen Shire Comprehensive Coastal Koala Plan of Management (the KPOM) was conditionally approved on 17 November 2016 by the NSW Government and took effect from 14 December 2016, when council resolved to accept the terms of the conditional approval. The KPOM was the culmination of several years of scientific research into the status of koalas within the study area, significant community consultation regarding the KPOM, and a valuable partnership between Council and the NSW Government Office of Environment & Heritage who prepared the mapping that was adopted by the KPOM. Ultimately, the KPOM designated 1183 ha of land as core koala habitat to the north of the Bellinger River, and the east of the Never Never River.

The adoption of the KPOM represented an important policy landmark that recognised that koalas need to be protected at a landscape scale in order for key threats to be addressed and the KPOM has operated with almost unanimous support from the local community since it was introduced.

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

On a procedural note, the formulation of the Local Land Services Amendment (Miscellaneous) Bill 2020 (the Bill) was characterised by a lack of any consultation with affected stakeholders, despite the far reaching implications of its content. The standards observed by the NSW Government in developing this piece of legislation stand in stark contrast to the standards expected of Local Government when it contemplates legislative change. As you may be aware, all NSW Councils were required by the NSW Government to prepare "Community Participation Plans" to ensure that the community were adequately consulted in important decisions.

It is recommended that the NSW Government review the way in which it approaches stakeholder consultation regarding legislative change to observe similar standards to those that they expect Local Government to follow.

In terms of Objective (a) of the Bill, it is noted that the local government area of Bellingen was excluded from the list of local government areas that were proposed to be excluded from the amending provisions of the Bill, despite it also having an adopted Koala Plan of Management. Subsequent last-minute inquiries by Council to determine why it was excluded from this list indicated that this was an administrative oversight rather than an intentional omission.

The exclusion of Bellingen Shire as an administrative error is in our view illustrative of the rushed nature of the legislation and a failure to properly contemplate the precise impacts of it on affected stakeholders. Should the Bill proceed any further in the terms originally anticipated, it is requested that Bellingen is added to the list of excluded LGA's.

In essence, the Bill proposes that the current regulatory framework that the NSW Government has developed to regulate clearing and forestry activities in rural areas of the State is adequate, and that the activities that are allowed under this regulation should not be able to be in anyway diminished or impacted by things such as Council zonings, Local Environmental Plan (LEP) consent requirements, or the designation of core koala habitat in Koala Plans of Management (KPOM's). Certain exemptions apply for a number of existing KPOM's.

It is our view that the current regulatory framework for clearing and forestry is not sufficiently robust to protect core koala habitat (or other important habitat) and the findings of three (3) recent reviews by the NSW Auditor General, the Natural Resources Commission and the NSW Parliamentary Inquiry into koalas support this position. The 2019 review by the Natural Resources Commission found that there had been a 13 fold increase in clearing rates attributable to the new legal framework governing clearing and that biodiversity in 9 out of 11 regions is now at risk.

In addition to this, the current Code of Practice for Private Native Forestry presents as inadequate as a protection for koala habitat. The prescriptions in the Code for threatened species are rarely, if ever triggered because there is no site survey requirement, and it relies on either the identification of core koala habitat in an adopted KPOM or a record in BioNet. Even if a prescription is triggered for koalas, the Code of Practice can also still actually allow for the logging of koala habitat trees that have up to 19 scats underneath them.

It is recommended that the Committee formally request details from Local Land Services as to how many times, and where, the Threatened Species prescriptions in the PNF Code have been triggered, implemented and monitored for effectiveness.

By reducing the incentives for Councils to prepare Koala Plans of Management and increasing the range of circumstances where clearing can occur without on-ground survey work, the obvious impact is that there are no new additions to the knowledge base regarding koala occurrence, thereby further limiting the number of times that koala prescriptions are applied to forestry or clearing operations.

The remaining parts of the Bill, which are geared towards “decoupling” all forestry and clearing provisions from the NSW land use planning framework is also of significant concern to Council. This would mean, for example, that forestry and clearing operations could now be permitted to occur in the E2 (Environmental Conservation) Zone. The NSW Government describes this zone as follows.

“This zone is generally intended to protect land that has high conservation values outside the national parks and nature reserve system.”

In Bellingen Shire this has been primarily applied to land that contains an identified “Endangered Ecological Community”, and “forestry” is currently a prohibited land use in view of these values. The proposed Bill would mean that any such prohibitions are no longer recognised, nor any requirements for development consent that may currently exist, or be proposed, in the Councils Local Environmental Plan.

These reforms are highly significant and would render Councils mute in terms of the ability to have any say in the way in which clearing or forestry land uses are permitted to occur in rural and environmental zones within their own local government areas. They act to render the planning intent of a local government area redundant (as expressed through the adoption of environmental zones within a publicly exhibited and legally adopted LEP), without any form of consultation with the community that it effects.

Accordingly, it is recommended that there should be no change in the ability of Council’s to determine consent requirements for private native forestry and that any ability to limit clearing in environmentally significant zonings is not further eroded.

The intent of objective (c) of the Bill was to extend the maximum duration PNF approvals from 15 years to 30 years. Council shares the concerns also expressed by Coffs Harbour City Council in their submission to the Committee regarding the potential impact of PNF to the koala population of the region. As stated in the most current 2016 Regional State of the Environment Report for the North Coast Region of New South Wales, ‘since 2007,

private native forestry in the North Coast region has increased significantly. Of the 2,916 PNF agreements approved in NSW between 2007 and June 2015, 69.4% were in the reporting region, covering 49.7% of the total area under PNF agreements in NSW (EPA Public Register 2016)'. The Regional State of the Environment Report 2016 goes on to say that 'the area under PNF agreements for the North Coast region as at June 2015 was 266,727 hectares' however the report also points out that only a fraction of these approvals have been enacted.

The current approval period of 15 years already means that the impact and legacy of these approvals cannot be underestimated. In sensitive environments an approval without further analysis for 15 years is already inappropriate. This is demonstrated by survey work and assessments older than 5 years being deemed, in general, to be time damaged in evaluations undertaken under the *Biodiversity Conservation Act 2016*. As such it is recommended that the extension of the maximum duration PNF approvals from 15 years to 30 years should not be supported, and further, that there should be no pre-emptive amendments to PNF provisions until such time as the PNF Review is completed.

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

As previously documented, Council has successfully utilised the provisions of SEPP 44 (1994) to introduce a Comprehensive Koala Management Plan for the coastal area of the Shire. The preparation of the CKPOM provided the opportunity to complete habitat mapping and on-ground surveys that confirm the list of tree species that are actually used by koalas within the study area.

The completion of this task identified 4 primary food tree species used by koalas in the study area as well as 2 secondary food tree species. Once this level of planning is complete, it reduces the need to rely upon lengthy lists of potential tree species in the SEPP, noting that the high number of trees listed within the 2019 SEPP caused a level of consternation among potentially affected parties. Preparing a CKPOM also removes the need for individual landowners to prepare their own KPOM's for works, as they can instead rely upon the provisions within the adopted CKPOM.

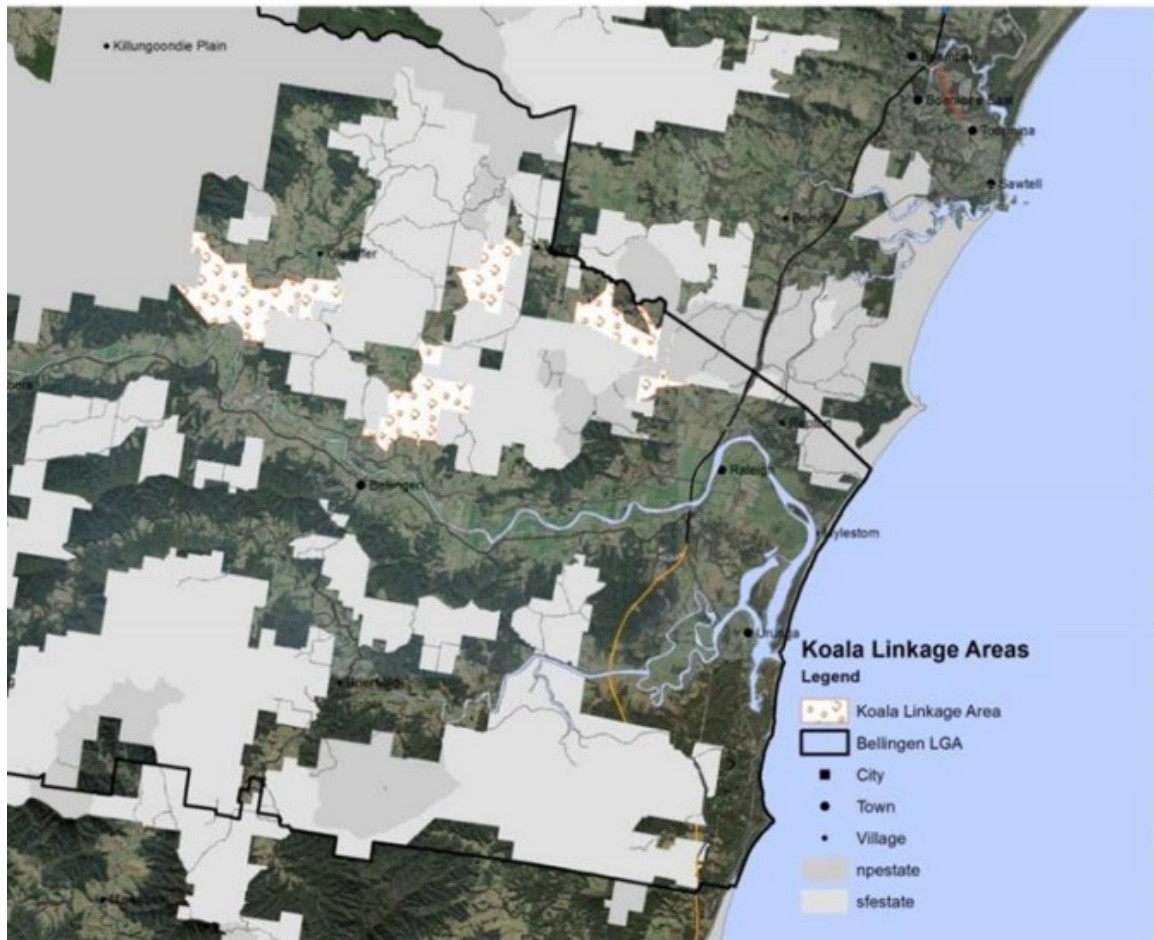
It is our recommendation that a functional SEPP needs to be in place and that Councils are actively encouraged and resourced to prepare KPOM's within their LGA's. The SEPP & any KPOMS developed in accordance with the SEPP should apply across all zones, and not be restricted to urban expansion areas only, as per one iteration of the SEPP during the 2020 series of negotiations within the coalition regarding koala policy. Any existing or newly identified core koala habitat identified in a KPOM should then continue to be protected from forestry and clearing activities.

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

Council has commissioned investigations to determine whether opportunities exist for the registration of Biodiversity Stewardship Sites over identified koala habitat within the Bellingen LGA, and utilisation of potential credit value to incentivise conservation and manage koala habitat on their land. This investigation revealed that this is not presently a realistic opportunity for landholders given the lack of a suitable market for the credits and the high costs/ risks of establishing the Agreements.

It is recommended that additional resources and funding should be allocated by the NSW Government to entice private landholders with koala habitat to register private conservation agreements on their land.

It is also noted that there has been a significant investment by private landowners in undertaking koala habitat restoration works within Bellingen Shire, with these works often undertaken within landscape scale linkage areas identified in Councils Koala Management Strategy. It is considered that private landowners could be even further incentivised to invest in these works if appropriate corridors were also identified for protection within Forestry Corporation estate. An extract from the Koala Management Strategy is provided below.



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

In general terms, it is considered important that the assessment of biodiversity values takes place by appropriately qualified persons, including systematic on-ground surveys to properly understand impacts. Any increased reliance upon desk-top style assessments, or self-assessment of impact by persons unqualified in ecology is of concern in that it risks missing important information and makes no further contribution to the knowledge base (eg: BioNet records) that is referred to when applying things such as desktop threatened species prescriptions.

The current regulatory framework attempts to portray clearing for agricultural uses and private native forestry as primarily low impact and routine activities that should not trigger the need for careful on ground assessment of impact. Most vegetation loss in rural land is administered by the *Local Land Services Act 2013*, which refers to the Native Vegetation Regulatory Map.

Council advocates that both core and potential koala habitat should cause the land to be mapped as 'regulated' as part of the Native Vegetation Regulatory Map, and that given the threatened species status of koalas, that approval under the *Local Land Service Act 2013* be required rather than the use of self-assessable codes of practice. Council urges the

inquiry to recommend finalising the Native Vegetation Regulatory Map. Council also supports including impacts on koala habitat as serious and irreversible as discussed in the 2016 Independent Review into the Decline of Koala Populations by the NSW Chief Scientist and Engineer Professor O’Kane.

The impacts of current regulatory regimes on private landholders, and

It is Council’s observation that current regulatory regimes place minimal regulatory burdens on private landholders undertaking agricultural or forestry operations. The objectives of the Bill essentially aim to remove any remaining checks on these activities (ie: designation of core koala habitat, environmental protection zones and the ability of Council to regulate land use in these areas). The purported adverse impacts of the Koala SEPP 2019 on the ability of farmers to undertake routine farming activities were grossly exaggerated, noting that in the vast majority of instances it would have absolutely no additional impact.

It is recommended that there be no further weakening of the few remaining checks on clearing and forestry operations that exist within the current regulatory framework.

Council also registers its concern with the recently announced Bushfires Legislation Amendment Bill 2020. The Bushfires Legislation Amendment Bill 2020 refers to a yet to be released Rural Boundary Clearing Code however, it is Councils understanding that 50m of vegetation (25m either side of a boundary fence), with potentially no provision for threatened species or Koala Plans of Management, could be removed in rural areas for the purposes of bush fire hazard reduction.

Council accepts that there is a need to properly plan for the future impacts of bushfires, however broad-brush approaches such as this are not supported. In areas like Bellingen Shire with both sensitive vegetation and many small lots (and therefore many boundaries), this impact could have a disastrous impact on the koala population.

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

The objectives of the Bill would significantly lessen the incentive for Councils to prepare new KPOM’s for their LGA’s, or part thereof, if there was no ability for those KPOM’s to trigger appropriate exclusions for clearing and forestry activities.

Although important, Council does not accept that the only focus of KPOM’s should be on managing land use change associated with urban expansion, and that all rural land use issues should fall under the scope of the LLS Act.

If you have any questions about the content of this letter, please telephone the undersigned

Yours faithfully

Liz Jeremy
General Manager

Attachment A – Council Resolution from 28 October 2020

7 MAYORAL MINUTE

Item	7.1
Subject	Proposed Changes To The NSW Native Vegetation Regulatory Framework and The Applicability of the Bellingen Shire Comprehensive Coastal Koala Plan Of Management
Presented by	Mayor

RESOLVED (Mayor King / Cr Fenton)

1. That Council registers with the NSW Government its opposition to any weakening of the protections afforded to mapped core koala habitat in Bellingen Shire, as a result of any private native forestry or clearing activities, as part of the Local Land Services Amendment (Miscellaneous) Bill 2020, the Private Native Forestry Review, or any subsequent amendments to Private Native Forestry Codes of Practice.
2. That Council requests urgent advice from the NSW Government, following advocacy from the member for Oxley, that the provisions of Bellingen Shire Council's Koala Plan of Management will be preserved, and mapped core koala habitat will continue to be protected from clearing or forestry operations in Bellingen Shire, should the Local Land Services Amendment (Miscellaneous) Bill 2020 proceed through the Lower & Upper House of the NSW Parliament.
3. That Council expresses to the NSW Government its concern with the lack of transparency, and lack of consultation with key stakeholders, that has characterised the introduction of the Local Land Services Amendment (Miscellaneous) Bill 2020 to the NSW Parliament.
4. That Council requests that the NSW Government provide Council with a detailed briefing regarding the precise impacts of the Local Land Services Amendment (Miscellaneous) Bill 2020 on Bellingen Shire and State-wide.
5. That Council registers with the NSW Government its opposition to the dismantling of current protections afforded by Environmental Zones, Koala Plans of Management, and the potential to require development consent for forestry operations, and its concerns with the adequacy of the regulatory framework for forestry and clearing operations that would replace these provisions, noting that these provisions have overseen a 13 fold increase in land clearing in NSW, as determined by the Natural Resources Commission.
6. That Council submits a motion to LGNSW Annual Conference that will be held on Monday 23 November 2020 as follows;

"That the LGNSW expresses its concerns to the NSW Government regarding;

- the lack of transparency and prior consultation that has characterised the introduction of the Local Land Services Amendment (Miscellaneous) Bill 2020
- the removal of the legal ability of Councils to make considered local policy decisions regarding certain land uses within rural and environmental protection zones
- the adverse environmental impacts of the proposed legislation, in view of the findings of three (3) recent reviews undertaken by the NSW Auditor General, the Natural Resources Commission and the NSW Parliamentary Inquiry into koalas."

For Cr King, Cr Fenton, Cr Harrison, Cr Wright-Turner, Cr Klipin and Cr Jenkins
Against Cr Carter

Motion has been carried.