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Ms Cate Faehrmann  
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Portfolio Committee No. 7 – Planning and Environment  
Parliament House, Macquarie Street  
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4 February 2021

Dear Ms Faehrmann,

## **Re: Inquiry into the Local Land Services Amendment (Miscellaneous) Bill 2020**

Thank you for the invitation to make a submission to the inquiry into the *Local Land Services Amendment (Miscellaneous) Bill 2020*.

The Royal Zoological Society of New South Wales (RZS NSW) is Australia's oldest and largest zoological society, comprising approximately 500 members, including professional zoologists and ecologists and members of the broader community passionate about the conservation of Australia's unique animals.

The Society and our members have approached our submission backed by a long history of interest in and involvement with the conservation of the fauna of NSW, through research, development of legislation and management plans, and through academic inquiry and dissemination of information. The current RZS NSW Council includes past members on the NSW Scientific Committee as well as practising ecological consultants who are involved in undertaking biodiversity assessments, as well as experience in koala ecology and planning policy.

You have asked for our submission to address six specific questions, which we have listed below along with our responses. At the outset, however, we wish to make clear our overall concerns.

The RZS NSW is a scientific organisation and, over the years, we have provided comment and input to numerous policy and legislative changes based on our expert opinion. In previous submissions we have been able to argue pros and cons of proposed policy on scientific grounds. The proposed *Local Land Services Amendment (Miscellaneous) Bill 2020* has zero basis in science and as such our comments are limited. With this in mind, we want to state at the outset that our concern lies not only in the proposed legislative changes themselves, but the overall message that this specific process sends regarding the value of the environment. Late in 2020 we saw the unedifying spectacle of in-house fighting between the governing coalition partners about the *State Environmental Planning Policy (Koala Habitat Protection) 2019* and the subsequent guidelines. While that argument was 'resolved' so as to make the Premier appear strong, we now see the capitulation to the very same argument being played out in this current bill. This is one of the most egregious pieces of political bastardry that we have commented on – there is no pretence of environmental protection or scientific reasoning, rather the bill is a thinly veiled and cynical attempt to appease the junior coalition partner to the detriment of NSW's biodiversity.

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

There are five objects of the *Local Land Services Amendment (Miscellaneous) Bill 2020*:

- (a) 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,
- (b) to remove requirements imposed by other legislation, including the requirement for development consent under the *Environmental Planning and Assessment Act 1979*, in relation to carrying out private native forestry that is authorised by a private native forestry plan under Part 5B of the Act,



- (c) to extend the maximum duration of private native forestry plans made under Part 5B of the Act to 30 years,
- (d) to require the Minister for Agriculture and Western New South Wales to consult with the Minister administering Part 7A of the *Fisheries Management Act 1994* and the Minister administering the *Forestry Act 2012* before making a private native forestry code of practice,
- (e) to allow native vegetation clearing in certain circumstances on land that is used for agricultural purposes without the need for authorisation under other legislation.

Overall, these five objects remove the need for consideration of koala habitat when clearing native vegetation on rural lands under approved activities. It further removes the need for more rigorous environmental approval under the *Environmental Planning and Assessment Act 1979* for private native forestry and proposes to extend approval to 30 years.

RZS NSW sees no scientific basis or merit in these changes. It is important to note that nowhere in the current or previous legislation is clearing of koala habitat prohibited in the initial phase on private lands – the identification of koala habitat simply provides a trigger for further rigorous assessment and approval. The removal of even the consideration of koala habitat or other environmental values from the approval process can only have a negative impact on these values.

We also note that the proposed changes go against 3 of the 9 objects of the *Local Land Services Act 2013*, namely:

- (e) to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development (described in section 6 (2) of the *Protection of the Environment Administration Act 1991*),
- (f) to apply sound scientific knowledge to achieve a fully functioning and productive landscape,
- (i) to provide a framework for financial assistance and incentives to landholders, including, but not limited to, incentives that promote land and biodiversity conservation.

**RZS NSW strongly opposes the bill and its objects in full.**

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

RZS NSW fully supports the objectives of *SEPP44* and the *State Environmental Planning Policy (Koala Habitat Protection) 2019*, namely to 'encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline'.

*SEPP44* was developed in 1994 with good intent and included an innovative mechanism - use the best available scientific information to identify koala habitat and then protect the habitat through a strategic plan of management. *SEPP44* never realised its full potential due to a number of key reasons:

- *SEPP44* only applied to situations where Councils were the consent authority (i.e., development approvals under Part 4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.) This has always meant that koala habitat identified under *SEPP44* could be cleared under different approval pathways, many of which had greater impacts. A good example is clearing of identified and mapped koala habitat for the Pacific Highway Upgrade (approval under Part 5 of the *EP&A Act*).
- From the outset there has been confusion over the definition of 'core' koala habitat. This confusion has hindered development of Comprehensive Koala Plans of Management under *SEPP44* and, more recently, consideration of how koala habitat can trigger assessment actions (e.g., under the *LLS Act 2013*). We maintain that this confusion should never have occurred – the definition of core koala habitat was developed, along with the definition of 'potential' koala habitat, for situations where there was no Comprehensive Koala Plan of Management. It was never intended that Comprehensive Koala Plans of Management (CKPoM) should map core koala habitat and careful consideration of the definition of core koala habitat under *SEPP44* clearly shows it cannot be mapped (i.e., the definition needs to be changed in order to map it). One of the first CKPoM prepared under *SEPP44* (Coffs Harbour), clearly demonstrates this point. *SEPP 44* refers to potential and core koala habitat when a Development Application (DA) is being assessed, but in the Coffs Harbour CKPoM in 1999, the terms primary, secondary and



tertiary koala habitat were used. Adoption by local government of a CKPoM replaces the requirement to assess each individual DA for core koala habitat, because the CKPoM has mapped and ranked this habitat. In fact, the ease of seeing koala habitat on a map, ranked so that you know what development is possible, or not, within the particular ranking, expedites the DA process for all parties. Even a quick reading of the Coffs Harbour CKPoM shows the terms primary, secondary and tertiary habitat in the maps of koala habitat in this local government area - core habitat and potential habitat were not used. These terms are used only when there is no CKPoM. SEPP 44 encouraged local governments to undertake a CKPoM, but it did not make it compulsory. The advantages of the Coffs Harbour CKPoM is evident in that it is now in its 22nd year since was adopted in 1999 by Coffs Harbour council and recognised as part of council's LEP in 2000. We also note that the first national award to local environmental community groups was to Coffs Harbour for its group of five plans, one of which was the CKPoM - Prime Minister John Howard awarded this national prize. These innovations in SEPP 44 and how it applies need to be retained in any future SEPP, not cast aside as is the case.

- There has been very limited uptake of development of CKPoMs under SEPP44. 103 local government areas are listed in Schedule 1 of SEPP44, yet only 5 CKPoMs have been developed and approved. There are likely deep rooted political reasons why Councils have not used the SEPP to promote koala conservation. Another is cost, yet an economic study in Coffs Harbour before its CKPoM was adopted demonstrated the great long-term benefits of a CKPoM, vs a fight over each DA.
- Koala habitat was identified with reference to 10 feed tree species listed in Schedule 2 of SEPP44. This list was based on information available at the time the policy was put in place, but quickly was recognised as being insufficient. The real solution was to undertake a CKPoM. In this process, the list of 10 trees (it would not have mattered if there were 123 trees on the list) was irrelevant. It is the process of mapping koala habitat for a CKPoM that identified the local trees of importance to koalas. This minimises conflict over the relevance of which trees matter.

The now repealed *State Environmental Planning Policy (Koala Habitat Protection) 2019*, aimed to update SEPP44. It used a combination of state-wide mapping and 123 feed tree species to identify koala habitat. It further clarified the definition of 'core' koala habitat. The Koala Habitat Protection Guideline (now repealed/removed) went further in outlining how the SEPP was to be implemented. RZS NSW has remaining concerns with the detail of the now repealed 2019 policy, including the blanket approach to koala habitat, but maintain that it is the broad lack of implementation and application of both policies that have seen them not reach their potential. RZS NSW would welcome the opportunity to have input and/or comment on any future koala habitat policies.

***RZS NSW fully supports the concept of a koala habitat SEPP but maintains that it must be compulsory and fully implemented, and its outcomes must be applied across all other State policies and legislation.***

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

This question is largely outside the area of expertise of RZS NSW. We do however note that there appears to be a false dichotomy – you either protect koalas and their habitat or you can use/profit from the land (at the expense of biodiversity). We believe there is a middle ground that should be investigated. It may be possible to conserve koalas with adequate protections identified and put in place, depending on the proposed land-use.

We further note that there is a current research project funded under the NSW Koala Research Plan that investigates "Maximising outcomes for koalas from private land". The results of this research should be carefully considered. Private land has long been recognised as providing important habitat for koalas, and indeed, on the north coast about 50% of modelled koala habitat occurs on private land. More importantly, much of the best koala habitat is on private land. Modelled habitat has a wide range in quality in defining koala habitat. This point is often overlooked, and leads to the misapprehension that all modelled habitat is core and must be saved. Better use of the maps is needed in future. The key to the long-term survival of koala populations will be to their survival on private land. A SEPP is the best legal instrument to identify and conserve koala habitat on private land. The position adopted in the current proposals undermine the value of the SEPP process and allows koala habitat to be converted into other uses and even a windfall profit for a minority.

***RZS NSW fully supports rigorous research into the options and benefits of koala (biodiversity) conservation on rural/private lands.***



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

The *Biodiversity Conservation Act 2016 (BC Act 2016)* and the *LLS Act 2013* saw a significant shift to identifying biodiversity values using mapped products (e.g., regulated lands under the *LLS Act 2013*). The increase in land clearing seen since the start of the *BC Act 2016* has clearly demonstrated that this position is not working.

***RZS NSW supports the concept of broadly identifying biodiversity values through scientifically sound, field-validated, maps but maintain that this must then be followed up with robust on ground assessment.***

### The impacts of current regulatory regimes on private landholders.

This question is beyond our area of expertise. We will however note that it is often said that the presence of significant biodiversity on private lands places undue impacts and restrictions on landholders. Legislation and policy will often aim to remove/reduce that burden on the landholder, for example by removing the need for any field surveys – it does not, however, provide for the driver for the landholder burden to be taken up by others (e.g., government). We believe in the case of the koala SEPP and LLS Act that regulatory maps can only go so far and that they should be used as a prompt for where field survey is required. On whose shoulder the burden of field survey falls is a social, economic and political question, but it shouldn't simply remove the need for on ground surveys and assessment.

***RZS NSW supports the concept of broadly identifying biodiversity values through scientifically sound maps but maintain that this must then be followed up with robust on ground assessment.***

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

This question is best addressed by local governments. We do however note the following points:

1. Restricting SEPP44 to the old list of 10 feed tree species instead of the 123 species included in the *State Environmental Planning Policy (Koala Habitat Protection) 2019*, will limit the ability of Councils to accurately map koala habitat. Mapping of koala habitat must be based on the best available scientific information. The question of whether or not to protect that habitat is secondary and is largely a political question.
2. The whole point of SEPP44 and of *State Environmental Planning Policy (Koala Habitat Protection) 2019* is to map koala habitat and then to apply a strategic approach to managing it. Clearing of koala habitat on rural lands without any input or oversight from Councils can only hamper the objectives of Koala Plans of Management and the ability of Councils to fully implement them.

***RZS NSW recommends that consistent measures of koala habitat are applied across all legislation and policies and that consistent impact assessment is applied.***

We thank you once again for the opportunity to participate in the inquiry. We are happy providing further input.

Yours faithfully,

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4 February 2021