SOUTH EAST FOREST RESCUE

PO BOX 899 Moruya, NSW, 2537

07 December 2015

Attn: Sandie Jones; Michael Hood; Greg Abood
Environment Protection Authority

By email: info@environment.nsw.gov.au

Dear EPA

Regarding Logging Tantawangalo Cpt 2433

Logging in Tantawangalo Cpt 2433 is said to have begun on 25 November 2015 without a logging incident plan publically available. We use the term 'logging incident' plan as:

a) the Forestry Corporation do not plant, water or care for native forest thus cannot be said to 'harvest'; and
b) all compartments that we have viewed in the last 14 years contain breaches of licencing conditions; and
c) due to lack of compliance with legislative requirements, including reviews of legislation, all logging is or is likely to be unlawful.

In this way any proposed or current plan will be the beginning of likely unlawful logging incidents.

1. *No Plan*

The logging plan was alleged to have been approved on 19 November 2015. There is no logging incident plan on FCNSW's website, and no plan was made available to SEFR. SEFR has not received any monthly advice on Tantawangalo Cpt 2433. The Eden IFOA sets out that:

(a) "Monthly advice" means the following documents:

  (i) *notification of a forestry operation prepared in accordance with 9A(3); and*

(ii) *an operational map prepared in accordance with Part B of Schedule 1 of Appendix A of this IFOA; and Condition 3 (a) of Appendix B of this IFOA; and*

(iii) *a location map prepared in accordance with Part C of Schedule 1 of Appendix A of this IFOA;*

We note the Forestry Corporation is both the proponent and the determining authority for proposed logging incidents.

2. *Notice Requirements*

Despite numerous placations by the EPA that your department is 'working with' the Forestry Corporation NSW ('FCNSW') on monthly notice breaches, the period of public consultation and notification is not being observed in preparation of native forest logging incident plans.

In our view the latest policy/practice on notification by FCNSW is in breach of requirements of the *Protection of the Environment Administration Act 1991* (NSW) ('POAA Act') and requirements of Environmental Impact Assessment ('EIA') generally and internationally. This requirement of notification is contained within many pieces of legislation and international conventions, and is clearly accepted as part of EIA requirements.

In 1998, through the *Forestry and National Park Estate Act*, FCNSW were afforded certain 'exemptions' and, *inter alia*, in lieu of advertised notification in local newspapers, the advanced notice clauses 23A, 23B, 29C were placed in the *Eden Integrated Forestry Operations Approval* ('IFOA'). We note that all these clauses have been removed. However, regardless of the IFOAs, FCNSW must still meet the bar of all protective legislation and basic EIA requirements and this cannot be relaxed.

The 'exemptions' were afforded on the proviso that FCNSW would comply. The overarching principle is that the legal and regulatory framework is to provide for the proper management of public owned native forests.

In other words for FCNSW to be afforded the exemptions, the requirements must be equal to, or be better than, the exempted legislation and FCNSW must comply. If those mechanisms in

the IFOAs, Forestry Agreements and Regional Forest Agreements fail and FCNSW does not comply then there can be no exemptions to the other relevant protective pieces of legislation.

It is well to keep in mind, as your department has said to us on numerous occasions, the IFOAs are merely delegated instruments and as such do not have the force of statutes. Therefore clearly it is the statutes that must be complied with.

Monthly Advanced Notice

In our view, the requirement is that the public must be given at least 30 days notice to allow opportunity to comment on the proposed logging incident, for consultation, and to make application for compensation if appropriate.

The Eden IFOA cl 9A(6) sets out that FCNSW must ensure that:

> *a) the monthly advice does not contain any statement or information which is incorrect, false, misleading or incomplete.*

Monthly advanced notice is as it states. Under the EPA Act public notice is required to be given whether the operation is classed as designated, advertised or special development. Sections 79, 79A, 79B of the EPA Act set out minimum requirements for notice, for example:

> *79 Public participation—designated development*
>
> *(1) Public exhibition and notification*
>
> *As soon as practicable after a development application is made for consent to carry out designated development, the consent authority must:*
>
> *(a) place the application and any accompanying information on public exhibition for a period of not less than 30 days (the submission period) commencing on the day after which notice of the application is first published*
>
> *(b) give written notice of the application in accordance with the regulations:*
>
> *(i) to such persons as appear to it to own or occupy the land adjoining the land to which the development application relates, and*
>
> *(ii) if practicable, to such other persons as appear to it to own or occupy land the use or enjoyment of which, in its opinion, may be detrimentally affected if the designated development is carried out, and*
>
> *(iii) to such other persons as are required to be notified by the regulations, and*

(c) cause notice of the application to be exhibited in accordance with the regulations on the land to which the application relates, and

(d) cause notice of the application to be published in accordance with the regulations in a newspaper circulating in the locality.

Eden IFOA cl 9A makes the same requirement as under s 79, minus the advertising in local newspapers, but to the same effect, with requirement to notify all logging incidents accompanied by proper documentation. Arguably, this includes monthly advanced notice to the public.

This is embodied in the *Forestry Act 2012* (NSW) s 69C which provides that there must be community consultation 'on forestry operations and other matters covered' by a Forest Agreement. The area is covered by a Forest Agreement therefore FCNSW are directly bound to provide proper notification of proposed logging incidents, which includes all documentation.

The Southern Ecologically Sustainable Forest Management ('ESFM') Plan provides FCNSW must ensure transparent and accountable professional forest management. It is provided that FCNSW must 'monitor and report biodiversity conservation performance to Montreal Criteria standard'. Montreal Criteria on public participation provides that a logging agency must provide for public participation. This is particularly apt when considering that these forests are publically owned and there is no other form of assessing what impact the logging will have on the environment or the community.

One of the main pillars of ESFM that FCNSW must comply with and adhere to is that they must 'Ensure public participation, access to information, accountability and transparency in the delivery of ESFM.'

This takes its origin from the Montreal Process, and Agenda 21 which states at cl 23.2:

One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making … Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures.

State-run agencies must have regard to international obligations and must not undertake an activity that would be inconsistent with international obligations. All requirements stem from the *Rio Declaration*. The intent of *United Nations Framework Convention on Climate Change* ('UNFCCC') Article 6 is reflected in Article 4.1(i) of the same convention, as well as in Article 10(e) of the *Kyoto Protocol*. Article 6 (Education, Training and Public Awareness) of UNFCCC Convention's is directly linked to the *Aarhus Convention*, therefore it is not necessary that Australia be a signatory to the *Aarhus Convention* as they are bound in an indirect way.

This repetition, which is in itself repetition of Principle 10 of the *Rio Declaration*, is reinforcement of the understanding that public participation is integral to good governance and decision making processes where citizens on-ground perhaps might have a better understanding of issues, and where these decisions could affect the lives of people within the area under consideration .

RFA Requirements

All parties to the Regional Forest Agreement ('RFA') agreed to protect and conserve the CAR Reserve System, of which Tantawangalo is a part. Further, RFA cl 49 and Attachment 6 provide for public notification and consultation mechanisms.

The Hawke Review provided that although the RFA provisions are often read as if they were exemptions they have effect as a licence, the terms of which must be complied with.[1] The Hawke Review noted that:

> The absence of transparent mechanisms to test non-compliance with RFAs and assess governments' performance on RFA obligations causes community concern and mistrust. The lack of transparency also limits the ability of parties to verify whether core environmental commitments or 'license conditions' of the RFAs are being met.

The Review also noted that:

[1] See also *Brown v Forestry Tasmania and Others(No 4)* [2006] FCA 1729.

> The (RFA) approval has continued to operate irrespective of the extent to which the commitments contained within the agreements have been implemented, particularly in relation to environmental outcomes.

Forest Agreement Requirements

Clause 4.3 of the Forest Agreement provides that FCNSW:

- will consult with stakeholders on operational issues such as the Plan of Operations.
- Stakeholder consultation on forest conservation and management will also occur through stakeholder groups and community forest partnerships.
- Stakeholder consultation on the EMS- NFMS will be conducted.

Operational issues include logging incident plans. Thus, under the Forest Agreements FCNSW are required to consult with stakeholders. Clearly SEFR is a stakeholder having been active in the RFA negotiations and monitoring FCNSW activities since 2001. Consulting requires FCNSW to notify SEFR of plans to conduct logging incidents in advance to allow time for SEFR to conduct proper investigation.

Consultation

Even though AFS standards are not recognized as best practice by the international community and are considered bare minimum and ineffective, FCNSW allege they are in compliance with AFS 4.1.1 forest management and ISO 14001 4.2 Environmental policy:

> Forests NSW Environmental Policy commits the organisation to a systematic approach to forest management, continual improvement in management performance and outcomes, legislative compliance, provision of resources, management review and stakeholder consultation.

So, clearly FCNSW cannot even comply with the bare minimum requirements.

FCNSW and SEFR are parties to the Dampier Agreement, a parol contract negotiated in 2001 in compartment 3124 of Dampier State Forest, whereby FCNSW agreed to provide copies of all approved plans while the RFA period was in operation. FCNSW clearly recognise and acknowledge the agreement with SEFR, evidenced by the performance since 2002. It would seem that FCNSW has breached the terms of the contract.

3. *Lifting Protective Zoning ('FMZ') – Water Catchment*

Under the *Forestry Act 2012* (NSW) s 19 logging of this FMZ is unlawful. FCNSW allege FMZ 3bC is the equivalent to IUCN Category IV.[2] Logging activities may not be carried out on land that is classified as Category IV,[3] as any activity must be to "maintain or enhance the values that the area is zoned to protect". Industrial logging does not maintain nor enhance any aspect of any value of any area.

Objectives of category IV is stated as being to maintain, conserve and restore species and habitats:

> Category IV protected areas aim to protect particular species or habitats and management reflects this priority. Many category IV protected areas will need regular, active interventions to address the requirements of particular species or to maintain habitats.[4]

Active management, or regular active intervention, is defined as an overall functioning of ecosystems that are being modified by, for example, removing feral weeds, providing supplementary food or artificially creating habitats.[5] This does not include high intensity logging.

Snigging and construction of roads in and through certain exclusion zones is only permitted with prior written approval of the National Parks and Wildlife Service.[6]

From Cpt 2433 HP 6/08/2009, 7:

> 5(a) Special Requirement Areas
>
> Forest Management Zone 3bC (Catchment) exists over the majority of Compartment 2433.

The transparent excuse for changing the zoning was:

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[2] ESFM Plan Ecologically Sustainable Forest Management Plan, South Coast Southern NSW (2005) 25 (State Forests of New South Wales, December 1999).

[3] *Integrated Forestry Operations Approval for the Eden Region 1999* cl 19(2).

[4] *Guidelines for Applying Protected Area Management Categories,* Dudley N [ed], Gland, Switzerland, IUCN, (2008).

[5] *Guidelines for Applying Protected Area Management Categories,* above n 4.

[6] *Terms of Licence Under the Threatened Species Conservation Act 1995 Eden* Appendix B, ('Eden TSL') cl 5.1(b).

> The effects on downstream water yield and water quality was considered and discussed with the appropriate Council and FNSW Soil and Water Specialist. It was determined due to the ratio of area proposed to be harvested versus total catchment area, the alternative coupe harvesting pattern in conjuction [sic] with existing stream exclusions, protection zones, and non harvest areas due to inaccessibility, that the impact on water yield and quality in the immediate or long term future is negligible. Harvesting of FMZ3bC areas within Tantawangalo Catchment does therefore not require additional modified harvesting prescriptions.

Of note Cpt 2432/2434/2435 HP 29/06/2009, 7 also says:

> 5(a) Special Requirement Areas
>
> Forest Management Zone 3bC (Catchment) exists over Coupe 1 of Compartment 2432, and all of Compartment 2434 and 2435 as indicated on the Harvesting Plan Operational Maps.

The 3bC was given to the area:

> to be excluded for conservation reasons. This area was defined using environmental constraints, in particular moratorium areas for particular Schedule 12 fauna, the Tantawangalo catchment, and proposed additions to the NPWS estate: Deferred Forest Assessment Report.

On State forests in the Eden region the Commonwealth Department of Agriculture Fisheries and Forestry states:

> The CAR Reserve System covers approximately one third of the entire region and about 56 per cent of the region's public land. Significant additions to dedicated reserves include:
>
> > * The link between Tantawanglo and Yurammie State Forests which provides a corridor from the escarpment to the coastal forests.[7]

[7] Department of Fisheries and Forestry, <http://www.daff.gov.au/__data/assets/pdf_file/0020/58502/rfa-and-the-environment.pdf >.

The Forestry Corporation allege they monitor and report using the Montreal Criteria and Indicators identified in the CRA process, and as agreed in the Regional Forest Agreements.[8] However, the Forestry Corporation's interpretation is that any compartment that was set aside as a special protection zone can have that zoning lifted at any time. This is a 'business as usual' approach by FCNSW.

RFA Milestone 15: *New South Wales to publish the results from the Yambulla and Tantawangalo Research Catchments - By the year 2000:* Eden RFA Att 5 cl 2(d).
Late/Not Done. That data collection 'could not be continued' for the Tantawangalo Research Catchments seems incongruous given that this data is on water flow.

While the impact on water yield and flow duration may be a small proportion of the total streamflow due to the relatively small proportion of the total catchment logged, there is no permissible negative impact on catchment values allowed under the original *Forestry Act 1916*, which had, as one of its objects to 'maintain and improve, in accordance with good forestry practice, the soil resources and water catchment capabilities of crown timber lands'. We note that this object has been removed, however FCNSW still must abide by the principles of ESD set out in the *Protection of the Environment Administration Act 1991* (NSW) s 6(2): *Forestry Act 2012* (NSW) s 10, relevantly:

> *(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.*

As these compartments are in the catchment of the Bega Valley Shire's diversion weir, any increased bedload sediment movement could adversely impact on water diversion to the Tantawangalo-Kiah water supply scheme, which supplies the southern half of the Bega Valley Shire.

Any reduction in diversions from the Tantawangalo weir in dry times due to increased ET losses by dense regrowth will be made up by increased extraction from the Kiah and/or Bega

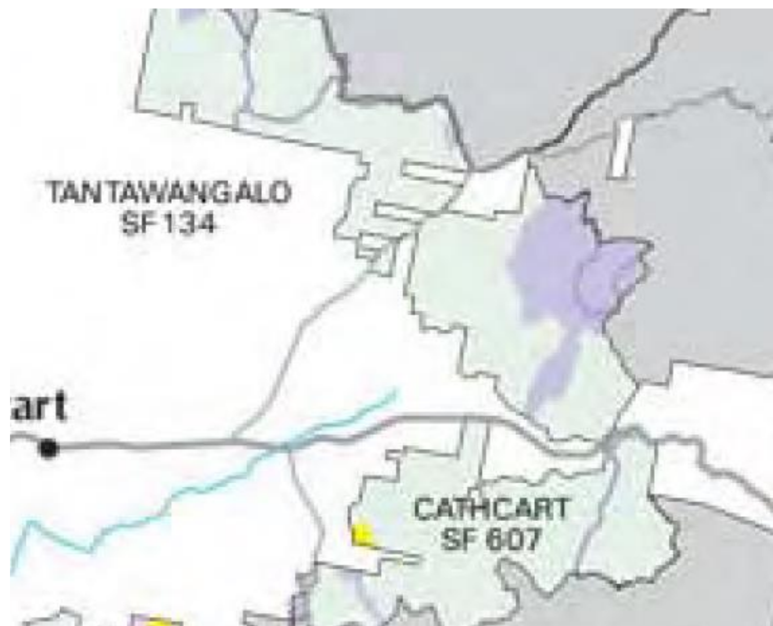
[8] Annex F, Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests *The Montréal Process* Third Edition, December 2007, Conservation and maintenance of soil and water resources; Maintenance of forest contribution to global carbon cycles.

sands aquifers, with resulting potential impact on river health and biodiversity in these stressed aquatic environments.[9]

There is a risk of serious impacts on water quality, particularly increased turbidity and stream bank erosion, if significant rainfall events occur after logging but before effective regeneration is established.

As flow in streams falls during dry periods, the value of water to the environment and to extractive users increases. Therefore, any effect of forest catchment management that is likely to decrease the flow of water in streams during dry periods is going to have a profound effect on the economic and environmental outcomes of negotiated flow-sharing arrangements.

The State of NSW Eden Region FMZ map shows all these compartments were designated Special Protection Zones:[10]



The JANIS Report states:

[9] Lane and Mackay, 'Stream Flow Response of Mixed-Species Eucalypt Forests to Patch Cutting and Thinning Treatments' (2001) 143 *Forest Ecology and Management* 131.
[10] NSW Department of Industry, Skills and Regional Development, Forestry Corporation NSW <http://www.forestrycorporation.com.au/management/sustainable-forest-management/esfm>.

> Although changes may include boundary rationalisations, the CAR reserve system must be predicated on the principle that security of tenure and management intent is fundamental.[11]

Specific FMZ areas 'negotiated' in the CRA process require joint agreement of the Minister for the Environment, Minister for Planning, the Minister for Forestry and the Minister for Mineral Resources and public consultation before boundaries can be changed.[12] Further, where a FMZ occurs within a special management zone any boundary change will require an Act of Parliament.[13]

Through the actions of the Forestry Corporation, that is, a FCNSW worker having a conversation with a Bega Valley Shire Council worker, the NSW Government is obfuscating to the Commonwealth Government.

What this means is that the revocation of an area that has been set aside as reserved would seemingly be in tension with *Eden Forest Agreement 1999* Preamble 1.3(c) as well as other international obligations on climate change. If this compartment was set aside as a Special Protection Zone and used in previous reporting by the Commonwealth, both domestically and internationally to prove compliance to climate change treaties and biodiversity conventions then what are the legal implications of revocation domestically and internationally?

How does logging of this area help in complying with meeting targets of maintaining or increasing the total carbon stored in forests and volume figures? It would be difficult to argue logging is helping mitigate effects of climate change. Certainly logging will affect future generations by depriving them of water. Thus, it would be difficult to argue logging will be in accord with the principle of intergenerational equity. Further, the lack of consultation does not meet requirements. Therefore, through breach of the *Protection of the Environment Administration Act 1991* (NSW) s 6(2) logging of Tantawangalo Cpt 2433 is in breach of the *Forestry Act 2012* (NSW) s 10, as well as international obligations under the *Kyoto Protocol*.

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[11] JANIS, *Nationally Agreed Criteria for the Establishment of a CAR Reserve System for Forests in Australia,* Joint ANZECC/MCFFA National Forest Policy Statement Implementation Sub-Committee, 1997.

[12] See *Eden Region Forest Agreement 2002* cls 6, 7.

[13] *Forestry Act 2012* (NSW) s 20.

In 2010 SEFR reported breaches of the TSL conditions in this compartment when the compartment was logged. Below is the map from the 2009 plan. It is safe to assume that the areas that were not logged then, likely will be now. This means the FRAMES volume figures are skewed, as the whole area was excluded from FRAMES.

Importantly, even though no logging should have occurred, FCNSW has already logged much of the compartment at maximum intensity, which is likely to equate to approximately 50% of the volume. For example, assuming forest types will yield $1m^3$ p/ha, then logging of 100ha will yield $100m^3$ under high intensity. So if this same forest was logged under FCNSW 3b visual protection yield would be half, ie $50m^3$. At the last logging event 50% of the area was logged at high intensity, which in this example would equate to $50m^3$. Thus FCNSW have already obtained the volume. The November 2015 monthly plan states 80ha will be logged at high intensity. FMZ 3bC catchment should be afforded greater protection. Therefore, no further logging should occur.

Lastly, the rock outcrops in this compartment and prior unlawful behaviour of FCNSW and the contractor dictate that there likely will be breaches of Eden IFOA TSL cl 5.11.