



SOUTH EAST FOREST RESCUE

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Mr S Hartley

Crown Forestry Policy and Regulation
Environment Protection and Regulation
Office of Environment and Heritage

Dear Steve,

Re: Bermagui SF Compartment 2002

Upon inspection of Bermagui SF Cpt 2002 we wish to report multiple breaches of the Eden IFOA:

1. It appears, using FNSW figures, that over 108% of the net harvestable area of the Cpt has or will be logged;
2. Coupe 3 adjoins a logged coupe;
3. There are now 5 contiguous compartments that have been logged;
4. In the event a new harvest plan was drafted, as logging commenced in Cpt 2002 on 10 September 2009, 2 years ago, the 5 year period has not been adhered to;
5. The period of notification has not been observed in preparation of the new harvest plan;
6. In the event that the old harvest plan was used there is not capacity to change or vary harvest plan without due process being followed;
7. In the event the original harvest plan was in force it contains no provision for the logging of coupe 3.

Firstly for this operation in Cpt 2002 to be covered by the Eden IFOA it must be an 'alternate coupe selection' operation. The IFOA provides:

(4) This approval applies only to logging operations carried out in State forests and in which trees are selected for harvesting using alternate coupe harvesting.¹

¹ Integrated Forestry Operations Approval Package Incorporating Amendments 1-5, *Forestry and National Park Estate Act 1998* Integrated Forestry Operations Approval for Eden Region, cl 5(4).

In the alternative, unless there is no ‘production of timber’, in other words no logs sold to either the chipmill or sawmills, and this operation could be classed as a ‘thinnings’ operation, *pro tanto* cl.5(11) and the IFOA should apply. There is no either/or situation when one of the purposes of the logging operation is the production of timber. Clause 5(6) of the IFOA provides:

(6) To avoid doubt, the logging operations described in subclause (2) extend to thinning, where thinning has as one of its purposes, the production of timber.

Clauses 5(1) – 5(2) provide:

(1) This approval applies to the forestry operations described in subclauses (2) to (9) in the Eden Region.

(2) This approval applies to logging operations, being the cutting and removal of timber for the purposes of producing any of the following:

(a) High Quality Logs (including an amount of up to 23,000m³ per year, being a quantity which reflects contractual commitments existing at the date of this approval);

(b) Pulp Grade Timber (including an amount of up to 345,000 tonnes per year, being a quantity which reflects contractual commitments existing at the date of this approval); and

(c) timber products other than High Quality Logs and Pulp Grade Timber.

As stated in the harvest plan for Cpt 2002 the ‘products’ are:

Table 6: Yield Estimate Information

Compartment No.	Sawlog Volume (m³ / ha)	Pulpwood Volume E1 & E2 (t / ha)
2002	17	13

Cpt 2002 has, as one of its purposes, the production of timber. This is an alleged volume figure of 1632m³ for sawlog and 1248m³ for pulp. A combined Cpt 2001/2002 sales figure of \$190 000 has been stated.² Therefore Cl.5(11) and the other clauses contained within the IFOA are applicable and must be adhered to. We would state however that, on ocular evidence, this operation is not a thinnings operation.

² NSW Legislative Council, David Shoebridge to Minister for Primary Industries, Questions on Notice, Questions and Answers Paper No 25, 2 August 2011, p180.

1. Breach of Eden IFOA cl.5(11)(B)(b)

Cl.5(11) of the IFOA applies to all logging operations on public land in the Eden Region. *Inter alia* cl.5(11) indicates ‘the area logged comprises no more than 60% of the net harvestable area (‘NHA’) of the compartment in existence immediately prior to logging’. Cl.5(11) provides:

5. Description of forestry operations to which this approval applies

(11) In this clause:

“alternate coupe harvesting” refers to a silvicultural practice carried out in a compartment of State forest having the following elements:

(A) harvesting across the compartment as a whole takes place in two harvesting operations; and

(B) in any one harvesting operation:

(a) the number of coupes logged is no more than:

(i) half of the total number of coupes + 1 (where there is an even number of coupes within the compartment), or

(ii) half of the total number of coupes + ½ (where there is an odd number of coupes within the compartment), and

(b) the area logged comprises no more than 60% of the net harvestable area of the compartment in existence immediately prior to logging, and

(c) each coupe in which logging is carried out adjoins at least one coupe that is not logged; and

(C) once any harvesting operation is completed in any coupes in the compartment no logging (other than thinning) is carried out again in those coupes until a further harvesting operation has been completed in the remaining coupes in the compartment; and

(D) there is a period of at least 5 years between the completion of logging in one harvesting operation and commencement of another in the compartment.

Note: The aim of alternate coupe harvesting is to disperse the environmental impacts of harvesting across space and time.

Coupes 1, 2, 9, and 10 have been logged. The commencement of logging of coupe 3 and 4 indicates that over 109% of the net harvestable area of the compartment will be logged. The total area was stated as being 190.2ha however upon closer examination in ArcView the total area of the compartment is 184.6ha, however the IFOA provides:

“net harvestable area”, in relation to a compartment in the Eden Region, means the sum of areas within the compartment that contains timber, excluding any area in which logging is prohibited by or under an Act (including under this approval, and under any licence or other authority)³

³ Integrated Forestry Operations Approval Package Incorporating Amendments 1-5, *Forestry and National Park Estate Act 1998* Integrated Forestry Operations Approval for Eden Region, cl 1.

Therefore the calculation cannot use the total hectare area figure but must be calculated using a figure that excludes areas not permissible to be logged. Therefore NHA figures are:

Compartment 2002

Coupe No.	HP NHA (ha)	Total NHA (ha)	Total NHA Logged
1	19.2	19.2	19.2
2	28	28	28
3		3.6*	3.6
4		5.4*	5.4
5		5.5*	
6		17.3*	
7		8.2*	
8		15.3*	
9	23.5	23.5	23.5
10	21.7	21.7	21.7
Totals	92.4	147.7	101.4

*These figures are from ArcView NHA shape files

The total NHA on FNSW figures for Cpt 2002 is 147.7ha. If FNSW had calculated the 60% hectare availability of the NHA correctly the figure would be 88.62ha available for logging. However, with the addition of coupes 3 and 4, the area in Cpt 2002 FNSW now state is available for logging is 96ha. This is 108.3% of the NHA.

Notwithstanding these figures FNSW do not provide proper NHA figures. Perhaps if there was this provision of correct data these calculations could be more accurate.

2. Breach of Eden IFOA cl.5(11)(B)(c)

Coupe 3 adjoins coupe 1 totally. Coupe 1 has been logged:

(c) each coupe in which logging is carried out adjoins at least one coupe that is not logged;

Cl.5(11) provides for process and regulation of ‘alternate coupe harvesting’ within a compartment. It does not allow for other compartments nearby or adjacent to be factored in, a la’ some type of offset arrangement. The clause provides:

“Alternate coupe harvesting” refers to a silvicultural practice carried out in a compartment of State forest.⁴

Interpreting this phrase, *noscitur a sociis*, the word ‘in’ is indicative of within and applying to one particular compartment. Therefore as coupe 3 adjoins a logged coupe this is a breach of cl.5(11)(B)(c).

⁴ Integrated Forestry Operations Approval Package Incorporating Amendments 1-5, *Forestry and National Park Estate Act 1998* Integrated Forestry Operations Approval for Eden Region, cl 5(11).

3. Breach of Eden IFOA cl.5(11)(D)

Logging commenced in Cpt 2002 on 10 September 2009, 2 years ago:

(D) there is a period of at least 5 years between the completion of logging in one harvesting operation and commencement of another in the compartment.

As stated in the Note, the alleged aim of ‘alternate coupe’ logging is to ‘disperse the environmental impacts of harvesting across space and time’.⁵ It would follow therefore that to not adhere to this aim is to concentrate environmental impacts.

General words can follow particular words, and vice versa. We can interpret the above statement *ejusdem generis* to construe the meaning of the words ‘in the’ followed by ‘compartment’. The literal approach would seem to suggest that, as there was a mere two year period between the completion of logging in one compartment and commencement of logging in other compartments, cl.5(11)(D) has not been adhered to.

Further Forests NSW should have adhered to cl.5(11). By the non-adherence to cl.5(11), as shown, this logging operation cannot be classed as an ‘alternate coupe selection’ operation and therefore falls outside the IFOA.

In our view if a logging operation falls outside an IFOA then all provisions of the *Environment Protection and Biodiversity Act 1999* (Cth), the *Environment Planning and Assessment Act 1979* (NSW), the *Threatened Species Conservation Act 1995* (NSW) and the *Protection of the Environment Operations Act 1997* (NSW) apply, which has requirement for Species Impact Statements and Environmental Impact Statements. It is our understanding that Forests NSW has not undertaken a Species Impact Statement nor Environmental Impact Statement.

4. Breach of Eden IFOA cl.23A

The period of notification has not been observed in preparation of the new harvest plan. When the IFOAs were enacted and consequently the exemptions to the *Environment Planning and Assessment Act 1979* (NSW) (‘EPA Act’), in lieu of advertised notification in local newspapers, cl.23A was placed in the IFOA. When the exemptions were introduced, it was officially stated as being on assumptions that there were, or would be, protective mechanisms in place and exemptions would ‘streamline’ the process.⁶ If those protective mechanisms fail then there can be no exemption to the other relevant pieces of legislation. IFOA cl.23A provides:

⁵ Integrated Forestry Operations Approval Package Incorporating Amendments 1-5, *Forestry and National Park Estate Act 1998* Integrated Forestry Operations Approval for Eden Region, cl 5(11), Explanatory Note.

⁶ Environment Protection And Biodiversity Conservation Bill 1998: Environment Protection And Biodiversity Conservation Bill Explanatory Memorandum cl 11(16), 12(22), 16(36), cl 18 and 19(47), 20(57), 25(84), 26(90), 28(97) 38(113).

23A. Monthly advance notice of harvesting operations

Note: SFNSW may combine the written notices and reports required each month under this clause, clause 23B, clause 29C and clause 29D.

(1) By the first working day of each month, SFNSW must submit to the regulatory agencies a written notice that specifies the following:

- (a) each new harvesting operation that is proposed to commence that month or the following month, by reference to the event ID for the operation and, if the associated site specific plan, prepared under clause 23, has been approved by SFNSW, to the date on which it was approved;*
- (b) each suspended harvesting operation proposed to recommence that month or the following month, by reference to the event ID for the operation and to the date on which the associated site specific plan, prepared under clause 23, was approved by SFNSW;*
- (c) the location of each harvesting operation specified, by reference to State forest name and compartment number or other identifying particulars (in the case of Crown-timber lands other than State forests);*
- (d) the proposed commencement or recommencement date of each harvesting operation specified; and*
- (e) the quantity of timber that SFNSW estimates will be yielded for each harvesting operation specified.*

Monthly advanced notice is as it states. This allows for proper assessment by the Office of Environment and Heritage ('OEH'). Under the EPA Act public notice is required to be given whether the operation is classed as designated, advertised or special development.⁷

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 as referred to in paragraph (d), and*
- (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*

⁷ *Environment Planning and Assessment Act 1979 (NSW) s 72K, s 79.*

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.

At s.79A it is provided:

79A Public participation—advertised development and other notifiable development

(1) Notice of a development application for consent to carry out advertised development is to be given in accordance with this Act, the regulations, the relevant environmental planning instrument and any relevant development control plan.

(2) A development application for specified development (other than designated development or advertised development) must be notified or advertised in accordance with the provisions of a development control plan if the development control plan provides for the notification or advertising of the application.

As shown this notification is what is required. IFOA cl.23 makes the same requirement, minus the advertising in local newspapers, but has the same effect with requirement to notify all logging operations to OEH accompanied by proper documentation.

4. Breach of Eden IFOA cl.28

There is not capacity to change or vary harvest plan without due process being followed. If the logging of Coupe 3 and 4 was not accompanied by a new harvest plan then the old plan must be varied or amended with appropriate monthly notification to OEH. The IFOA provides:

28 Site specific plans of harvesting operations

(5) A harvesting operation should only be carried out in accordance with a plan prepared under this clause. However, if a harvesting operation varies from a plan prepared under this clause, then SFNSW must:

- (a) prepare a document that sets out the reason for such a variation; and*
- (b) amend the plan, or prepare a document that sets out how the harvesting operation varies from the plan and keep this document with the plan.*

Finally and further at s.79B of the EPA Act the responsibility and powers of OEH are clearly set out:

(3) Consultation and concurrence—threatened species Development consent cannot be granted for:

(a) development on land that is, or is a part of, critical habitat, or

(b) development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat, without the concurrence of the Director-General of the Department of Environment, Climate Change and Water or, if a Minister is the consent authority, unless the Minister has consulted with the Minister administering the Threatened Species Conservation Act 1995.

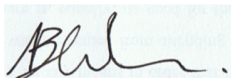
This concurrence is not inclusive of the Forest Agreement but applies to each forestry operation individually. Therefore *et sequitur* OEH has final approval on all forestry operations. At the very least a harvest plan should be forwarded to OEH to allow for proper environmental assessment. In our view if proper assessment had been undertaken OEH would not have approved this operation.

This raises two questions; did FNSW give appropriate notification, and if so how were these many breaches overlooked by OEH? The simple answer could be that either the knowledge level in OEH is lacking, or mere rubber stamping took place. We have commented in the past that FNSW have routinely logged over area but nowhere is it more apparent than in Cpt 2002.

We strongly request an investigation into Forests NSW conduct and how this situation was allowed to occur.

Kind regards,

L Stone



O.S. Daines