

Submission
No 34

INQUIRY INTO PROVISIONS OF THE FORESTRY LEGISLATION AMENDMENT BILL 2018

Organisation: National Parks Association of NSW and Nature Conservation
Council of NSW

Date Received: 30 May 2018

The Hon Taylor Martin MLC
Chair
Legislative Council Standing Committee on State Development
Parliament House
SYDNEY NSW 2000

30 May 2018

Dear Mr Martin,

NPA and NCC submission to Standing Committee on State Development Inquiry into the Provisions of the *Forestry Legislation Amendment Bill 2018*

The National Parks Association of NSW (NPA) is a community-based organisation with over 20,000 supporters from rural, remote and urban areas across the state. The NPA promotes nature conservation and evidence-based natural resource management. We have a particular interest in the protection of the State's biodiversity and supporting ecological processes, both within and outside of the formal conservation reserve system.

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 150 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

Overarching comments

We appreciate the opportunity to make a submission to the Standing Committee on State Development's inquiry on the *Forestry Legislation Amendment Bill 2018* (FLAB), and we outline our concerns, recommendations and areas that we support below. Recommendations and support are highlighted in **bold**. The depth of our submission is influenced by the timeframe made available to us for this purpose combined with the number of complex environmental policies subject to public consultation at the same time.

The FLAB has three main components:

- Schedule 1 inserts a new Part 5B into the *Local Land Services Act 2013* (LLS Act) to deal with private native forestry (replacing provisions that originally sat in Part 5C of the *Forestry Act 2012*)
- Schedule 2 makes changes to the *Forestry Act 2012* relating to logging of public native forests
- Schedule 3 makes other consequential amendments

Our organisations' position is that native forest logging on public land should end following the expiry of the Regional Forest Agreements (RFAs). We do not oppose Private Native Forestry (PNF), but we are concerned that proposed changes to PNF will abandon environmental protection in favour of wood supply (see below), and that PNF should be more effectively regulated, rather than deregulated, in order to protect the environment and future opportunities for landholders.

The forestry industry has been transitioning away from native forests for decades, and plantations now account for about 85% of our wood needs¹. We should use the pending expiry of the RFAs to complete this transition. Plantations now account for essentially all profits and the vast majority of

jobs in the forestry industry. We calculate, using census data, that both direct and indirect employment in the native forest logging sector now accounts for just 0.03% of all primary industry employment in NSW, and just 0.0008% of total employment. The transition would therefore have minimal social impact, particularly if accompanied with alternative employment proposals such as NPA's *Great Koala National Park and Forests For All*. Taken in light of the demonstrated impacts of logging on koala habitat² and greater gliders³, the driving of Key Threatening Processes including 'loss of hollow-bearing trees'⁴ and 'Forest eucalypt dieback associated with over-abundant psyllids and bell miners'^{5,6}; repeated economic failures⁷; demonstrated problems in wood supply and disquiet among millers as to preferential treatment of Boral revealed in a Government report⁸ and uncertainty around future resources due to climate change impacts⁹, we believe that the Government should abandon plans to extend RFAs and its proposed new Integrated Forestry Operations Approval (IFOA) and commit to an exit from native forest logging on public land.

1. Process

We wish to put on record our disappointment with the process for developing the FLAB, particularly in the context of other major changes occurring concurrently (the RFA reviews and the IFOA proposals, the latter of which is affected by the FLAB). We were initially consulted on a draft *Native Forestry Bill* in September 2017 and given just six working days within which to make a written submission. Consultation on the NFB was confidential, selective and excluded the public. We were not consulted on the resulting FLAB subject of this inquiry.

Coupled with the release of the new draft IFOA and recent RFA reviews, it is hard to escape the impression that the forestry changes are being rushed. This is not appropriate considering the magnitude of the changes proposed; the NSW government has committed to the extension of the RFAs for a further 20 years, while the IFOA proposals would alter a model that has been in place for 20 years. Processes of this opaque nature ultimately serve to erode public trust in the legislative process, disenfranchise the public (particularly younger people who have never had an opportunity to shape forest policy) and likely contribute to widespread apathy about political engagement. We urge the Government to return to a policy making process that respects public participation and delivers evidence-based policy settings.

We are concerned that the FLAB subject of this inquiry is a result of industry lobbying for legislation that would maximise wood supply over environmental protections. Documentation surrounding the proposed changes to the IFOA clearly highlight that there is a wood supply shortfall and that this issue is being prioritised over environmental protections. Indeed, the Natural Resources Commission (NRC) report that accompanied the IFOA proposals states that: "*following analysis of the expected cumulative impact of the agreed and recommended settings, the Commission has determined that it is not possible to meet the Government's commitments around both environmental values and wood supply*". It is in this context that the FLAB should be judged.

2. Ecologically Sustainable Forest Management

We welcome the retention of Ecologically Sustainable Forest Management (ESFM) principles in the provisions relating to PNF, however in our experience, forestry operations in NSW do not meet ESFM principles. Current logging practices on public land regularly flout the principles of ESFM, and the new IFOA proposals arguably abandon them completely. We are concerned that despite the inclusion of ESFM principles in Part 5B of the LLS Act PNF will similarly abandon ESFM principles on private land.

Current IFOA proposals, such as clearfelling in modelled high-quality koala habitat on the north coast, ‘remapping and rezoning’ old-growth to make up timber shortfalls and logging trees up to 140cm diameter are entirely inconsistent with ESFM. The Government appears to be paying lip service to the principles while abandoning them, rather than seeing them as foundations for a sustainable industry. Abandoning the principles of ESFM abandons NSW’s commitments under the National Forest Policy Statement and walks away from decades of shared responsibility.

Many of our concerns with the FLAB can and are discussed in light of one or more of the principles of ESFM below.

(a) maintaining forest values for future and present generations, including:

(i) forest biological diversity

Forest species are becoming more threatened¹⁰, and we know that logging impacts on many species and drives Key Threatening Processes, including bell-miner associated dieback. The Forest Ecosystems of NSW are numerous and highly complex, and therefore ensuring they are not compromised by logging activities requires consultation with expert ecologists and a strong regulator. Should the PNF codes resemble agricultural codes in the *Local Land Services Amendment Act 2016* (i.e. they are self-assessable and do not require on-ground consultation with expert ecologists) it is beyond doubt that they will lead to significant degradation of forests, violating this principle of ESFM.

We **recommend** that any PNF code is developed in consultation with scientists independent from Government in order to ensure it is fit for purpose in regards environmental protection.

We **recommend** a more appropriate model is for more consultative and well-resourced preparation of Property Vegetation Plans (PVPs)—or PNF plans as per the FLAB—including on-ground visits by expert ecologists, to guide harvesting operations and highlight matters of environmental concern. We made this point during consultation on the land clearing legislation and reiterate it here.

We are sceptical that the removal of Threatened Species and Pollution licenses and their insertion into the new IFOA will adequately protect the environment. The new IFOA settings are based on the need to maximise timber production, and the poor environmental protection settings reflect that prioritisation. The new settings will destroy forests in a global biodiversity hotspot (the Forests of East Australia); are almost certain to result in local and regional extinctions of wildlife; will ‘remap and rezone’ old-growth (which appears to mean revoking Special Management Zones, part of the informal reserve system); and will enable the logging of trees up to 140cm diameter (160cm in the case of alpine ash and blackbutt) that will inevitably lead to a depauperate environment for current young people and future generations.

We **recommend** that the FLAB better define ‘biodiversity’ in the context of PNF.

(ii) the productive capacity and sustainability of forest ecosystems

The changes to PNF are deeply concerning in light of the demonstrated shortfall of timber to supply Boral’s contracts to 2028 in northern NSW. Given the pre-eminence of timber supply over environment in the IFOA proposals, we find it difficult to believe that the changes to PNF will not share this priority. We note that the PVP model could assist in achieving this principle by including an assessment of productive capacity and therefore determining an ecologically sustainable logging rate.

(iii) the health and vitality of native forest ecosystems

We note that the NRC report advising on the IFOA⁹ remake identified five State Forests (one of which, Mount Lindsay, is one of the new koala reserves) in the Urbenville Management Area that “were considered impractical to manage for commercial purposes given reductions in net harvest area and areas affected by Bell Miner Associated Dieback”. This highlights how failing to manage forests with ecological sustainability as the primary concern is ultimately self-defeating to the industry.

We **recommend** that any changes to PNF (e.g. the code) and the FLAB should reflect this imperative.

(iv) soil and water quality

Current logging practices, including the use of heavy machinery, on public land frequently result in soil erosion and associated water impacts, and logging is proposed in unsuitable areas—such as the Nambucca Beds. Different soil types may be more or less erodible, and this again highlights the importance of ensuring that landholders are provided with expert on-ground advice to avoid unforeseen environmental (and therefore productivity) impacts.

We **recommend** that the FLAB protect ‘soil health’ (rather than soil quality) and ‘water quality and quantity’ as objectives of ESFM.

(v) the contribution of native forests to global geochemical cycles, and

We highlight the disruption to carbon cycles of native forest logging—particularly intensive logging. The Australian Government¹ accepts that logging reduces the carbon stores of forests, and carbon transfer away from forests is increasing¹⁰.

The correct application of ESFM should result in no disruption of the carbon cycle in production forests. Climate was not a priority consideration in the RFAs, but is now the largest social, economic and environmental challenge we face. It is recognised that deforestation and forest degradation produce a significant portion of global emissions¹¹. In Australia, approximately 44% of carbon stocks have already been lost from temperate forests¹², and logged forests store approximately 60% of their maximum carbon stocks¹³.

The NSW Forest Industry Roadmap states that ‘sustainably managed forests have the capacity to absorb greenhouse gases as they grow, which contributes to a healthy environment’, and cites ‘Department of Primary Industries research’ as the source of this information. The source of this statement appears to be the 2007 (and now outdated) 4th IPCC assessment. However, high quality, peer-reviewed research does not accord with this statement. Mature forests have higher carbon stocks than regrowth forests¹⁴. Carbon stores in old growth (pre-logged) forests can be extremely high as a result of living trees and coarse woody debris, with large-diameter trees particularly important contributors¹⁵. The ‘remapping and rezoning’ of old-growth, and the logging of trees up to 140cm diameter (or 160cm in the case of blackbutt and alpine ash) via the new IFOA will therefore further reduce the carbon stores of forests, just when they should be maximised. Besides the direct removal of large amounts of biomass, logging shifts the age-class distribution to smaller-diameter trees¹⁶, which will therefore reduce carbon stores by reducing large trees.

Research in the Victorian Central Highlands and in southern NSW demonstrates that managing forests for conservation rather than timber extraction results in ‘an immediate and substantial reduction in net emissions relative to a reference case of commercial harvesting’¹⁷, primarily because the vast majority (>90%) of forest products are short-lived and logged carbon is therefore

rapidly returned to the atmosphere^{17,18}. This finding is supported by other research^{19,20} and Australian temperate eucalypt forests are some of the most carbon-dense on earth²¹.

Carbon credits arising from the conservation of native forests could be a source of income for forest management for landholders^{22,23}, and we would **recommend** the FLAB facilitate this by taking a precautionary approach to logging. Permitting intensive logging removing a large proportion of biomass may preclude access to future sources of funding based around maximising carbon stores.

(vi) the long term social and economic benefits of native forests

It is our view that the maximum long term social and economic benefits of forests will flow from precautionary management that protects the biodiversity values and enables landholders to benefit from potential sources of funding such as carbon credits or the Biodiversity Conservation Trust. Should the FLAB result in the prioritisation of short-term timber extraction over long term sustainability, this element of ESFM will be violated.

(vii) natural heritage values,

(b) ensuring public participation, provision of information, accountability and transparency in relation to the carrying out of forestry operations,

Unfortunately, the FLAB is unlikely to increase (or even maintain) the degree of transparency around logging operations. For example, the Minister may decide not to publicly exhibit submissions to a PNF code. We also note that the intent is for consultation to be similar to the land clearing codes, and make the point that this consultation was not at all transparent from our perspective, as no feedback from environment groups as to how to improve codes was incorporated into the final codes, with no explanation as to why not. The concerns raised about the codes persist to this day. We **recommend** that inadequate public consultation result in the invalidation of a code.

We would also **recommend** that a public PNF register is established, and are concerned that the FLAB does not require this. A public register should allow the public to see where a PNF license had been granted, and to view the PNF plan. This would avoid confusion as to the legality of operations (such confusion has been reported in land clearing, where neighbours are uncertain as to whether clearing is approved) and enable the public to assess whether PNF was being conducted in line with a plan, which in turn would assist in compliance. This is also important for Local Government's ability to protect its local environment: it undermines development controls and zoning to enable PNF to be regulated by the State without any information being made available.

Finally, the lack of 'third party' rights to oversee public native forest logging is exceptionally undemocratic and entirely at odds with the goal of transparency. A sustainable logging industry should have nothing to fear from robust public oversight—particularly as State Forests are public land. We **recommend** third party standing should be reinstated.

(c) providing incentives for voluntary compliance, capacity building and adoption of best-practice standards

The best incentive for voluntary compliance is a robust compliance regime that incentivises voluntary compliance via a respect for the law. This includes robust public oversight via legal standing, public registers and prompt digital data availability (pertaining to timber volumes and environmental protection).

(d) applying best-available knowledge and adaptive management processes to deliver best-practice forest management

We do not have confidence that the FLAB will enable this element of ESFM to be met. See next point on the precautionary principle.

(e) applying the precautionary principle (as referred to in section 6 (2) (a) of the Protection of the Environment Administration Act 1991) in preventing environmental harm.

We would contend that logging typically fails to apply the precautionary principle. For example, Forestry Corporation has publicly cited a lack of data as evidence as to a lack of impact of logging on koalas, despite knowledge of steep declines in koala populations²⁴. This is not consistent with the precautionary principle. We would also point out that the proposed IFOA changes are entirely inconsistent with the precautionary principle. This is evident from the uncertainty among the threatened species expert panel on the IFOA surrounding the ability of the environmental measures to adequately protect the full range of flora and fauna in logging operations, because there has been little data gathered by industry upon which to make decisions. The correct application of the precautionary principle in this case would have been to exclude logging from the habitat of threatened species and permanently protect it.

3. Penalties and enforcement

We **support** the inclusion of an offence for contravening a PNF plan and code, and the penalties proposed. However, we note that in order to maximise the rigour of the compliance regime, the PNF plans should be on a public register. We **support** the EPA being the regulatory authority, and we **support** the ability of the regulator to issue stop work orders and to order remediation work.

4. Public consultation

We **recommend** an increase in the public consultation periods to eight weeks, or 56 days, from the proposed four weeks (28 days). Governance arrangements require many organisations to seek board approval of submissions and 28 days does not allow for this. Local Government is also unable to respond to a consultation period of 28 days due to meeting cycles, which undermines local democracy.

5. PNF plans and mapping

If a PNF plan is to be effective, two key elements relevant to mapping are required: first, the map must accurately identify features that require protection. These include (but are not limited to) threatened ecological communities (the EPA should expand its TEC mapping accordingly); current extent of rainforest and old-growth; wilderness; rare and endangered ecosystems (according to national JANIS criteria); heavily cleared ecosystems (>70%); poorly reserved ecosystems (<30%); areas of high biodiversity and areas of outstanding biodiversity value; seasonal hotspots; centres of endemism; refugia, stream buffers; steep and erodible soils; wetlands and their buffers; rock outcrops; regionally significant wildlife corridors and remnant native vegetation.

Second, the mapped features must be identifiable on the ground in order for them to be protected. This will require on-ground landholder contact from a qualified agency. Contractors and/or Forestry Corporation are not suitable agencies to provide advice because they have a clear conflict of interest and motivation to maximise timber output and, in the case of the latter, has been unable to protect environmental matters on Crown land.

We would also suggest that Plans include an assessment of timber volume from the operations. This would allow public oversight as to the accuracy, or otherwise, of projections, and future assessment of actual outcomes against expected outcomes.

6. Concurrence

We are concerned that the power to make PNF codes has been moved from the Environment Minister to the Minister for Lands and Forestry (although we acknowledge the concurrence of the Environment Minister is still required). However, the concurrence of the Primary Industries Minister is also required, creating a clear imbalance.

We **recommend** that PNF codes be made by the Environment Minister, with the concurrence of the Minister for Lands and Forestry, and **recommend** the concurrence of the Primary Industries Minister be removed.

7. Exercising powers and functions

We **recommend** Ministers (or Government officials) should exercise powers and functions 'to achieve' or 'in accordance with' the ESFM definitions in part 5B. The term 'have regard to' is too subjective.

Yours sincerely,

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