Submission No 39

INQUIRY INTO PROVISIONS OF THE FORESTRY LEGISLATION AMENDMENT BILL 2018

Organisation: North East Forest Alliance

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North East Forest Alliance

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NEFA submission to:

Inquiry into the Provisions of the Forestry Legislation Amendment Bill 2018

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The North East Forest Alliance (NEFA) was formed in 1989 and has thus had a long involvement in forest issues under a variety of legislative and structural changes. We have undertaken a number of successful court cases when the (then) Forestry Commission was in significant breach of their legal obligations. We have undertaken peaceful non-violent direct actions, and been arrested for our efforts. We worked closely with all stakeholders and State and Commonwealth agencies during the Comprehensive Regional Assessment. And we have undertaken numerous audits of forestry operations.

Recommendations:

Regulation of private native forestry

It is considered totally inappropriate that the Minister for Lands and Forestry should prepare Codes of Practice for private property given that his priority is to obtain timber from private land to make up for public shortfalls. Clause 60ZT 'Responsibility for preparation and making of code' should identify the Minister administering the *Biodiversity Conservation Act 2016* responsible for preparing and making private native forestry codes of practice.

Requirements that Codes of practice include provisions relating to "biodiversity conservation" is a grossly inadequate basis to ensure protection of threatened species and ecosystems. In order to increase the chances of any resultant Code of Practice providing meaningful protection for threatened species it is proposed that 60ZT (3) be expanded to include provisions relating to:

> (b) biodiversity conservation that maintains the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations,
> (b2) threatening processes, threatened species, populations and ecological communities under Part 4 of the *Biodiversity Conservation Act 2016*:
> (b3) Commonwealth recovery plans and conservation advices under the Environment Protection and Biodiversity Conservation *Act* 1999

The intent should be to identify needed prescriptions to minimise impacts on threatened species and ecosystems and to require adequate surveys to identify all those requiring species specific protection.

Section 60ZR needs to expand the objects to separate out and expand "protect biodiversity" to a separate clause:

> (c) to protect biodiversity (including threatened species, populations and ecological communities under Part 4 of the *Biodiversity Conservation Act 2016)*

Clause 60ZU (1) sets a minimum consultation period on draft Codes of Practice of 4 weeks, given that Codes of Practice are complex documents that are infrequently reviewed, the timeframe for exhibition should be extended to 8 weeks to allow for meaningful consultation.

Clause 60ZU (5) allows that there is no requirement to comply with the basic requirements for the draft Codes of Practice to be made publicly available for a period of at least 4 weeks and for the minister to consider any submissions, do not have to be complied with. This clause must be removed.

The current secrecy surrounding PNF approvals are contrary to the one of the basic principles of ESFM supposedly underpinning the bill: *(b) ensuring public participation, provision of information, accountability and transparency in relation to the carrying out of forestry operations*. Clause 60ZY should be amended to include:

> (2) In determining whether to approve a draft plan (with or without modification), Local Land Services is to have regard to the following:
>
> ...
>
> (c) The advices of any other agency or local government authority with specific responsibility for the subject lands.
>
> ...
>
> (6) Before approving a private native forestry plan Local Land Services must inform neighbours and publicly exhibit the proposed plan for a period of at least 4 weeks.
>
> (7) Approved private native forestry plans will be publicly available.

Schedule 2 Amendment of Forestry Act 2012 No 96

Conditions 69D and 69F are to be amended to remove the need for advertising in newspapers of proposed Forest Agreements. This will reduce opportunities for people to be informed in a timely manner of such proposals. 69G 4a reduces giving 6 months' notice in a newspaper down to 28 days. 69NA also requires only 28 days exhibition for an Integrated Forestry Operations Approval. The exhibition period of 4 weeks specified in 69D 2b and 69 2b is already inadequate for what are complex and long lasting documents with significant consequences for public lands, and should be increased to 8 weeks. 69G 4a should certainly not be reduced below 2 months and 69NA should be at least 8 weeks.

The new bill seeks to remove grazing from the ambit of the IFOA by deleting clause 69K(3), while limiting its consideration to a regulation under 92(2p) . This is strongly opposed. Grazing on State forests in north-east NSW has supposedly been regulated in accordance with Forest Agreements since 1999. Because of the significant impacts of grazing on threatened species, wetlands and streams the intent of the IFOA was to not allow any expansion of grazing, to exclude grazing from "informal reserves" and "exclusion zones", and for the Forestry Corporation to prepare grazing management plans within 2 years. The removal of grazing from the ambit of the IFOA will allow for a significant increase in environmental impacts.

It is proposed to amend Section 69ZA 'Application of statutory provisions relating to proceedings by third parties' to tighten the current limitation on 3rd party enforcement. Given the proven lax and ineffective enforcement by the EPA it is essential that 3rd party rights to enforce the IFOA be reinstated, at a minimum Section 69ZA should be deleted, though it should be replaced with the well tested Section 9.45 'Restraint etc of breaches of this Act' from the Environmental Planning and

Assessment Act 1979. Community groups can not afford to take frivolous cases so it is hard to fathom why the NSW Government is so adverse to allowing civil enforcement of the IFOA.

NEFA is concerned that the transitional provisions of "17 Existing IFOAs" may have the effect of making our 5 outstanding complaints of breaches to the EPA regarding logging operations in Sugarloaf, Gibberagee and Gladstone State Forests irrelevant. We seek assurances that the EPA's tardiness in dealing with our significant complaints will not invalidate them or the ability of the EPA to later prosecute them.

Contents

1. Objective a: Regulation of private native forestry

1.1. Private Native Forestry Codes

Section 60ZT: The private native forestry codes under the proposed Part are to be made by the Minister for Lands and Forestry with the concurrence of the Minister for the Environment and the Minister for Primary Industries.

The proposal to give the responsibility for developing a revised Private Native Forestry Code of Practice to the Minister for Lands and Forestry is strongly opposed. There are many problems and deficiencies with the current PNF Code, though handing the rewriting over to an agency that has been specifically targeting private lands to make up for sawlog short-falls from public lands is a blatant example of putting the fox in charge of the hen-house. There can be no doubt that the emphasis will be on reducing existing environmental protections rather than improving them to effectively implement the principles of ESFM.

60ZT Responsibility for preparation and making of code should identify the Minister administering the *Biodiversity Conservation Act 2016* responsible for preparing and making private native forestry codes of practice.

The Private Native Forestry Code was introduced by the NSW Government in August 2007 and sets the minimum operating standards for harvesting in private native forests. Under the Code, broadscale clearing for the purpose of private native forestry is taken to be "sustainable" and "improve or maintain" environmental outcomes (even when it causes extensive environmental degradation) if:

- it complies with the requirements of the PNF Code, and
- any area cleared in accordance with the Code is allowed to regenerate and is not subsequently cleared.

The regulation came into effect on 1st August 2007. The announcement included $30 million restructuring funds for the timber industry. These were only meant to be an interim measure while the Government developed a new Act to regulate private native forestry over the next few years.

The Regulation requires that all logging operations on private land require a Property Vegetation Plan (PVP) or a development consent that complies with the Codes of Practice. A PVP could be approved for up to 15 years.

The Department of Environment and Climate Change was put in charge of the implementation of the Code of Practice. At the time NEFA were concerned that most of the important duties under the Code were given to ex-Department of Natural Resources staff within DECC who had a long history of promoting logging industry interests and being antagonistic towards conservation outcomes. These same staff and attitudes were later transferred to the EPA, and their roles in remapping oldgrowth for logging, remapping endangered rainforest for roading, identifying core Koala habitat for logging, and turning a blind eye while a road was pushed through exclusions areas for Koalas and threatened plants later (see Case Study 1) confirmed NEFA's concerns that it remains a captured bureaucracy. Given the secrecy that surrounds this unit, we can only guess at the magnitude of their crimes,

Under the Native Vegetation Act 2003, harvesting and associated forestry operations conducted for the purposes of PNF require an approved PNF Property Vegetation Plan (PNF PVP). PNF operations under a PNF PVP must be conducted in accordance with the PNF Code of Practice (the Code). The Code has been granted biodiversity certification under the Threatened Species Conservation Act 1995 (TSC Act). This means that once a PVP has been approved, landholders do not need to separately apply for a licence under the TSC Act. Yet they provide no meaningful protection for threatened species or Endangered Ecological Communities.

The PVP process is just a simplistic desk-top approval. The PNF Code of Practice is the regulatory mechanism. There is nothing in the EPA's guidelines relating to Private Native Forestry that require surveys for any threatened species. Rather the species-specific protections identified in the code only apply to a 'known record' on Wildlife Atlas or 'site evidence' where a landowner may incidentally come across evidence of a threatened species.

Most PNF logging operations are undertaken in areas where there have been no surveys for threatened species and thus there are no "known" records. Therefore the reliance is on incidental "site evidence" which is unlikely to be accidentally found for most threatened species, and even where evidence (such as quoll or Koala scats) may be found and identified by an experienced

person, the landowner or contractor have a clear financial incentive not to admit to it. This means that while the PNF code has many potentially useful prescriptions for threatened species they a practically useless.

For example, for koalas, the specific provisions for the PNF Code of Practice are:

(a) Forest operations are not permitted within any area identified as 'core koala habitat' within the meaning of State Environmental Planning Policy No. 44 – Koala Habitat Protection

(b) Any tree containing a koala, or any tree beneath which 20 or more koala faecal pellets (scats) are found (or one or more koala faecal pellets in Koala Management Area 5) must be retained, and an exclusion zone of 20 metres (50 metres in Koala Management Area 5) must be implemented around each retained tree.

(c) Where there is a record of a koala within an area of forest operations or within 500 metres of an area of forest operations or a koala faecal pellet (scat) is found beneath the canopy of any primary or secondary koala food tree (see Table I below), the following must apply:

(i) A minimum of 10 primary koala food trees and 5 secondary koala food trees must be retained per hectare of net harvesting area (not including other exclusion or buffer zones), where available.

(ii) These trees should preferably be spread evenly across the net harvesting area, have leafy, broad crowns and be in a range of size classes with a minimum of 30 centimetres diameter at breast height over bark.

(iii) Damage to retained trees must be minimised by directional felling techniques.

(iv) Post-harvest burns must minimise damage to the trunks and foliage of retained trees.

Clause (a) is next to useless as of the four Comprehensive Koala Plans of Management (CKPoM) approved over the past 22 years, the Coffs Harbour CKPoM is the only one to identify core Koala habitat across the LGA and the Kempsey CKPoM only identifies two very small areas. Even then, from 2007-2010 the PNF unit of DECC (NPWS) approved 60 PVPs allowing logging of 2,000 ha of the 19,000 ha of mapped core Koala habitat identified in the Coffs Harbour CKPoM. Even though NPWS had prepared the CKPoM and signed off on it as meeting all legal requirements, they later claimed it hadn't been legally gazetted. (see 2.1.6 of NEFA submission to the NSW Koala Strategy at http://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/programs-legislation-and-framework/nsw-koala-strategy/koala-strategy-public-submissions)

Clauses (b) and (c), like all species specific provisions in the PNF Code of Practice, are triggered by either the existence of koala records in the Atlas of NSW Wildlife or the identification of the presence of koalas (or evidence of their presence) by the landholder and/or a logging operator. There are very few records in the Atlas of NSW Wildlife for private lands. The PNF Code of Practice does not require pre-logging surveys for koalas or any other species, which means they are usually neither identified nor protected.

Clear examples of the failure to identify threatened species in PNF operations are provided in Case Studies 1 and 2 appended to this submission. In both cases NEFA engaged experts to undertake simple surveys that proved the presence of threatened species that required significant additional

habitat retentions to reduce logging impacts on them. No action would have been taken to apply the necessary impact mitigation measures on these species unless NEFA had intervened.

At Whian Whian (Case Study 1) the Forestry Corporation were undertaking the logging operation, using their same team that usually plan and execute logging operations on public lands in the region - meaning that they are meant to be fully trained in the identification of the relevant threatened species and species specific retention requirements. Because it was obviously suitable habitat, NEFA engaged an acknowledged expert to undertake a survey which located Masked Owl, Sooty Owl and Marbled Frogmouth on the property. Even then the Forestry Corporation refused to apply the required prescriptions, claiming the records didn't legally constitute a 'known record' as they were not on Wildlife Atlas. It wasn't until days later when a blockade by concerned locals stopped them leaving the forest until they committed to applying the required prescriptions that they very reluctantly agreed. This clearly demonstrates that there is no will on behalf of the Forestry Corporation to apply even minimal mitigations for threatened species unless made to by unequivocal legal requirements. That a Government Agency can display such contempt for threatened species is sad. Nothing better can be expected from untrained private logging contactors chasing a buck.

This contempt for threatened species was reinforced a couple of days later when NEFA (Case Study 1) found the route of a new road marked to pass within what should have been 20m buffers for 8 Koala high use trees (>20 scats), over 60 vulnerable Red Bopple Nut *Hicksbeachia pinnatifolia,* and 3 endangered Slender Marsdenia *Marsdenia longiloba.* This route was marked by Foresters who should have been familar with these species but simply did nit care because they hadn't been "recorded". After a prolonged process where the EPA refused to implement a Stop Work Order and turned a blind eye, the Forestry Corporation proceeded to construct an illegal track through what should have been 20m exclusion zones for 3 Koala high use trees, 7 endangered Slender Marsdenia, 12 vulnerable Arrow-head Vines, and 8 vulnerable Red Bopple Nuts, most of which had been identified and tagged with pink tape (by either NEFA or the Forestry Corporation) prior to track construction. These breaches were done knowingly.

Two Slender Marsdenia were killed, one injured and 3 are missing. One Arrow-head Vine later died. The EPA issued the Forestry Corporation with two Penalty Notices (each with a fine of $5,500) on the 11 September 2015 for constructing their track through what should have been 20m exclusion zones for a Koala High Use Tree and the Endangered vine Slender Marsdenia. They were also issued with an Official Caution for violating buffers of 4 Red Bopple Nuts, with violations of 6 Arrow-head Vine buffers noted. This is half the breaches documented by NEFA. Given that the EPA had almost used up their 2 years for legal action, the Forestry Corporation simply waited for the 2 years to expire before telling the EPA that they would not pay the fines. They got away scot free.

NEFA also found that the OEH had wrongly remapped rainforest on the Whian Whian property to delete rainforest that qualified as both the Endangered Ecological Community (EEC) Lowland Rainforest in NSW North Coast and Sydney Basin Bioregion under the NSW Threatened Species Conservation Act, and the Critically Endangered Lowland Rainforest of Subtropical Australia under the *Environment Protection and Biodiversity Conservation Act 1999*. This was done to allow the Forestry Corporation to construct a road through it, with deleted rainforest reassigned as cleared land or as part of the logging area. At no stage in their assessments or remapping did the Forestry Corporation, EPA or OEH recognise they were dealing with endangered rainforest. Despite NEFA presenting detailed evidence to the EPA they refused to investigate.

As with all prescriptions for threatened species, the fundamental question is whether the prescription is effective in reducing logging impacts to an insignificant level, or even whether it has any beneficial effects. As with public lands, the NPWS, DLWC and EPA have been applying prescriptions for threatened species in a haphazard way since the inception of the Endangered Fauna (Interim Protection) Act 1991 on the premise that the prescriptions would avoid "a significant effect". Though, as far as we are aware, there has never been any attempt to assess the effectiveness of prescriptions - the agencies just don't care.

While it is recognised that the failure to provide any meaningful protection for threatened species and ecosystems has to be dealt with in the Codes of practice, it is important that the legislation provide the basis for ensuring this. It is clear that the current legislation has failed and reference to the vague term "biodiversity conservation" will not rectify the existing problems, rather it is likely to exasperate them.

Under clause 60ZT 'Responsibility for preparation and making of codes' Clause (3) requires that Codes of practice include provisions relating to " biodiversity conservation". This is an inadequate basis to ensure compliance with the requirements of the *Biodiversity Conservation Act 2016* and should not be considered adequate to grant exemption from that act. In accordance with the North East Regional Forest Agreement Clause 62 that requires "*The Parties agree that the management prescriptions or actions identified in jointly prepared and agreed Recovery Plans or Threat Abatement Plans will be implemented as a matter of priority* ".

Requirements that Codes of practice include provisions relating to "biodiversity conservation" is a grossly inadequate basis to ensure protection of threatened species and ecosystems. In order to increase the chances of any resultant Code of Practice providing meaningful protection for threatened species it is proposed that 60ZT (3) be expanded to include provisions relating to:

> **(b) biodiversity conservation that maintains the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations,**
> **(b2) threatening processes, threatened species, populations and ecological communities under Part 4 of the *Biodiversity Conservation Act 2016*:**
> **(b3) Commonwealth recovery plans and conservation advices under the Environment Protection and Biodiversity Conservation *Act* 1999**

The intent should be to identify needed prescriptions to minimise impacts on threatened species and ecosystems and to require adequate surveys to identify all those requiring species specific protection.

Section 60ZR Objects of Part gives:

> The objects of this Part are:
> (a) to authorise the carrying out of private native forestry in accordance with principles of ecologically sustainable forest management, and
> (b) to protect biodiversity and water quality (including threatened species, populations and ecological communities under Part 7A of the *Fisheries Management Act 1994*) in connection with private native forestry operations.

Section 60ZR needs to expand the objects to separate out and expand "protect biodiversity" to a separate clause:

(c) to protect biodiversity (including threatened species, populations and ecological communities under Part 4 of the *Biodiversity Conservation Act 2016)*

Clause 60ZU (1) sets a minimum consultation period on draft Codes of Practice of 4 weeks, given that Codes of Practice are complex documents that are infrequently reviewed, the timeframe for exhibition should be extended to 8 weeks to allow for meaningful consultation.

Codes of Practice are only ever prepared infrequently, for example it is already 11 years since the last one. They are complex documents that should be exhibited for a reasonable time, which is proposed should be 8 weeks rather than 4.

Clause 60ZU (5) allows that the basic requirements for the draft Codes of Practice to be made publicly available for a period of at least 4 weeks and for the minister to consider any submissions do not have to be complied with, this clause should be removed.

This clause relates to public consultation over codes, it simply requires a code to be made publicly available for a period of at least 4 weeks and for the minister to consider any submissions. It is astounding to have clause which allows '(5) A failure to comply with a requirement under this section in relation to a proposed code of practice does not prevent the code being made, or invalidate the code once it is made', meaning that even these basic requirements do not have to be complied with.

Clause 60ZV (3) gives the Minister discretion to make minor or urgent changes without any consultation so there can be no excuse for weakening Clause 60ZU.

1.2. Division 3 Private native forestry plans

60ZY provides that a private native forestry plan has effect only if it is approved by Local Land Services. Though the Bill is silent on the need for consultation with relevant agencies and the provision of the plan to local Councils, neighbours and the general public. The current practice is that plans are only available to the landowner and the EPA, and they refuse to provide them to any other person or even local government.

It is recommended that clause 60ZY be amended to include:

(2) In determining whether to approve a draft plan (with or without modification), Local Land Services is to have regard to the following:

...

(c) The advices of any other agency or local government authority with specific responsibility for the subject lands.

(6) Before approving a private native forestry plan Local Land Services must inform neighbours and publicly exhibit the proposed plan for a period of at least 4 weeks.

(7) Approved private native forestry plans will be publicly available.

The current secrecy surrounding PNF approvals are contrary to the one of the basic principles of ESFM supposedly underpinning the bill: *(b) ensuring public participation, provision of information, accountability and transparency in relation to the carrying out of forestry operations*. This secrecy has the perverse consequences of undermining the ESFM principle of *c) providing incentives for voluntary compliance, capacity building and adoption of best-practice standards*, as the only accountability is to the EPA and not affected communities.

The RFA definition of ESFM elaborates:

Principle 2 Ensure public participation, access to information, accountability and transparency in the delivery of ESFM.

- Ensure public participation in decision-making processes at local, regional and State and Federal levels.
- Ensure comprehensive, timely and reasonable public access to information.
- Ensure transparency, openness and accountability in decision making processes and performance.

It is clear from our experience that any claims that Private Native Forestry is adequately or competently regulated or that the PNF code achieves the principles of ESFM are plainly false. The minimum standards established by the PNF Code are too minimal to achieve ESFM, this is most apparent by their failure to provide any meaningful protection for threatened species or Endangered Ecological Communities. Theoretically they are meant to provide protection for mapped rainforest and oldgrowth forest, though these are open to review and the regulatory authorities have wrongly remapped significant areas of both. The lack of transparency hinders accountability.

It is abundantly clear that all aspects of PNF are undertaken in a secretive process where no information is publicly provided, even to Local Councils when they have over-lapping responsibilities, this is in direct contravention of '**Principle 2 Ensure public participation, access to information, accountability and transparency in the delivery of ESFM'.**

One of the biggest problems NEFA encountered with private land logging at Whian Whian (Pugh 2014) was the total secrecy involved. Legally we were not allowed to trespass on private property once we were asked to leave, which created dilemmas when we knew there were likely to be Koala High Use Trees and threatened plants along the route of a road that the Forestry Corporation were intending to bulldoze the next day, and the EPA had made it clear they were going to do nothing to stop them. Our survey found 8 Koala High Use Trees, over 60 vulnerable plants and 3 endangered plants on the route.

Though the secrecy became most apparent when we found that the Office of Environment and Heritage, at the request of the Forestry Corporation and EPA, had remapped rainforest on the Whian Whian property to reclassify large areas of the nationally listed Critically Endangered Lowland Rainforest of Subtropical Australia as part of the logging area or cleared land to enable the Forestry Corporation to construct a road through it. We engaged an expert who proved from ground transects and Aerial Photographic Interpretation (API) that it had been wrongly remapped (Pugh 2014), with obvious major errors that should not have been made by a half-competent API practitioner.

Under DECCW's Old Growth and Rainforest Private Native Forestry assessment protocols a private landowner can a request a review of oldgrowth and rainforest mapped in 1998 as part of the Comprehensive Regional Assessment process. A 2010 internal review of DECCW's (now OEH) methodology for remapping oldgrowth forest found it was fundamentally flawed and that a significant amount of the mapped oldgrowth was being wrongly deleted. Webster (2010) found that *"the protocol implementation is working very well for rainforest"*, but that implementation for *"old-growth is highly variable and problematic and has apparently resulted in some areas of old-growth being potentially available for harvest"* . Transect assessments resulted in PNF old-growth classification in 4 out of 5 areas that were not identified by DECCW assessments as being old-growth.

NEFA considered that as much as 8 thousand hectares of mapped oldgrowth forest were likely to have been remapped as not being oldgrowth, and thus been made available for logging, in numerous 15 year Property Vegetation Management Plans. The reviewer hoped that improved imagery and hardware, combined with fieldwork, and regular peer review would increase the accuracy and reliability of DECCWs remapping. In November 2012 NEFA attended a field day organised by EPA aimed at showcasing how OEH had improved their oldgrowth field assessments, though it revealed a fundamentally flawed field assessment process that was strongly criticised by all stakeholders.

Whian Whian proved that OEH had still not rectified the manifest deficiencies in their remapping, and that to the contrary, even with state of the art imagery and equipment there was something very wrong. Despite the comprehensive and detailed evidence we presented (Pugh 2014) the EPA refused to investigate our complaint and when we submitted a freedom of information request (GI(PA) Act) both the EPA and OEH refused to provide any documents on their remapping on the grounds that there was "*a public interest consideration against disclosure of information*" because the remapping of public data by a public agency was "*personal information*" and its release may cause harm to a person.

The curtain of secrecy surrounding PNF is intended to hide what is going on from public view. While it is recognised that there needs to be a degree of confidentiality, the lack of any independent scrutiny has enabled the EPA to become a captured agency and encouraged bad practices.

From his review of forestry self-regulation in Tasmania, Prest (2003) considered that it contained insufficient safeguards and "*insufficient measures to counteract the strong incentives to under-report threatened species matters*", noting that when combined with secrecy provisions:

> *the system of self-regulation can create an environment in which external review, evaluation and critique are unwelcome. In such a context, conditions are created in which it is possible, or even expected, for participants to turn a blind eye to breaches of the Act and Code.*

While we supposedly have an independent regulator in NSW, this seems to sum up the situation in NSW. Prest (2003) identifies that there is a danger when the regulator identifies those they are meant to regulate as their "cutomer" or "client". Our experience at Whian Whian was that the EPA perceived their role being to facilitate the Forestry Corporation's activities (regardless of the consequences) while regarding the locals who were complaining as the problem. Prest (2003) suggests that "*the institutional solution is to separate roles and responsibilities between the regulator and the service provider, by creating an Office of the Forest Regulator separate to extension services*".

Prest (2003) also identifies that that "'*soft' techniques for behaviour change, although vital, must take place within a context of the threat of coercive action to ensure compliance. Threats and inducements must be perceived as real, not a mere bluff*". The EPA appear unwilling to regulate private forestry, they are a captured agency.

It is considered that as well as effective regulation there needs to be incentives in the form of stewardship payments to protect high conservation value areas (such as core Koala habitat) on private property. To improve regulation of PNF in NSW, Prest (2003) makes a number of recommendations, including:

offering financial incentives and other inducements for biodiversit conservation and for positive land-management actions to private landholders, in order to overcome existing countervailing incentives to destroy biodiversity.

It is evident that current regulation of private native forestry is ineffective as shown by Jamax Forest Solutions (2017) "Report on survey of NSW north coast private native forest harvesting contractors" undertaken for DPI, it identifies:

67% of PNF harvesting contractors believed that the majority to vast majority of landowners were only interested in maximising the income from their forest

The survey results highlight that the majority of landowners are not thinking beyond the current harvest and have little or no knowledge of sustainable forest management.

For landholders who know little about forestry, there is currently nowhere to go for free independent advice. There has been no formal training offered or provided to either landholders or forestry contractors by the EPA in at least the last 4 years. In the absence of any guidance from the EPA, landholders tend to rely heavily on contractors and mills, who themselves may not possess the requisite technical skills to provide appropriate forestry advice.

Harvesting contractors noted that many landholders have forests that are unproductive and in poor health (e.g. degraded by high grading over many decades) and that EPA officers demonstrated that they have no interest in helping landholders improve forest health and productivity. On the contrary, the EPA Private Native Forestry Officers advocate for similar high-grading harvesting operations with little thought to promoting biodiversity or replenishing the site with vigorous regeneration.

Even though 73% of PNF landowners already have a PNF PVP through the NSW EPA before they meet a harvesting contractor, 78% of landowners understand very little (0-20%) about the PNF requirements.

NEFA have only taken two audits of private properties, once at Whian Whian in 2013 (Final Audit of Whian Whian Property) and once at Limpinwood in 2017 (NEFA Audit of Hewitville Property). Both show that there is no meaningful protection for threatened species in PNF operations and that the EPA are neither competent nor effective regulators.

The forestry plans seen by NEFA are simplistic documents, often just a basemap with mapped streams, rainforest and oldgrowth provided by EPA over which vague intents, such as new roads, are roughly indicated. Their extremely poor standard is reflective of their secrecy and therefore lack of public accountability. This is not a standard that would be accepted for a Development Application (DA).

PNF operations can involve logging of hundreds of hectares, construction of numerous new roads, and numerous creek crossings, and yet all that is required is a "back-of-the-envelope" plan and a sign off by a LLS employee. All other major developments on private lands requiring Council approval require a DA, Statement of Environmental Effects, assessments of threatened species and expert assessments where major earthworks are proposed. Most importantly they require public exhibition where affected and concerned people can scrutinize the documents and make submissions.

PNF is often of a far greater extent and of far greater impact than other developments on private land required to be assessed in open and transparent processes with opportunities for public scrutiny.

Currently the contents of PNF plans remain unknown to the public and even Crown Lands and local Government when they have legal responsibility for the protection and management of the lands covered by the EPA's approval. The EPA don't even refer proposals to affected agencies for their comments.

This is clearly apparent for the Limpinwood property in the Tweed Local Government Area (see PNF Case Study 2) where a significant part of the area covered by both the PVP and PNF approval is identified in the Tweed LEP as Zone 7 (d) Environmental Protection (Scenic/Escarpment) and 7(l) Environmental Protection (Habitat). Though the EPA gave approval to the landowner to log these areas without bothering to consult Council as to the appropriateness of the works proposed or to find out whether Council required any modifications. The EPA refused to even provide Council with a copy of their approval. Similarly the EPA approved roads within the PVP area to be constructed on Crown Road reserves, and for Crown Road reserves to be used for access, without consulting Crown Lands.

The outcomes were that 3.5km of roads were constructed on Crown road reserves without the consent of Crown Lands (and with significant pollution problems and excessively steep sections), and some 18ha of environmental zones were logged without the consent of Council. And the EPA claim it is none of their responsibility. They should never have approved these works in their PVP and PNF approval.

2. Objective b: Regulatory framework for public native forestry and the enforcement role of the Environment Protection Authority.

This submission focuses on the issues of PNF associated with planning, environment, natural resources (i.e sawlogs) , and public administration

Schedule 2 Amendment of Forestry Act 2012 No 96

2.1. Public Consultation

Condition 69D 'Public consultation on making agreement' is to be subject to a variety of amendments to remove the requirement for advertising the agreement in newspapers. This will significantly reduce people's ability to become aware of the proposal. Section 69F 2(a) and (b) are similarly altered. Given that Forest Agreements are complex documents that are infrequently reviewed, and the reduced ability for the public to become aware of the public exhibition of an agreement, the timeframe for exhibition given in 69D 2b and 69F 2b should be extended to 8 weeks to allow for meaningful consultation.

The most significant change is to 69G 'Review of agreements and related integrated forestry operations approvals' where 4 a is to be reduced from "giving at least 6 months' notice of the review" in a newspaper to "giving at least 28 days public notice of the review".

69NA Public consultation on proposed approvals similarly proposes giving at least 28 days notice of a proposed integrated forestry operations approval.

Forest Agreements are only ever prepared infrequently, for example it is already 20 years since the upper and lower north east forest agreements were signed. They are complex documents that should be exhibited for a reasonable time, which is proposed should be 8 weeks rather than 4.

2.2. Grazing

69K 'Forestry operations to which Part applies' section (3) makes it clear that the definition of forestry operations includes bee-keeping and grazing, the new bill seeks to remove these from the ambit of the IFOA by deleting clause 69K(3). Grazing was explicitly excluded from areas currently without permits to limit any increase in the significant impacts grazing has. There were also requirements for grazing plans to constrain the impacts of grazing.

The grazing industry has a variety of obvious affects on native ecosystems through clearing of vegetation, competition with native herbivores for the best feed, construction of fences which impede native species, control of native predators (including through indiscriminate baiting programs), use of herbicides, use of fertilisers, construction of artificial watering points, and the introduction of exotic plant species for feed.

Livestock also have significant direct impacts on native ecosystems and water bodies (see **Impacts of Grazing**). The principal environmental impacts of livestock have been found to be:

- changing the structure and species composition of ground cover and understorey vegetation;
- promoting the invasion of exotic plant species;
- reducing regeneration of overstorey trees and increasing the mortality of remaining trees;
- causing reductions in populations of a broad range of mammals, birds, reptiles, amphibians, fish and invertebrates through habitat degradation;
- compacting, degrading and baring soils;
- increasing runoff and erosion, and the transportation of sediments and nutrients (i.e. N and P) into streams from soils and excrement*;*
- destabilising and eroding stream banks, and changing the morphology and flow regimes of streams;
- significantly impacting on water quality and stream biota by increasing turbidity and nutrients; and
- affecting human health through the depositing of feces and urine in and near streams which can cause contamination by a range of viruses, bacteria and parasitic protozoa.

Grazing on State forests in north-east NSW has supposedly been regulated in accordance with Forest Agreements since 1999. Both the Forestry Corporation"s Environmental Impact Statements and the State"s Comprehensive Regional Assessments identified gazing as having significant environmental impacts. The intent of the IFOA was to not allow any expansion of grazing, to exclude grazing from “informal reserves” and “exclusion zones”, and for the Forestry Corporation to prepare grazing management plans within 2 years.

A 2009 audit by NEFA found that, amongst numerous other problems, that the Forestry Corporation were allowing grazing in areas where it was not approved, not excluding “informal reserves”, “exclusion zones” or mapped Endangered Ecological Communities, and still had no Grazing Management Plan.

It was not until 2013 that a Grazing Management Plan was prepared for the Upper North East region, though it fails to consider relevant research (even the Forestry Corporation‟s own), doesn‟t comply with the statutory requirements, and proposes to consider impacts through some unspecified future monitoring. The Environment Protection Authority approved the plan, and is now proposing removing all constraints on grazing. There appears to have been no meaningful attempt to identify or redress the impacts of grazing on public forests over the past 16 years.

Approximately 110,748 ha of State forests in north-east NSW are under annually renewable forest permits issued by the Forestry Corporation. An additional 122,438 ha is held and grazed as lease-hold tenure under the *Crown Lands Act, 1989* administered by the Forestry Corporation. As noted by the Forestry Corporation (2012, 2013) "*The Corporation also issues short-term Forest Permits where grazing is not expected to continue for more than about six months and where the boundaries of the area to be grazed are secure".*

The 1999 Forest Agreement for the Upper North East Region requires that grazing “*must be excluded*” from Forest Management Zone 2, which is counted as “informal reserves” and part of the Comprehensive, Adequate and Representative Reserve System. Grazing is a prohibited activity in FMZ 1 and 2.

The Integrated Forestry Operations Approval (IFOA 33 (1)), along with the terms of the Threatened Species Licence (TSL) and Fisheries Licence, require Forests NSW to prepare grazing management plans with specified strategies to control any adverse impacts on the environment. In Accordance with the IFOA a model plan was due to be submitted to DUAP by 30 June 2000 (33 (4)), with grazing management plans covering the whole of each region within 6 months of the model plan being approved (33 (5)). The IFOA states:

> ***33. Grazing management plans***
>
> *(1) SFNSW must prepare a plan (—grazing management plan‖) (or plans) that specifies (or specify) strategies to be adopted in relation to controlling any adverse impacts on the environment of grazing animals in the Upper North East Region.*

The Threatened Species Licence (TSL) defines *"Specified forestry activities"* to include *"grazing activities"*, stating "*All specified forestry activities are prohibited in exclusion zones"*, specifically prohibiting them in “High Conservation Value Old Growth Forest”, “Rainforest”, “Rare Non-Commercial Forest Types”, “Stream protection zones”, “wetlands”, “Heath and Scrub”, “Rocky Outcrops and Cliffs”, “Ridge and Headwater Habitat”, and exclusion zones established for Pouched Frog, Green and Golden Bell Frog , Giant Barred Frog, Fleay‟s Frog, Stuttering Frog, Philoria spp., White-crowned Snake, Pale-headed Snake, Albert‟s Lyrebird, Marbled Frogmouth, Owls, Rufous Scrub-bird, Brush-tailed Phascogale, Hastings River Mouse , Koala high use areas , Spotted-tailed Quoll, Squirrel Glider, Yellow-bellied Glider dens, Wombat, Golden-tipped Bat, flying-fox camps, Bat Roost Protection, and numerous Threatened Flora. NEFA is not aware of any occasion on which the Forestry Corporation has actually excluded grazing from these supposed exclusion zones.

TSL condition 5.15 requires that

a) The areal extent of grazing authorities issued by SFNSW must not be extended except where they fulfil SFNSW responsibilities under the Rural Fires Act 1997.

b) Grazing Management Plans for all SFNSW estate subject to domestic grazing must be prepared by the first five yearly review of the Integrated Forestry Operations Approval. Grazing Management Plans must consider the habitat requirements of threatened species and include management actions to protect threatened species and their habitats. SFNSW should consult with NPWS during the preparation of these Plans.

TSL condition 5.9 requires that "*Grazing and associated burning should be excluded from wetlands"*. The Fisheries Licence condition 6.1c requires that:

The areal extent of grazing authorities issued by SFNSW must not be extended in any compartment where there is no physical barrier to prevent cattle from entering exclusion zones and buffer zones implemented under the conditions of this licence,

The Forestry Corporation (2013) also identify that:

The Australian Forestry Standard AS4708:2008 and Environmental Management System standard ISO 14001 require that any damage agents (such as grazing livestock) are assessed and controlled and that the organisation's significant environmental aspects are taken into account.

2.3. Legal

It is proposed to delete Section 69S 'Civil enforcement of certain conditions of approval' which allows that "A relevant Minister may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the conditions of an integrated forestry operations approval"

Schedule 2 [28] omits provisions relating to the civil enforcement of integrated forestry operations approvals by relevant Ministers as a result of the application to the Environment Protection Authority of the civil enforcement regime under the *Biodiversity Conservation Act 2016* and as a consequence of the amendments made by **Schedule 3.1**.

It is proposed to amend Section 69ZA 'Application of statutory provisions relating to proceedings by third parties' to tighten the current limitation on 3rd party enforcement and alter the words for consistency within the Act as it relates to the new IFOAs scheme. Section 2 specifies that "*Proceedings may not be brought under a statutory provision to which this section applies*", this is specifically intended to stop 3rd parties taking the Forestry Corporation to court for clear and prosecutable legal breaches of the IFOA.

We submit that section 69ZA ought to be omitted and replaced it with Section 9.45 'Restraint etc of breaches of this Act' from the Environmental Planning and Assessment Act 1979:

S69ZA Restraint etc of breaches of this Act

1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

(2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body

corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.

(3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

The justification for this provision is that it is the provision within the *Environmental Planning and Assessment Act 1979* and so it is tried and tested as a necessary provision in the efficient and effective operation of environmental legislation. Considering all of the literature and jurisprudence on this very provision, of which there is much, there is no valid justification for not having such a provision that contributes to the function of environmental laws under the rule of law in Australia.

In the alternative and as an absolute minimum we submit that section 69ZA be omitted completely.

Application of prescriptions in the real world is where the process can often fail. In practice poor implementation is a common occurrence in NSW. NEFA considers that this is testimony to regulatory failure in NSW. Even the small sample of convictions Justice Pepper (*Director-General, Department of Environment, Climate Change and Water v Forestry Commission of New South Wales [2011] NSWLEC 102*) reviewed led her to conclude:

However, in my view, the number of convictions suggests either a pattern of continuing disobedience in respect of environmental laws generally or, at the very least, a cavalier attitude to compliance with such laws.

... Given the number of offences the Forestry Commission has been convicted of and in light of the additional enforcement notices issued against it, I find that the Forestry Commission's conduct does manifest a reckless attitude towards compliance with its environmental obligations ...

The cases reviewed by Justice Pepper were just the few that the EPA has prosecuted the Forestry Corporation for and some of those for which Penalty Notices had been issued. There are a plethora of quite serious offences that the EPA have only taken token, if any, regulatory action for.

All the years of regulation have failed to arrest the criminal behaviour of the Forestry Corporation, failed to implement the principles of ESFM and failed to provide the protection our threatened species so desperately require. It is evident is that the EPA's token 'proactive' audits and failure to apply meaningful deterrents has allowed the Forestry Corporation's *reckless attitude towards compliance with its environmental obligations* to flourish. It is also apparent that by their interpretations the EPA are continually weakening their ability to take regulatory action. It has reached the stage that, with a few exceptions, the EPA will only take meaningful regulatory action if the Forestry Corporation voluntarily confess.

Since the inception of the North East RFA the EPA have only ever prosecuted the Forestry Corporation in 2004 for one offence after they admitted guilt for 600 cubic metres of fill from a poorly constructed road in Chichester State Forest collapsing into a creek in contravention of the Environmental Protection Licence. Before the judgment was handed down the EPL was altered to exclude the vast majority of Forestry Corporation logging operations from its ambit.

In an overtly political move the EPA decided to stop issuing Penalty Notices for breaches of the TSL after January 2016. In response to our query for the EPA to explain their position the EPA 9 February 2018) responded "*we determined to focus our approach on our proactive*

regulatory program and compliance priorities. In conjunction, we considered alternative tools such as the proactive release of information via audit reports, the issuing of official cautions, investigations and prosecutions".

NEFA considers that the EPA's decision not to issue Penalty Notices as a political decision, the removal of a significant deterrent from the Forestry Corporation, a weakening of forest regulation and an intentional disincentive for NEFA's auditing. It is extremely frustrating for us to identify significant breaches that only result in meaningless and inconsequential warning letters or "official cautions".

Of equal concern is that the EPA rarely audit any species-specific prescriptions because they do not have the ecological expertise and they do not have the will because they are not compliance priorities. For example at Royal Camp (Case Study 3) they were shown a felled tree with obvious "V notch" feed marks by a Yellow-bellied Glider which was legally required to be retained, an acknowledged expert engaged by NEFA confirmed to the EPA that there was no doubt that the feeding marks were made by a Yellow-bellied glider, discussing in detail the characteristic signs and method of Yellow-bellied Glider sap feeding, showing them the obvious chewing and claw marks, and pointing out a likely nearby den tree. In response (a year later) the EPA stated "*Whilst EPA officers observed incisions as described by NEFA, the EPA could not determine beyond reasonable doubt whether the incisions had been made by a yellow bellied glider. As such no regulatory action was taken".* The EPA later admitted they were wrong not to accept the expert evidence, though still took no action what-so-ever. At the subsequent Upper House Inquiry even the Forestry Corporation admitted that it looked like a Yellow-bellied Glider Feed tree to them.

Later at Cherry Tree State Forest (Case Study 4) the EPA admitted that the 12 Yellow-bellied Glider feed trees we had identified with logging around them and physical damage, were indeed feed trees though this time refused to take any action because while many had both old and recent feed marks they couldn't prove that they were actually being used at the time of the logging.

In spite of making Endangered Ecological Communities (EECs) a compliance priority the EPA refused to take any regulatory action what-so-ever in response to the roading and logging the Endangered Ecological Community Lowland Rainforest in Cherry Tree State Forest in response to NEFA's audit (Case Study 4) . The rainforest had been mapped for decades and it had been identified and mapped as the EEC Lowland Rainforest in a joint mapping project by both the EPA and the Forestry Corporation in 2016. NEFA's review of that mapping identified 33 incursions into mapped Lowland Rainforest affecting 4.5 ha. Despite their own mapping the EPA (Jackie Miles, 1-12-17) said they would do nothing because they could not determine beyond reasonable doubt that it was an EEC.

Similarly the EPA refused to even consider or mention 90ha of the EEC Grey Box-Grey Gum Wet Sclerophyll Forest the Forestry Corporation logged within the Cherry Tree compartments. This too had been mapped jointly by both the EPA and the Forestry Corporation as an EEC in 2016, though the EPA refused to even consider it on the grounds that they have a Memorandum of Understanding with the Forestry Corporation not to use their mapping of it as a 'backward looking compliance tool', this is despite NEFA identifying numerous breaches within it before the EPA mapped it.

Though the most outrageous abrogation of their duty was the EPA December 2017) stating that they would take no regulatory action at all for 122 breaches of habitat tree protections they identified in Cherry Tree State Forest likely "*as a result of harvesting operations*", because they were not able "*to prove beyond reasonable doubt that each individual instance of damage or debris was as a result of those undertaking the harvesting operation*" "*nor could it obtain evidence that would rebut a defence that the damage was caused by some other means*". This new position rules out the EPA taking further regulatory action for most breaches unless the Forestry Corporation confess.

The attached case studies all document examples of regulatory failure by the EPA on both private and public land. It is obvious that in some cases the EPA is complicit in commission of the offences (ie see the issue of rainforest remapping in the Whian Whian Case Study), so it is no surprise that they refuse to investigate such offences. Given their lax interpretation of many legal requirements there is a need for interpretation by the courts.

The EPA are obviously a politically driven body with an aversion to enforcing the existing logging rules. If there is an intent to make the Forestry Corporation comply with their legal obligations then it is essential that there be an ability for independent enforcement and determination by the courts. This is also needed to provide clarification of what the rules actually mean. It is not easy for public interest groups to take court cases, in reality we can only do so if we have a barrister's opinion that we have very good prospects of success. We can not afford to take frivolous cases. Given this it is hard to fathom why the NSW Government is so adverse to allowing civil enforcement of the IFOA.

2.4. Transitional Arrangements

Part 3 Provisions consequent on enactment of Forestry Legislation Amendment Act 2018

NEFA is concerned that the transitional provisions of 17 Existing IFOAs may have the effect of making our 5 outstanding complaints of breaches to the EPA regarding logging operations in Sugarloaf, Gibberagee and Gladstone State Forests irrelevant. We seek assurances that the EPA's tardiness in dealing with our significant complaints will not invalidate them or the ability of the EPA to later prosecute them. They are:

- NEFA Preliminary Audit of Sugarloaf State Forest, Compartments 380 381 and 382. Dailan Pugh and Joe Sparks. November 2016
- Preliminary Audit of the Endangered Narrow-leaf Melichrus in Gibberagee SF, Dailan Pugh, NEFA February 2017
- Preliminary Audit of Gibberagee SF. Dailan Pugh, NEFA, March 2017
- Preliminary Audit of Gladstone State Forest. Dailan Pugh, NEFA, August 2017
- Supplementary Audit of Gibberagee State Forest. Dailan Pugh, NEFA, October 2017.

Schedule 2 [24] omits the current requirement that a forest agreement is a prerequisite for an integrated forestry operations approval. Forest agreements were made in connection with the original making of coastal integrated forestry operations approvals but a further forest agreement will not be required for the remaking of those approvals.

3. Case Studies:

3.1. Case Study 1: PNF Whian Whian Case Study.

NEFA (Pugh 2014) became involved with logging of a private property at Whian Whian (adjacent to the Nightcap National Park) when neighbours tried to have their concerns regarding Koalas addressed. The operation was undertaken by the same Forestry Corporation staff who oversaw logging operations in Royal Camp SF. The forester in charge of the operation, had previously accompanied EPA on their searches for Koala scats in August 2012 and July 2013 during EPA investigations of NEFA's reported Koala High Use Areas in compartments 15 and13 of Royal Camp SF.

At that time logging of private lands is supposedly regulated by the provisions of the Native Vegetation Act 2003. This act prohibits the clearing (including logging) of native vegetation without either development consent or a property vegetation plan. A property vegetation plan was prepared for this property in 2012. A PVP is a voluntary, legally binding agreement between a landholder and the Local Land Services (Catchment Management Authority).

Discussions with Forestry Corporation on 14 September 2013 revealed that they had found evidence of Koalas on the property and were thus applying the Private Native Forestry Code of Practice requirement to retain 10 primary koala food trees and 5 secondary koala food trees per hectare. Forestry Corporation said that to achieve this they were basically excluding most Tallowwoods from logging, with only "a few" proposed for removal. They also stated that they had found 2 Koala high use trees (ie with $\geq$20 Koala scats under them). For Koala high use trees the Code requires:

> *Any tree containing a koala, or any tree beneath which 20 or more koala faecal pellets (scats) are found must be retained, and an exclusion zone of 20 metres must be implemented around each retained tree.*

Tree found to be Koala high use tree on 14 September (Tallowwood to left of rd), scats shown to FC and EPA, still not accepted as a high use tree and not buffered.

Concerns that this property is of exceptional value for Koalas and that Koala's were not being adequately protected were highlighted by a brief assessment by NEFA for less than an hour of trees in the vicinity of the boundary on 14 September which located 5 Koala high use trees, none of which had apparently previously been searched. One of the Koala high use trees found had not been previously searched despite having a new road constructed right next to it. The scats at the base of the tree were shown to the Forestry Corporation on the day and to the EPA the next week, though both agencies refused to accept the evidence we showed them.

Aside from their incidental sighting of the 2 Koala high use trees, the Forestry Corporation had undertaken no survey for threatened plants or animals on the property despite it being in next to the Nightcap National Park in one of Australia's recognised biodiversity hotspots with numerous threatened species recorded in the vicinity. With all their experience the Forestry Corporation would have been well aware that there were a large variety of Threatened Species Conservation Act listed threatened plants and animals that were likely to occur on the property, just as NEFA were.

NEFA returned 4 days later to do nocturnal call-playback on the adjacent property, hearing Marbled Frogmouth responding from three valleys on the property, along with a Masked Owl and a Sooty Owl. None of these Vulnerable species had previously been identified by the Forestry Corporation. The PNF Code of Practice required establishment and marking of 20m exclusion areas on all streams in the area for Marbled Frogmouth and effectively increased retention of the largest trees from 20 per 2 hectares to 30 for the owls. The Forest Operation Plan was required to be amended and the exclusion zones marked in the forest before logging resumed. In addition to the Koala a further 11 threatened fauna species and 3 threatened flora species were identified as likely to occur within the logging area that should also be surveyed for. NEFA wrote to the Ministers for the Environment and Primary Industries asking them to stop logging while surveys by flora and fauna experts were undertaken so all the required prescriptions could be applied.

The adjacent landowners, through whose property the Forestry Corporation had constructed their track and had "Permits to Enter", withdrew access permission. Concerned locals had gathered to force compliance with the landholder's decision. In negotiations to exit through the property, the Forestry Corporation admitted they had not implemented prescriptions for Marbled Frogmouth and forest owls and when forced by protectors to state whether they will in the future, they very reluctantly state "*following alleged identification of species have decided to implement a number of prescriptions*", but refuse to state which ones.

When NEFA (Pugh 2014) learned that the Forestry Corporation were proposing to construct a new road we surveyed the marked route and identified that it passed through, and within 20m of, 8 Koala high use trees (>20 scats), over 60 vulnerable Red Bopple Nut *Hicksbeachia pinnatifolia,* and 3 endangered Slender Marsdenia *Marsdenia longiloba.* Under the PNF code the Koala high use trees and the threatened plants all required 20m exclusion zones to be implemented and marked around them. NEFA wrote to the EPA on the 22 September 2013 to request the immediate and urgent imposition of a Stop Work Order in accordance with Section 37 of the Native Vegetation Act 2003.

The EPA sent a team (including a botanist) in to oversee the Forestry Corporation, work was stopped though the EPA refused to impose a Stop Work Order. They EPA did not bother to check NEFA's records, yet spent 2 days wandering around the proposed route with the Forestry Corporation while they identified a new route. The EPA then left the site to allow the Forestry Corporation to construct their new road.

The EPA team had been transferred from the North Coast Regional Office of DLWC that over a decade earlier Prest (2003) described as having a "*laissez-faire stance of allowing self-assessment ...At its worst, this involved turning a blind eye to the impact of logging under exemption*", which he likened to a "*scenario of 'negotiated non-compliance', a term invented ... to explain where regulator and regulatee come to an unspoken agreement not to apply the legislation to the letter*".

Three days after our request for a Stop Work Order the new track was constructed. Subsequent inspections by NEFA (with botanists) found that the track had been illegally constructed through what should have been 20m exclusion zones for 3 Koala high use trees, 7 endangered Slender Marsdenia, 12 vulnerable Arrow-head Vines, and 8 vulnerable Red Bopple Nuts, most of which had been identified and tagged with pink tape (by either NEFA or the Forestry Corporation) prior to track construction. One of the Koala high use trees that had been identified by the Forestry Corporation in the presence of the EPA had the track constructed within 15m and debris within 12m without its exclusion boundary being marked, one 3.2m from the track had been checked by the Forestry Corporation in the presence of the EPA but had not been identified despite subsequent inspections showing abundant scats, and one had been identified by NEFA but could not be subsequently verified due to scats being removed. Two Slender Marsdenia were killed, one injured and 3 are missing. One Arrow-head Vine later died.

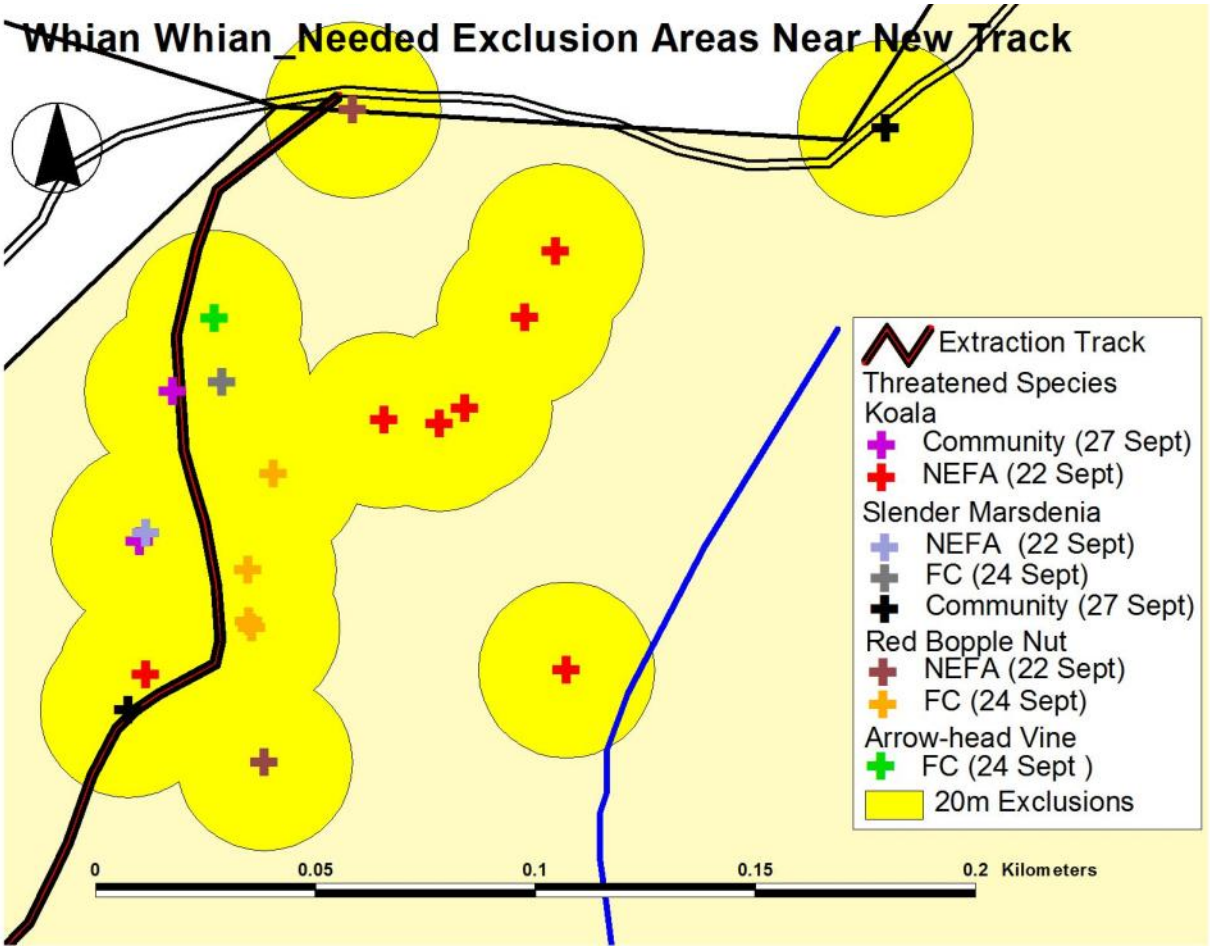
As an outcome of negotiations with the landowners, three days later Community Surveys by community members and volunteer botanists (under the supervision of the FC) commence, and continue intermittently (due to other commitments) over a weekend. The surveys revealed that the extraction track had passed through 3 endangered Slender Marsdenia (*Marsdenia longiloba*), killing two and leaving the last one injured, the buffer of a Koala high use tree marked by FC, and an unmarked Koala high use tree 4.5m from the extraction track. Across the property multiple records were made of 2 NSW TSC Act Endangered and 3 Vulnerable plant species, and an additional 10 Koala high use trees were located. On the weekend, rainforest expert Dr. Kooyman identified the nationally Critically Endangered “Lowland Rainforest of Subtropical Australia” as occurring in the identified logging area and subjected to roadworks.

During the course of our investigations NEFA, and the community, proved the presence on the property of 6 TSC listed Vulnerable animals: Alberts Lyrebird, Marbled Frogmouth, Sooty Owl, Masked Owl, Koala and Pouched Frog. And 5 threatened plants: two TSC listed Endangered species (*Endiandra muelleri* ssp. *Bracteata)* and Slender Marsdenia (*Marsdenia longiloba)* and three TSC listed Vulnerable species Corokia *(Corokia whiteana)*, Red Bopple Nut (*Hicksbeachia pinnatifolia)* and Arrow-head Vine (*Tinospora tinosporoides*). A number of other threatened fauna species are likely to occur (Appendix 1).

Along with the community NEFA also identified the presence on the property of 16 Koala high use trees with 20 or more Koala scats beneath them. This large number of high use trees proves that there is an active breeding Koala colony on the property, with evidence of males, females and young, that largely escaped the attention of the Forestry Corporation. There can be no doubt that the property constituted high quality core Koala Habitat but the EPA didn't care.

In total NEFA identified 8 Koala high use trees,10 Slender Marsdenia, 30 Arrow-head Vines, and 36 Red Bopple Nuts that had forestry operations within what should have been 20m exclusion zones around them had they first been identified. 3 Slender Marsdenia are missing, presumed dead, with another two confirmed dead and one injured. A Red Bopple Nut was injured and an Arrow-head Vine killed. Many more were pressumably bulldozed out during road construction or buried under

debris. There are also numerous Arrow-head Vines and Red Bopple Nuts within areas of mapped rainforest that were deleted and thus have had their protection removed. After the Community Survey logging was undertaken within what should have been an exclusion zone for at least 2 Slender Marsdenias and 1 Red Bopple Nut in an area adjacent to Nightcap National Park not covered in the Community Survey. A track was constructed within what should have been an exclusion zone for another Koala high use tree. This logging occurred after foresters had been shown these species nearby during the Community Survey and the FC should have been capable of identifying them by themselves.



MAP: Threatened species reported by NEFA to EPA on 22 September, species tagged by NEFA on 22 September and/or subsequently tagged by FC on 23-5 September, and species identified in community survey of 27 September. The western Koala high use tree identified in the community survey was previously identified by FC and EPA on 24 September. Plant localities are often for multiple individuals. Included are indicative 20m buffers. Note that the extraction track was constructed through what should have been exclusion zones for many species.

The NSW Recovery Plan for Green-leaved Rose Walnut identifies that "To improve the consideration of the Green-leaved Rose Walnut and the Rusty Rose Walnut in environmental impact assessments for developments and activities:

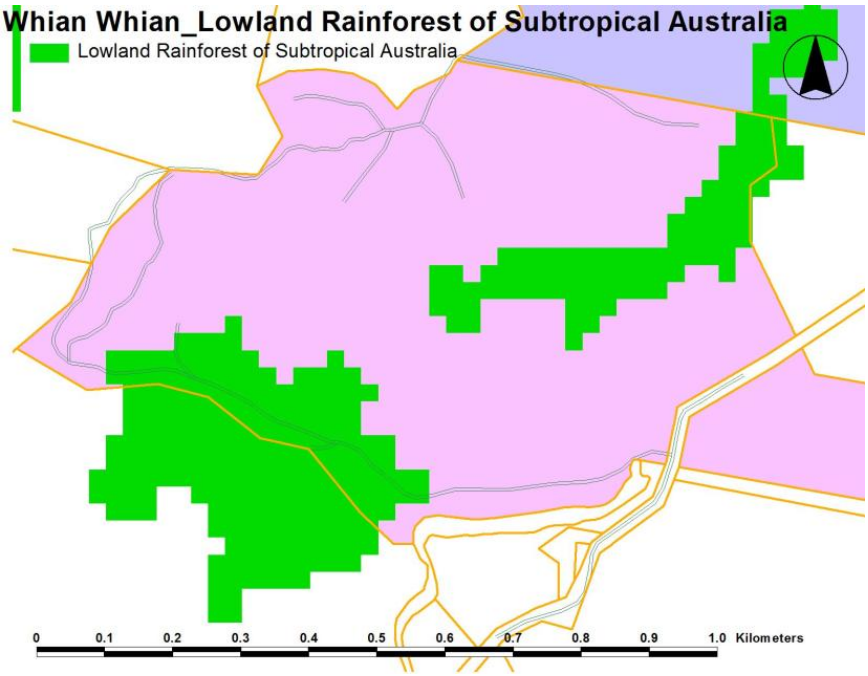
> *A standard minimum survey effort should be undertaken when determining if the Green-leaved Rose Walnut and the Rusty Rose Walnut are present in or near the area of a potential development or activity. The presence of either taxon should require implementation of effective mitigation measures to reduce the impact of any proposed development or activity.*

All these species (aside from Pouched Frog) are identified in the Private Native Forestry Code of Practice as requiring exclusion areas or increased tree retention. Disgustingly, the Forestry Corporation, a public entity, were taking advantage of the basic premise of the PNF Code that the prescriptions aimed at reducing logging impacts on select threatened species are only activated where there is a “record” or “site evidence” of the species. Given the PNF Code has no survey requirements the Forestry Corporation was operating on the basis that they would not look before they logged, presumably because they did not want to apply the required prescriptions to reduce impacts on threatened species.

Even after we engaged a recognised expert who identified 3 records of Marbled Frogmouth, and one each of Masked Owl and Sooty Owl on the property, and requested the Ministers to intervene, the Forestry Corporation refused to implement the required prescriptions until grudgingly forced to days later by a community blockade. The Forestry Corporation argued they did not have to implement the PNF prescriptions because our expert records were not on Wildlife Atlas and thus did not constitute a "record" in accordance with the PNF Code.

Similarly both the Forestry Corporation and the EPA refused to accept or recognise NEFA's records of Koala High Use trees, despite the fact that our previous records in Royal Camp SF had been verified by both agencies. The foresters we had exposed at Royal Camp were accusing us of moving Koala scats, from as far away as Coffs Harbour. It was plain to see, for anybody who bothered to look, that there were plenty of fresh scats and it was obviously high quality core Koala habitat.

NEFA review of rainforest mapping showed the road had been constructed through a 12.5ha stand of rainforest mapped in the NSW 1998 Comprehensive Regional Assessment (CRA), that extends across the boundary with the property to the south. The mapping by Flint and Cerese (2010) clearly identified this rainforest as Lowland Rainforest of Subtropical Australia under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). FC, EPA and OEH have no excuse for ignoring this evidence.



Mapped Lowland Rainforest of Subtropical Australia (from Flint and Cerese 2010)

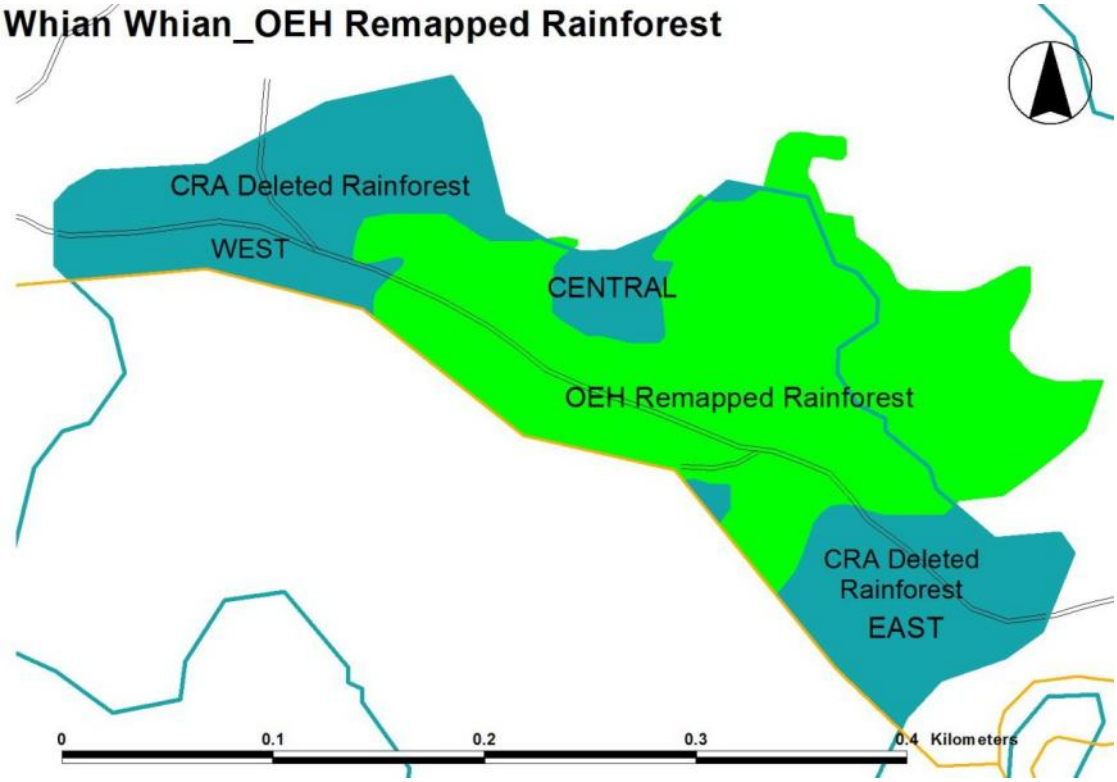
The EPA website states:

> *An approval under the Native Vegetation Act 2003 does not remove the obligation of landholders to obtain approval under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), where necessary. 'Actions' that are likely to have a significant impact on a matter of national environmental significance, such as ... nationally listed threatened species and ecological communities, ... require approval under the EPBC Act. If a person proposing to take an action believes that it might have a significant impact on a matter of national environmental significance, they must refer the proposal to the Commonwealth Department of Environment to determine if an approval is required.*

This CRA mapped rainforest is taken to be rainforest for Property Vegetation Plans (PVPs) except where disputed by property owners. If the landowner is not happy with the CRA rainforest mapping on their property, the landholder can:

> *apply to DECC for an evaluation of the area proposed for private native forest for new rainforest mapping and determination of rainforest. The landholder will need to identify the area in dispute and provide evidence to DECC officers that the area is not rainforest. Evidence could include photographic and logging records, or other disturbance history.*

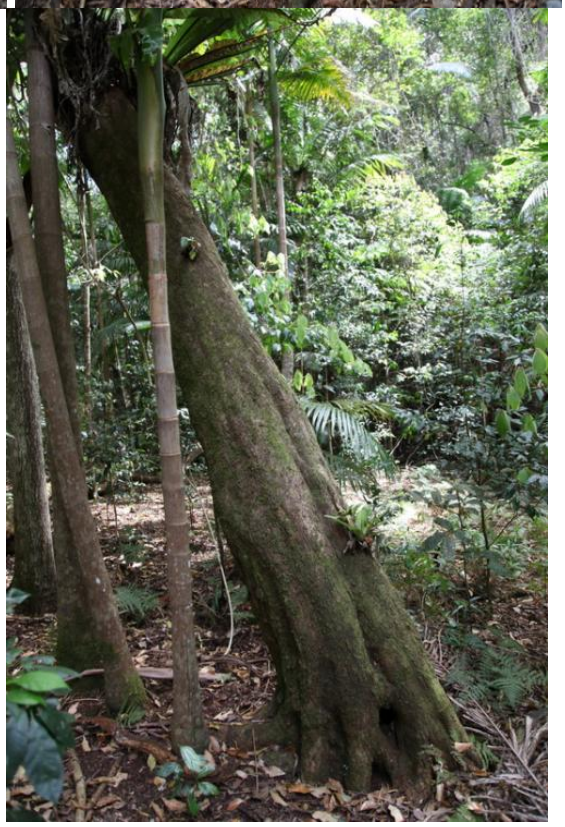
In May 2012 as part of the preparation of the PVP, the OEH, at the request of the EPA and Forestry Corporation, reviewed the rainforest mapping. In this process they redrew the rainforest boundary. The 4.9 hectares of rainforest mapped on the property in the stand along the road, was remapped as 3.3ha by OEH, with 2.5 ha deleted and 0.9ha added by an extension of the boundary to the north. The deleted rainforest was reassigned either to the loggable area or as cleared land. The FC constructed the main access road through this stand of rainforest for 520m, with this reducing to 250m with the remapping. This road was newly constructed through the deleted rainforest.



MAP: OEH remapping of the CRA mapped rainforest resulted in the deletion of a western, central and eastern patches. Note that most of the stand occurs on the adjacent property (outlined in blue).

In deleting these rainforest patches the Government agencies removed all protection from them and their inhabitants, reallocating the western and central stands for logging and the eastern stand as cleared land.

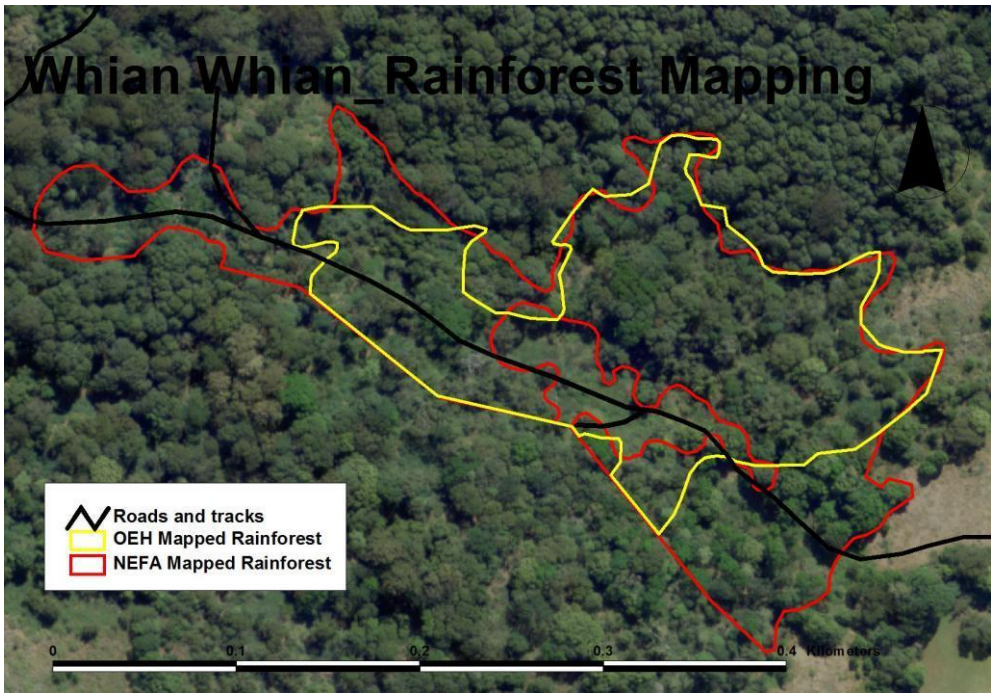


Examples of Lowland Subtropical rainforest remapped by OEH as either cleared land or assigned to the logging area.

Part of a large area of rainforest retained as rainforest in OEH remapping.

NEFA engaged an API expert and botanist to remap the rainforest in the vicinity of the access road using Aerial Photographic Interpretation (API). This was done by applying the definition in the PNF Code and the methodology specified in the "Identification of Rainforest, Field Guide" (NRM Field Assessment Guidelines: Rainforest Identification). In accordance with the Field Guide NEFA undertook transects to determine crown separation ratio using two "zig zag transects" (Field Guide 3.2). From this process, floristic assessments, and consideration of the criteria, it was clear the deleted rainforest qualified as both the Endangered Ecological Community (EEC) Lowland Rainforest in NSW North Coast and Sydney Basin Bioregion under the NSW Threatened Species Conservation Act, and the Critically Endangered Lowland Rainforest of Subtropical Australia under the *Environment Protection and Biodiversity Conservation Act 1999*.



Mapping by OEH and NEFA overlaid on aerial photo, note the south eastern patch classed as "cleared" by OEH and the central lantana dominated area classed as non-rainforest by NEFA.

NEFA presented our detailed evidence to the EPA as part of our audit (Pugh 2014). NEFA requested the PVP and documents relating to the rainforest remapping under the Government Information (Public Access) Act 2009 (GIPA) from both the EPA and OEH though they gave a blanket refusal of every document on the grounds they are "*personal information"* and that their release can *"reasonably be expected to" "expose a person to a risk of harm or of serious harassment or serious intimidation"*.

There was a 2 year window of opportunity for the EPA to legally pursue this matter, and they used most of this time up before they responded (28 September 2015). The EPA refused to consider or investigate our rainforest complaint, instead referring back to the PVP remapping:

> *The EPA engaged the Office of Environment and Heritage (OEH) to do an independent review of existing rainforest mapping of the property. This review was done using the agreed and documented rainforest re-mapping protocol and in accordance with the PNF Code definition of rainforest. API and field site verification was completed during 2012. All mapped rainforest was excluded from the approved PNF PVP for the property.*

The EPA did take some action for a Koala high use tree and one endangered plant, noting:

> **Two penalty notices issued for unlawful native vegetation clearing**
> The most significant findings from our investigation resulted in the EPA issuing two penalty notices to the Forestry Corporation of NSW for breaches of the Private Native Forestry Code of Practice (PNF Code) and ultimately section 12 of the *Act*. The penalty notices were for $5,500 each (i.e. $11,000 total).
>
> We have taken action for the unlawful clearing of native vegetation on two dates. On 25 September 2013 we found that FCNSW conducted forestry operations (snig track construction) in a 20 metre exclusion zone around an identified koala tree (a tree with 20 or more scats beneath it). We also found that on 3 October 2013, FCNSW conducted forestry operations within a 20 metre exclusion zone around a Slender Marsdenia (*Marsdenia longiloba)*, an endangered plant species. Two brush box trees were felled within seven metres of the plant, as part of ongoing usage of the snig track.

The EPA had issued the Forestry Corporation with two Penalty Notices (each with a fine of $5,500) on the 11 September 2015 for constructing their track through what should have been 20m exclusion zones for a Koala High Use Tree and the Endangered vine Slender Marsdenia. They were also issued with an Official Caution for violating buffers of 4 Red Bopple Nuts, with violations of 6 Arrow-head Vine buffers noted. This is half the breaches documented by NEFA.

The Forestry Corporation stated they intended to vigorously dispute the fines on the grounds that their intent *"was discussed with EPA staff on site during the operation".* In other words, the EPA knew they were going to construct the illegal road and, at best, did nothing to stop them.

Given that the EPA had almost used up their 2 years for legal action, the Forestry Corporation simply bided their time before telling the EPA that they would not pay the fines and would rather dispute them in court. By then, the EPA claim, it was too late to defend the fines in court. Given the EPA's complicity in the construction of the illegal road it is no wonder they waited so long to take action so that they could avoid court.

The same Forestry Corporation staff went on to bulldoze roads through the NSW EEC Lowland Rainforest and 26 Vulnerable Onion Cedars at Cherry Tree State Forest in 2015 (Pugh 2015) and the same EPA staff investigated and did not recognise it as Lowland Rainforest. Once again the EPA waited until the 2 years available for prosecution had almost expired before announcing they would take no action for the Lowland Rainforest.

3.2. Case Study 2: PNF Hewittville

The Environment Protection Authority issued a Property Vegetation Plan (PVP) for part of the Hewittville property on 29 April 2013. The contents of that plan and the subsequent Forest Operation Plan remain unknown to the public and Tweed Shire Council as the EPA refuse to allow anybody else to view them. Even that part of the property covered by the PVP is confidential. The only information publicly available is the location of the property and the date the PVP was issued for some or all of it.

Road and clearing works began sometime after August that year in both the PVP area and other parts of the property. These involved unauthorised clearing of native vegetation during construction of a road on a Crown Road Reserve and in part a Council 7(d) Environmental Protection Zone without consent, causing significant and ongoing pollution of a creek and Hopping Dicks Creek. At the same time clearing of riparian vegetation along 5 mapped streams and Hopping Dicks Creek was undertaken, including the filling of one stream for a house site.

The neighbour's attempts to get action to halt the clearing were frustrated by delays caused by bureaucratic buck-passing, inadequate and incomplete remedial works, a failure to hold the landowner to account and finally by the Government's sign-off foreclosing Council's attempts to take prosecution action.

Tallowwood with 23 scats beneath it from mother and baby subject to roadworks, such trees are meant to be protected by 20m buffers, but only if they are found. As there is no requirement to look before they log there is effectively no protection for such key feed trees.

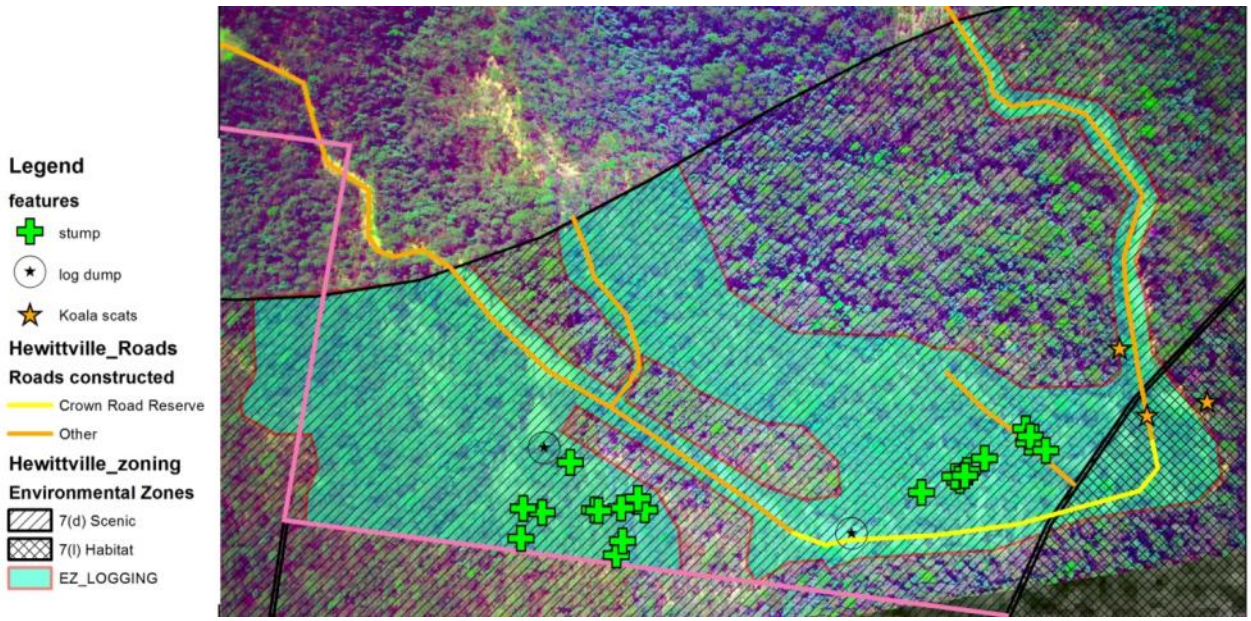
For the second time in March 2017 Hewittville cleared vegetation and constructed another access road on a Crown Road Reserve without consent, this time through 3 neighbour's properties as well

as in the PVP area. Despite Council and the Department of Lands attempting to stop works, they apparently continued. The neighbours are still waiting to find out what the Government will do, if anything, but are hopeful that Council will take legal action on their behalf.

Following complaints from locals NEFA decided to undertake an initial assessment of the property from the Crown Road Reserve that runs through it. We engaged the services of ecologist David Milledge to assess the presence of owls and Marbled Frogmouths on the property through playback of their calls from the road reserve. The assessment occurred on the afternoon of Saturday 9th September 2017.

NEFA identified 2 Koala High Use Trees and detected the presence of two Marbled Frogmouths and one Masked Owl. The PNF Code requires stream exclusions to be increased by 10m on first and second order streams for Marbled Frogmouths thoughout the logging area, for an additional 10 of the largest trees to be retained per 2 hectares within 1km of the Masked Owl, retention of 10 primary Koala food trees and 5 secondary Koala food trees per hectare, and 20m buffers to be placed around the 2 Koala high use trees we identified (from our tiny sample).

None of the roadworks inspected by NEFA appeared to be appropriately drained, The PNF Code does have specific requirements for cross drainage according to slope. For example the 250m road from the stream crossing to the top of the slope only had one side drain and yet soil has been bulldozed into a bank preventing water egress, A snig track on a 23^{o} slope was observed to have no cross banks.



NEFA preliminary mapping of the extent of logging and roadworks within the 7(d) and 7(l) Environmental Protection zones on the Hewittville property. Note that this mapping is only approximate and requires ground truthing.

During the course of the assessment it became obvious that extensive logging and roadworks had been undertaken in the Tweed Shire Council's Zone 7 (d) Environmental Protection (Scenic/Escarpment) and 7(l) Environmental Protection (Habitat), despite the landholder having no consent to do so. Subsequent assessment of aerial photographs identified that some 18ha of the 7(d) and 7(l) Environmental Zones had been logged, with the main road constructed for 1.3km through 7(d) and (l) zones. Some 400m of the road (and one log dump) are on the Crown road

reserve (again without permission). There were also significant other roads, snig tracks and 2 log dumps constructed in the 7(d) zone

The EPA apparently visited the site three times before NEFA's visit, most recently the Monday before NEFA. At our meeting with the EPA on 4 October 2017 we were informed that the EPA had not inspected the environmental zones prior to NEFA's complaint. The EPA's failure to inspect the active logging and roading in the environmental zones on their visit a few days before NEFA shows lax supervision. The EPA seemed blithely unaware that every time they visit the site they use a road constructed without consent through the 7(d) Environmental Zone, including in the PVP area, and past cleared riparian areas.

On 4 October the EPA said they had told the landowner 4 times that he needed permission for forestry activities in the Environmental Zones. Tweed Shire Council (21 September 2017) also advises "*The owners of the subject site have been provided with an extensive briefing of these LEP consent requirements on multiple occasions*". The landowner's failure to seek the required approval despite 4 reminders from the EPA and multiple advices from Council indicates that the breach was made knowingly and deliberately.

At its meeting of 21 September 2017 Council unanimously resolved that:

> *1. Council engages its solicitors to provide advice regarding the unauthorised forestry and road works within that portion of Lot 136 DP DP755724 Boormans Road, Tyalgum affected by Tweed Local Environmental Plan 2000 environmental zones, as identified in this report, and that a further report be submitted to Council providing preferred options for prosecution of the site owners, and best options to impose a statutory stop work order under the Environmental Planning and Assessment Act 1979 and* ***a Clean Up Notice under*** *the Protection of the Environment Operations Act 1997;*
>
> *2. Council endorse that a systematic site assessment be undertaken to inform any investigation and compliance action including:*
>
> > *a. Survey all constructed roads via vehicle traverse with differential GPS;*
> >
> > *b. Survey the aerial extent and location of all areas of vegetation clearing;*
> >
> > *c. Assessment by a suitably qualified ecologist to quantify the vegetation classification of areas impacted by vegetation clearing; and*
> >
> > *d. Assessment by a suitably qualified ecologist of the quantified extent of vegetation clearing in relation to the impacts of the clearing on threatened species and threatened species habitat.*
>
> *3. Council officers continue to work with relevant State and Federal Government compliance agencies to seek a prosecution of the site owners under their legislation and appropriate site management.*
>
> *4. Subject to the advice in 1 above the Stop Work Notice and the Clean Up Notice may be issued by the General Manager or delegate without the need for a further report to Council.*
>
> *5. Council requests in the strongest terms and makes representations in person to the state government to revoke this Private Native Forestry licence due to the significant impacts for Tweed's World Heritage values, threatened species, waterway pollution, safety issues with the instability of the works for compliance officers and on site workers, the unsuitability of the external road network, the significant costs of the extensive compliance actions required, the*

distress caused in the community, and the ongoing risks of further compliances breaches as evidenced by the significance and similarity of these repeat offences.

Despite having approved a PVP and subsequent Forest Operation Plan that proposed logging of the Environmental Zones, and refusing to provide their PVP to Tweed Shire Council, the EPA 14 February 2018) denied any responsibility for the logging and roading in the Environmental Zones, stating:

> The EPA is aware that Tweed Shire Council is considering matters relating to the requirements of the Environmental Protection Zone (EPZ) on the property. As previously advised, the EPA has no jurisdiction in relation to such matters. Similarly, the EPA has no jurisdiction on Crown road reserves, these are administered by Department of Primary Industries - Lands. Our investigation has not considered any allegations related to the EPZ or Crown roads.

The EPA did identify "alleged" breaches of 5 conditions of the PNF Code with trees felled across streams, a log dump constructed too close to a stream, and inadequately drained snig tracks and roads. They failed to provide any details as to the number of breaches. Though they outrageously and unjustifiably claimed that "there was no harm to the environment" and only gave "formal warning" letters to the landowner and contractor.

The EPA also confirmed the two Koala high use trees and said the records of Marbled Frogmouth and said they would be taken into account in the future. Though as they were not "known" at the time of the logging no enforcement action was taken or possible.

A community assessment in December 2017 identified a rainforest stand as qualifying as the Endangered Ecological Community Lowland Rainforest, with 14 Vulnerable Durobby (*Syzygium moorei*) and a number of Endangered Green-leaved rose walnut (*Endiandra muelleri* subsp.*bracteata*) within or near it. While their report was provided to the EPA (with localities) because it was anonymous nothing will be done to protect these unless the EPA investigate it for themselves.

Most concerning, some 3 months after NEFA's complaints, they identified that the required drainage had still not been implemented on roads and that significant erosion was occurring, polluting the creek through the rainforest. The EPA are asleep at the wheel.

3.3. Case Study 3: Royal Camp State Forest:

Before logging the Forestry Corporation (FC) are required to thoroughly search for Koala scats to identify and protect Koala High Use Areas. Royal Camp and the nearby Carwong State Forest have been proposed by NEFA as the 'Sandy Creek National Park', primarily because of Koalas.

In our audit of Royal Camp on 4 August 2012 NEFA found abundant evidence of Koalas, no evidence of Koala scat searches, and no marking of Koala feed trees. We identified 4 Koala High Use Areas in compartment 15 and another likely one in compartment 16. One was actively being logged (near log dump 20), another about to be logged, and the other 3 proposed for logging. Logging was stopped. All these were subsequently verified by both the EPA and the Forestry Corporation. The EPA later found that 61 trees had been logged and 405m of snig tracks constructed in the koala high use exclusion zone.

On 9 August logging resumed, with EPA approval, in a part of Royal Camp SF in compartment 16 that hadn’t been assessed by NEFA or the EPA. On the 19 August NEFA assessed a small part of

this logging area and found that the Forestry Corporation was still not looking for Koala scats and that another Koala High use area had been logged. On 24 August the EPA checked our complaint, finding that the required searching was still not being done and that 7 trees were removed and 230m of snig tracks constructed within a koala high use area. The EPA refused to take legal action in respect to this.

On the 23 September 2012 NEFA inspected part of an area logged after the 24 August. Again it was apparent that nobody was doing the required searches for Koala scats and we found yet another Koala High Use Area that had been logged. The Forestry Corporation had just continued blithely on ignoring their responsibilities to the Koala without anyone bringing them to heel. The EPA never audited this repeat of a repeat offence.

Other offences identified by NEFA that the EPA ignored, included:

- Logging of an obvious Yellow-bellied Glider sap-feed tree,
- Failure to retain and protect adequate numbers of habitat trees,
- Bulldozing a track through a stream buffer,
- Logging an area affected by Bell Miner Associated Dieback (BMAD).

In 2013 NEFA became alarmed that the Forestry Corporation was proposing to commence logging in Compartment 13. The Forestry Corporation's draft Harvesting Plan identified "nil" Koalas. On 4 July 2013 NEFA inspected the area because of our concern that they may again log Koala High Use Areas. On one day we located 34 trees with Koala scats about their bases, identifying 2 Koala High Use Areas. These were confirmed by the EPA and logging didn't start.

On 15 August 2013, a year after our complaint, the EPA verified all the Koala High Use Areas we had identified, issued the Forestry Corporation 3 Penalty Notices (a $900 fine) for failing to look for and protect a Koala High Use Area and its buffer (near log dump 20), and a warning letter for failing to retain and mark the required habitat trees (near log dump 20) and for burning numerous exclusion areas in a hazard reduction burn.

The EPA did not assess 11 of our complaints, suppressed audit results relevant to complaints, claimed that they couldn't find trees they were shown, ignored expert evidence, and refused to audit significant breaches. Our complaints were subsequently subject to an Upper House Inquiry.

For background see NEFA's audit reports "NEFA Audit of Royal Camp State Forest" and "NEFA submission to Performance of the NSW Environment Protection Authority (Inquiry)".

3.4. Case Study 4: Cherry Tree State Forest

Logging of compartments 359, 360 & 361 of Cherry Tree State Forest began in January 2015 and was completed in September 2015. NEFA first visited in March 2015 and within a few hours found a road had been bulldozed through rainforest, within the 20m buffers of 8 vulnerable Onion Cedar (with some dying), inadequate retention and protection of habitat trees and gross violations of erosion mitigation prescriptions. We reported our findings to the Environment Minister, Forestry Corporation and EPA at that time in an attempt to ensure inspections by a botanist, greater scrutiny of operations and improved implementation of prescriptions.

The Forestry Corporation "cleaned up" near the main road, removing debris from around habitat trees, marking additional trees and draining tracks. When the EPA inspected a few days later they

confirmed the 8 Onion Cedar, but could find nothing else wrong. As the Forestry Corporation continued to rampage through the forest we made repeated attempts to highlight and stop their illegal works, to no avail.

NEFA's final audit report was submitted in December 2015 identifying:

- that the rainforest is Endangered Ecological Community (EEC) Lowland Rainforest, with 5 tracks illegally constructed through it and 8 logging incursions into it,
- over 26 Onion Cedar (in the same vicinity) were affected by the road,
- there had been wanton incursions into a Squirrel Glider exclusion area,
- 12 Yellow-bellied Glider sap-feed trees had not been identified and appropriately managed,
- canopy removal was greater than 50% in Black-striped Wallaby habitat,
- Koalas had not been adequately searched for,
- By extrapolation from our samples that In the order of 2,000 (44%) of the habitat trees required to be protected were logged, and that there were over 1,600 breaches of habitat tree selection and retention requirements,
- 9 cases where logging tracks had not been properly drained,
- 7 incursions into stream buffers,
- logging of an area affected by BMAD, and
- intensive logging of a visual protection area.

On their March "audit", and subsequent visits, the EPA had not recognised that the rainforest was an Endangered Ecological Community (EEC) or that additional Onion Cedar had been affected. They did not care about the BMAD. Because of their failure to recognise the EEC and widespread abuse of habitat trees (which was all around them), or to inspect the steeper areas that the Forestry Corporation had not tidied up, Forestry did nothing to stop their illegal activities and continued to bulldoze roads through endangered rainforest, trash habitat trees, ignore threatened species, degrade stream buffers and promote BMAD.

On the 15 January 2016 the EPA responded to our initial complaint about the 8 Onion Cedar, totally ignoring the additional 18 we had subsequently identified and shown them on a site inspection, and issued Forestry with two Penalty Notices ($1,000 each), cautioned them about their failure to properly assess the area before roading, and required debris be removed from around 1 plant.

In their final report on 21 December 2016 the EPA confirmed 66 breaches of logging prescriptions: 11 relating to threatened plants (the 8 Onion Cedar), 3 to rainforest (2 undecided), 2 to habitat trees, 35 to tracks (3 undecided), 11 to streams (2 undecided), and 4 to threatened fauna (17 undecided). These understate the significance of the breaches, for example 1 breach was recorded for failure to retain the required number of hollow-bearing trees, with the EPA assessment identifying a shortfall of 275 such trees in just one compartment. The only regulatory action taken for all these breaches was a meaningless 'official caution'.

The EPA deferred consideration of our complaints regarding roading and logging in the EEC Lowland Rainforest and damage to habitat trees, telling us they were considering legal action for these offences.

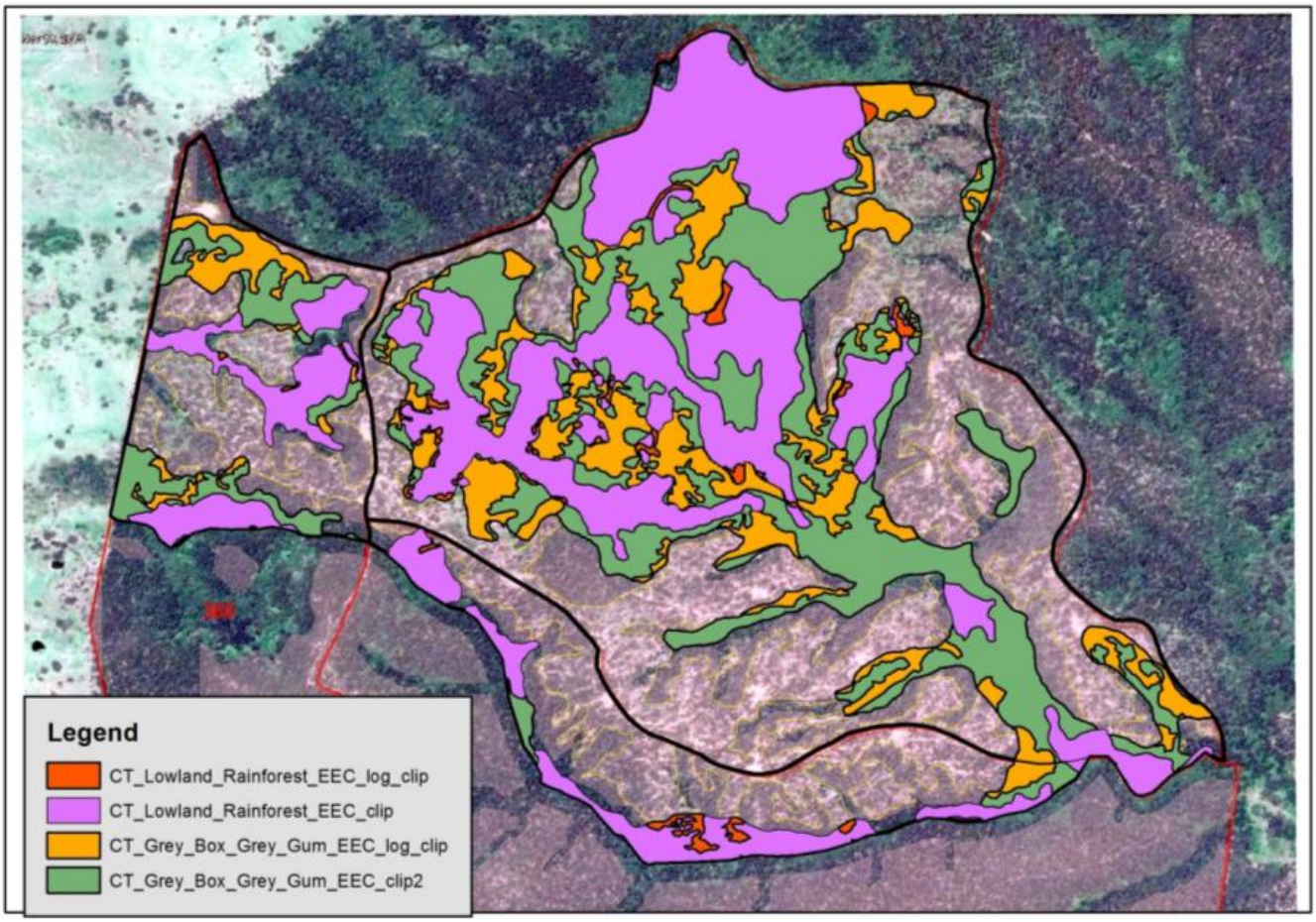
In June 2016 the EPA and Forestry Corporation completed their project of mapping select EECs "*to support improved recognition, regulation and management of Threatened Ecological Communities (TECs) in NSW native forestry*". It was not until May2017 that we were able to obtain the mapping under a freedom of information request. Within Cherry Tree they had mapped 116ha of the

Endangered Ecological Community Lowland Rainforest and 142ha of the Endangered Ecological Community Grey Box-Grey Gum Wet Sclerophyll Forest. Comparison with Google earth identified that 4.5 ha of mapped Lowland Rainforest has been affected by 33 incursions, 50ha of Grey Box-Grey Gum Wet Sclerophyll Forest was heavily logged (>50% canopy removal and bared ground) with up to another 40ha subject to logging operations.

The EPA knew of the presence of both EECs before issuing their final report on 21 December 2016, though they made no mention of them and failed to consider that most of the breaches they confirmed as breaches of the TSL actually occurred in EECs.

While it was obvious that the decision had been made months before, the EPA waited until the 2 years for prosecution had almost expired before telling us (1 December 2017) that they had no intent to take legal action. They claimed that their principal reason was that they couldn't prove beyond reasonable doubt that the roading and logging was in the EEC Lowland Rainforest, ignoring the fact that both agencies had mapped it as such. The made no mention of the Grey Box-Grey Gum EEC, pretending that it didn't exist.

From their limited plots the EPA identified 73 habitat trees that had been physically damaged and 49 that had excessive debris left around them, considering it likely "*the damage to the trees and the debris were as a result of harvesting operations*". Though the EPA refused to take any action what-so-ever for the damage to habitat trees on the spurious grounds that they couldn't prove that the Forestry Corporation caused the damage, going so far as to claim that someone else may have sneaked in there while logging was underway (presumably with a bulldozer and chainsaw) and caused the damage.



EPA (2016) mapping of EECs with heavily logged areas of each EEC (red and orange) as identified from Google Earth 18 November 2015. The Google Earth landsat images are relatively low resolution and thus only identify gross disturbances, generally in excess of 50% canopy removal where bare soil is visible, so logging disturbance is far more widespread than mapped.

For background see NEFA's Audit reports: "Audit of Cherry Tree State Forest, Compartment 359, 360 & 361″ and "Trashing Endangered Ecological Communities in Cherry Tree State Forest".