



3 August 2006

Goolengook Investigation Submission
Victorian Environment Assessment Council
1/8 Nicholson Street
EAST MELBOURNE VIC 3002

By facsimile: 03 9637 8024
13 pages (inc this page)

Dear Sir/Madam

VEAC GOOLENGOO K INVESTIGATION

1. Introduction

Lawyers for Forests ("**LFF**") has taken an active interest in the Victorian Environment Assessment Council ("**VEAC**") Investigation ("**the Investigation**") of the Goolengook Forest Management Block ("**the Goolengook FMB**").¹

We **enclose** a copy of LFF's submission regarding the terms of reference for the Investigation and dated 2 December 2006.

2. Need to "Ensure No Net Deterioration in Timber Production Capacity" should be afforded limited weight

LFF is concerned that the terms of reference for the Investigation² (so far as they refer to the purpose to "ensure that there is no net deterioration in timber production capacity") ("**the Resource Security Term of Reference**") do not comply with the *Victorian Environment Assessment Council Act 2001* ("**the VEAC Act**").

Section 5 of the VEAC Act states that the objectives of VEAC (apart from the general requirement to ensure that it performs its functions in a manner which facilitates its objectives under the VEAC Act) is to:

¹ References to the Goolengook FMB are to the area the subject of the Investigation, as outlined in the Goolengook Forest Investment Information Booklet, June 2006, VEAC ("**the VEAC Information Booklet**").

² Refer page 6 of the VEAC Information Booklet.

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"provide independent and strategic advice to the Government of Victoria on matters relating to the protection and ecologically sustainable management of the environment and natural resources of public land."

Further, Section 18 of the VEAC Act lists a number of matters VEAC **must** have regard to in carrying out the Investigation. Apart from consideration of the existing or proposed uses of the environment, section 18 includes the following environment conservation and sustainable management considerations:

- (a) the principles of Ecologically Sustainable Development;
- (b) the need to conserve and protect biological diversity;
- (c) the need to conserve and protect any areas, which amongst other things, have ecological, natural or landscape significance; and
- (d) the need to provide for the creation and preservation of a Comprehensive Adequate and Representative Reserve System of parks and reserve.

VEAC must also consider:

- (e) the potential environmental, social and economic consequences of implementing the proposed recommendations.³

Therefore, the only relevant factor under section 18 of the VEAC Act under which VEAC could consider the Resource Security Term of Reference is the reference to "social and economic" consequences in section 18(g) of the VEAC Act. However, this is in the context of the general environment protection objective for VEAC under section 5 of the VEAC Act, the repeated references to environmental conservation and ecologically sustainable development objectives in section 18, and the reference to environmental considerations in section 18(g) itself.

Accordingly, and to ensure that VEAC provides independent and strategic advice in accordance with the requirements of sections 5 and 18 of the VEAC Act, VEAC should accord environmental considerations greater weight than the Resource Security Term of Reference. The Resource Security Term of Reference should be accorded no weight, or if any, little weight.

Additionally, for VEAC to abide by the Resource Security Term of Reference, VEAC is acting inconsistently and so in contravention of the Act. This is because the Resource Security Term of Reference stops VEAC from taking into account the matters set out at (a) to (d) above, which are matters that

³ Refer section 18(g) of the VEAC Act.

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the VEAC Act requires **must** be taken into account. If VEAC takes the Resource Security Term of Reference into account, it should do so only insofar as it complies with the matter set out at (e) above and not to the exclusion of all other matters required to be taken into account including those set out at (a) to (d) above.

In short, the key question for VEAC is whether the Goolengook FMB merits protection, based on principles of Ecologically Sustainable Development, the need to conserve and protect biological diversity, and the need to protect any areas, which amongst other things, have ecological or national significance, and meet the Comprehensive, Adequate and Representative Reserve criteria.

The need to ensure resource security for the logging industry is irrelevant to this key question in the context of VEAC's purposes under the VEAC Act. For VEAC to afford the Resource Security Term of Reference any weight at all or any weight to the exclusion of the other grounds would contravene VEAC's duties under the VEAC Act.

Indeed, LFF believes the Minister for Environment has acted improperly in including the Resource Security Term of Reference as a term of reference for VEAC. LFF therefore reserves its rights to challenge the validity of the Resource Security Term of Reference.

To the extent that VEAC accords the Resource Security Term of Reference any weight (and LFF asserts that it should not be accorded any weight) then of course utilisation of unprotected forest should be considered rather than protected forest.

3. Relative Security of Current Protection Mechanisms

If the area of the Goolengook FMB outside the Errinundra National Park ("**the Currently Unprotected Goolengook Forest**") is considered worthy of protection, then it (including the Goolengook Flora and Fauna Reserve) should be added to the Errinundra National Park.

Protection of areas by reliance on the use of Special Protection Zones, General Management Zones (with or without a Special Management Area) and the application of the Code of Forest Practices ("**the Code**") is inadequate.

Reservation of land as a Special Protection Zone or General Management Zone (with a Special Management Area) have no legislative status, and can be changed or amended without a public advertising submissions process, and by the stroke of a bureaucratic pen.

Areas within a Special Protection Zone and General Management Zone are effectively exempt from the operation of the Flora and Fauna Guarantee Act 1988 ("**the FFG Act**"). Further, there is no proper environmental impact assessment undertaken before logging operations. The Code and the

Victorian Forest Management System do not provide for proper environmental impact assessment before logging, and in particular, the impact of logging on FFG Act listed threatened species and communities.

Accordingly, if the Currently Unprotected Goolengook Forest is to be protected, then it should be protected as a national park under the *National Parks Act 1975*.

Further, that part of the Goolengook River within the Errinundra National Park is within the Benn, Goolengook, Arte and Errinundra Rivers Heritage Area ("**the Heritage Rivers Area**") under the *Heritage Rivers Act 1992* ("**the Heritage Rivers Act**"). However, only 100 metres either side of the Goolengook River to the south of the Errinundra National Park is within the Heritage Rivers Area.

Protection of all of the land within the Currently Unprotected Goolengook Forest will enhance the nature conservation, recreation, scenic and cultural heritage values of the Heritage Rivers Area, in a manner which is consistent with the objectives and purposes of the Heritage Rivers Act.

The Currently Unprotected Goolengook Forest should be added to the Heritage Rivers Area. This is consistent with the State Government's commitment to the protection of the quality and the quantity of Victoria's valuable water resource.

4. Ecological Significance of the Goolengook FMB

LFF supports the addition of the Currently Unprotected Goolengook Forest to the Errinundra National Park.

LFF understands that the Currently Unprotected Goolengook Forest (and in particular that part outside the Goolengook Flora and Fauna Reserve):

- contains extensive nationally-significant strands of old growth forest (including significant areas of "negligibly disturbed "forest"⁴);
- supports threatened species⁵ and two threatened plant communities⁶ listed under the FFG Act;

⁴ Old growth forest being forest that meets the definitions specified in the Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve for Forests in Australia, and includes areas identified by Woodgate (1994) as "old-growth forest" and "negligibly disturbed forest".

⁵ Refer to page 11 of the VEAC Information Booklet.

⁶ Being Cool Temperate Rainforest Community and the Warm Temperate Rainforest (East Gippsland Alluvial Terraces Community).

- should be integrated into the Errinundra National Park as the only management option which can guarantee the sustainable operation of the natural ecological and evolutionary processes required to maintain the outstanding heritage values of the upper Goolengook catchment and the Goolengook River, which is within the Heritage Rivers Area;
- must be integrated into the Errinundra National Park for its ecological significance, natural beauty and interest and for the preservation of its wildlife habitat; and
- meets the criteria for protection as part of the Comprehensive, Adequate and Representative Reserve system.

5. Accuracy of Information

LFF urges VEAC to request further information if required. LFF has doubts as to the accuracy of the information gathered under the Regional Forestry Agreement process, and information subsequently obtained, particularly by aerial surveys.

In particular, LFF is not certain whether the map attached as Map 5 to VEAC Information Booklet is an accurate description of the old growth and regrowth areas of the Goolengook FMB. If there is uncertainty, then VEAC should request further information and research should be undertaken before issuing its draft proposals paper.

6. Effect of Previous Disturbances

Bushfires and logging operations which do not involve clear felling and then slash and burn operations do have less negative impact than clear felling and slash and burn logging operations. LFF believes the forests in the former category will, in most cases, regenerate to a forest which would constitute "negligibly disturbed forest" and which therefore satisfy the definition of "old growth".

Just because a forest has been subject to a bushfire, or burning operations, or logging operations which do not involve a clear fell and slash and burn operation, does not mean that those forests should be automatically categorised as regrowth forest.

7. Conclusion

Please acknowledge receipt of this submission.

LFF wishes to be kept informed of the consultation process, and have the opportunity to present a submission to VEAC after the draft proposals paper is released.

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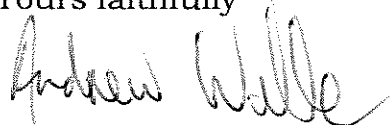
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LFF:

- urges VEAC to incorporate the Currently Unprotected Goolengook Forest in the Errinundra National Park; and
- to place no weight on the Resource Security Term of Reference.

Please call Andrew Walker on 0418 106 750 or 9602 9240 if you have any questions

Yours faithfully



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3 December 2002

Mr Scott Ashby
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BY FACSIMILE: (03) 9637 8131

Dear Sir

**SUBMISSION ON PROPOSED TERMS OF REFERENCE FOR THE
VEAC GOOLENGOOK OLD-GROWTH STUDY**

Introduction

Lawyers for Forests, ("LFF") supports the moratorium on logging for the Goolengook Forest Management Block ("Goolengook Block") announced by the Bracks Government on Wednesday 30 October 2002, and the appointment of the Victorian Environment Assessment Council ("VEAC") to investigate the future of the Goolengook Block, "with the aim of removing all logging of old growth forest."

Terms of reference too narrow

Whilst LFF welcomes the Bracks Government's announcement, the proposed terms of reference for VEAC as advertised in the Age on 2 November 2002, ("the proposed terms of reference") are too narrow. Essentially they seek to limit VEAC's investigation and focus to ascertaining whether other protected forests of "equivalent timber resources" within the East Gippsland Regional Forest Agreement ("RFA") area can be swapped for the Goolengook Block if the Goolengook Block is protected from logging.¹ Effectively, given the requirement for "equivalent timber resources," the VEAC investigation, ("the Investigation") will be asked to consider whether similar old growth forest can be swapped.

The final terms of reference should require VEAC to examine whether the Goolengook Block merits protection. Whether there is alternative

¹ The proposed terms of reference refer to "protected" in the sense of being outside a dedicated reserve, but within a Comprehensive Adequate and Representative Reserve, or within a Special Management Zone. Note - this contrasts with the Media Release made by Minister Garbutt on 30 October 2002.

(and currently protected) forest of equal yield that could be swapped is irrelevant, or at best, only one (and a minor one at that) of many considerations.

In this regard, the proposed terms of reference do not reflect what LFF believes is the public perception - that the primary purpose of the Investigation should be to ascertain whether the Goolengook Block merits protection.

Terms of reference do not comply with the VEAC Act

Further the proposed terms of reference do not comply with the *Victorian Environmental Assessment Council Act 2001*, ("the VEAC Act").

Section 5 of the VEAC Act states that the objective of VEAC (apart from the general requirement to ensure that it performs its functions in a manner which facilitates its objectives under the VEAC Act) is to:

"provide independent and strategic advice to the Government of Victoria on matters relating to the protection and ecologically sustainable management of the environment and natural resources of public land."

Further, section 18 of the VEAC Act lists a number of matters VEAC **must** have regard to in carrying out the Investigation. Which, apart from consideration of RFAs and existing or proposed uses of the environment, includes environment conservation and sustainable management considerations such as:

- The principles of Ecologically Sustainable Development;
- The need to conserve and protect biological diversity; and
- The need to conserve and protect any areas, which amongst other things, have ecological or natural significance.

To ensure "independent and strategic advice" is provided in accordance with the requirements of the VEAC Act, sections 5 and 18, **all** of the factors relevant for the protection and ecologically sustainable management of the environment should be considered. This goes beyond considering whether it is possible to make a resource swap of old growth for old growth.

Whether the logging industry has resource security or not, is not relevant for the purposes of ascertaining whether land is being managed ecologically and sustainably, and whether the Goolengook Block should be protected. The proposed terms of reference should not be so limited.

The proposed terms of reference should reflect sections 5 and 18 of the VEAC Act. In particular, the final terms of reference should contain sustainable management and environmental conservation objectives.

These objectives include:

- Whether the protection of the Goolengook Block would assist in achieving the reduced sawlog volumes required to comply with reduced sustainable yield rates under the Forests Act 1958 section 52D for the East Gippsland area. (And LFF notes that the Bracks Government has committed to reducing these rates in accordance with the recommendations contained in the Vanclay report).²
- Whether, if the Goolengook Block was logged, the objectives of the *Flora and Fauna Guarantee Act 1988* ("FFG Act") and any Action Statements made under the FFG Act would be complied with.
- Whether, if the Goolengook Block was logged, the environmental objectives of the East Gippsland RFA, specifically Attachment 5 of the RFA, would be complied with.

If the proposed terms of reference remain in their current form, and VEAC follows them, VEAC cannot comply with the VEAC Act.

Terms of reference not consistent with other VEAC referrals or the Common Position Statement

LFF, in its letter to the Minister dated 3 April 2002, advised of its endorsement of the Goolengook Common Position Statement, ("the Statement") which seeks the integration of Upper Goolengook catchment into Errinundra National Park. Around 25 organisations endorsed the Statement. LFF believes the Statement had some influence in leading the Government to announce the Investigation.

However the proposed terms of reference do not reflect the Statement. LFF believes they should incorporate the resolution contained in the Statement calling for integration of Upper Goolengook Catchment into Errinundra National Park.

LFF also notes the recent terms of reference directing VEAC to carry out an investigation of the Angahook-Lorne State Park in the Otways, (and made pursuant to Section 15 of the VEAC Act). These direct VEAC to determine Angahook-Lorne State Park's potential to be

² Evaluation of Data and Methods for Estimating the Sustainable Yield of Sawlogs in Victoria, J. Vanclay and J. Turner (2001)

designated as a national park. Those terms of reference also require VEAC to have regard not only to the relevant RFA but also conservation considerations such as the "objects of the National Parks Act with respect to national and State parks."

So, the Angahook-Lorne State Park terms of reference have both RFA based considerations (and therefore consideration of existing forest use) and consideration of environment conservation objectives.

However the proposed terms of reference contain no such balance between consideration of existing uses, and environment conservation objectives.

Following the release of the terms of the inquiry for the Angahook-Lorne State Park, there is a public expectation that the investigation will also contain an appropriate balance between consideration of existing uses, and environment conservation objectives.

RFAs are not binding and the proposed terms of reference should not address this.

The Minister's media release of 30 October 2002 appeared to suggest that the State Government was bound, under the East Gippsland RFA, to find alternative forest of equal yield if the Goolengook Block was protected.

The proposed terms of reference appear to reflect this, anticipating a swap of old growth forest, and resource security for the logging industry.

However RFAs do not impose a legally binding obligation on the State Government to provide resource security to the logging industry. And given uncertainties over the extent of our knowledge of the ecological significance and sustainable resource extraction capabilities of our forests, nor should they.

The Western Australian and Queensland examples (and it would appear the Victorian example, following the Bracks election promise to phase out logging in the Otways) demonstrate that RFAs do not impose a legally binding obligation on State Governments to provide resource security.

Nor do RFAs provide for compensation to the logging industry if the extent of the CAR Reserve is expanded. In this regard, RFAs are similar to reductions made to sustainable yield rates under section 52D of the Forests Act, 1958. Such reductions do not trigger a right of compensation to the logging industry.

It is also interesting to note that the government has not felt bound to fulfil its "environmental" obligations under RFAs. For example, it

does not consider itself bound to undertake a five yearly review of the operation of the East Gippsland RFA on time.

Nor, to LFF's knowledge does the State Government consider itself bound to comply with other environmental obligations under the East Gippsland RFA such as the requirements to:

- Make the Annual Reports for 2001 and 2002 available;
- Establish an "appropriate set of sustainable indicators" which enables assessment in accordance with the theme under the RFA to monitor forest changes and as required for the 5 year review;
- Implement an "ongoing quality assurance program; and to
- Prepare Action Statements for the majority of threatened species under the Flora and Fauna Guarantee Act.

For this reason, the proposed terms of reference should not be framed on the basis of proving resource security to the logging industry.

Other matters:

Please acknowledge receipt of this submission.

Please also confirm any further consultation process proposed, and in particular the consultation process proposed for the Investigation.

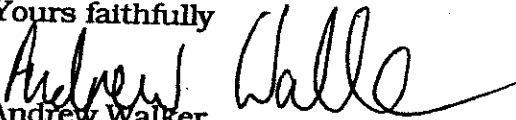
Conclusion

LFF urges the Government to adopt wider terms of reference for the Investigation.

LFF supports and endorses the terms of reference prepared by Environment Victoria, which are attached to this submission.

Please call Andrew Walker on 96589864 during office hours if you have any questions.

Yours faithfully


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RECOMMENDED TERMS OF REFERENCE

Pursuant to section 15 of the Victorian Environment Assessment Council Act 2001, the Victorian Environment Assessment Council is requested to carry out an investigation of the Goolengook Forest Management Block to determine the potential for the Upper Goolengook Catchment to be designated as an addition to Errinundra National Park.

The investigation will consider:

- The need to guarantee the continuation of the natural ecological and evolutionary processes required to maintain the outstanding heritage values of the Upper Goolengook Catchment;
- The need to reserve and protect permanently for the benefit of the public, indigenous flora and fauna and features of scenic, ecological and historic interest in the Goolengook Forest Block pursuant to Section 4(a)(ii) of the National Parks Act 1975;
- The need to protect all old-growth forest³, including "negligibly disturbed" forest, contained in the Goolengook Forest Block;
- The need to protect the six threatened species and two threatened plant communities listed under Schedule Two of the Flora and Fauna Guarantee Act 1988 which inhabit the Goolengook Forest Block;
- The capacity of the current Comprehensive, Adequate and Representative (CAR) Reserve system within the Goolengook Forest Block to adequately and permanently protect ecological values, particularly rainforest⁴, from impacts of unnatural disturbances such as logging and roading;
- Whether silvicultural practices used in the Goolengook Forest Block are ecologically sustainable;
- The significance of social and cultural values of the Goolengook Forest Block to the public, particularly indigenous people.

³ Old-growth forest, in the context of this investigation, is forest that meets the definition specified in the Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve for Forests in Australia, and includes areas identified by Woodgate et al (1994) as "old-growth forest" and "negligibly disturbed forest."

⁴ Rainforest, in the context of this investigation, is forest that meets the definition specified by the Rainforest Technical Committee in 1986

In conducting this investigation it is recommended that VEAC has regard to:

- The objects of the National Parks Act 1975 with respect to National and State Parks
- Section 18 of the Victorian Environment Assessment Council Act 2001
- The Flora and Fauna Guarantee Act 1988 and relevant Action Statements
- The most up to date research and scientific information on Goolengook's biological values
- The Revised Goolengook National Park Proposal (Picone, A. 2002)
- Regional Land Conservation Council Recommendations
- The Goolengook Forest Block Report (1991)
- The East Gippsland Regional Forest Agreement (1997)
- The East Gippsland Forest Management Plan (1995)
- The Victorian State Government's 'Our Forests, Our Future' Policy Statement (2002)
- Saving Old Growth Forest (Common Position Statement endorsed by local environment groups, November 2002)
- Evaluation of Data and Methods for Estimating the Sustainable Yield of Sawlogs in Victoria, J. Vanclay and J. Turner (2001)