



4 April 2014

Lawyers for Forests Inc (LFF) write in response to the request for public comment on the proposed changes to the Code of Practice for Timber Production 2007 (the **existing Code**), including the new draft Code of Practice for Timber Harvesting Operations 2014 (the **draft Code**) and the new draft Management Standards and Procedures for Timber Harvesting operations in Victoria's State forests 2014 (the **draft Management Standards**).

Preface

LFF considers that any review of the regulatory framework for native forests in Victoria is inadequate and misconceived in the absence of:

- ❖ a commitment to expand the reserve system in the Central Highlands in accordance with the recommendations of the leading Ash forest scientist, Professor David Lindenmeyer¹, in order to protect the Leadbeater's Possum from extinction and address the serious decline in Ash forest ecosystem health in that FMA, including in response to the devastating 2009 fires;
- ❖ a commitment to immediately place the few remaining areas of old-growth forest into the reserve system across the state. The majority of Victorians have wanted an end to logging old-growth forests for decades, and “[t]he increase in large-scale bushfire events means that early growth stages are now over-represented in Victoria's vegetation growth stages .. This has severe implications for biodiversity, especially fauna that require older growth stages”²;
- ❖ strengthening all prescriptions for threatened species in accordance with the latest science³ – the current prescriptions, which have informed those set out in the draft Management Standards, are shockingly out of date in most instances and do not take account of the ongoing decline of most species since the prescriptions were written (mostly in the mid-90s);
- ❖ a comprehensive review of the forest values and threatened species habitat affected by the 2014 East Gippsland bushfires, with a view to expanding the reserve system to replace lost values, and an interim moratorium on logging old growth and mature forest in the GMZ/SMZ in that FMA;
- ❖ a commitment to end salvage logging practices, and the intensification of logging in remaining green forest following bushfire, including because “adding to fire impacts is the detrimental impacts of salvage logging. The removal of dead trees and the important habitat they provide can lead to ongoing impacts on biodiversity greater than the impact of the fire”⁴, and “the

1 See <http://www.greatforestnationalpark.com.au/park-plan.html>

2 Victoria: State of the Environment 2013, Commissioner for Environmental Sustainability Victoria, State Government of Victoria, 2013, p110.

3 See, for eg, Lindenmayer, D. B., Blair, D., McBurney, L., and Banks, S. (2013b). New Restoration Forest Management Prescriptions to Conserve Leadbeater's Possum and Rebuild the Cover of Ecologically Mature Forest in the Central Highlands of Victoria. Fenner School of Environment and Society Report, The Australian National University, Canberra. Version 2. July 2013.

4 As above n1, pp73, 110, also see, for eg, Lindenmayer, D. B., and Ough, K. (2006). Salvage logging in the montane ash eucalypt forests of the Central Highlands of Victoria and its potential impacts on biodiversity. Conservation Biology; and Lindenmayer, D. B., Burton, P. and Franklin, J.F. (2008). Salvage Logging and Its Ecological Consequences. CSIRO Publishing, Melbourne.

harvesting of unburnt forest is also an issue in areas where significant fires have occurred because they provide an important refuge for displaced fauna”⁵.

The existing regulatory framework and that proposed via the current review address none of the above, nor do they address, more generally, that:

- ❖ threatened species, including forest-dependant species, in Victoria have continued to decline since the current regulatory framework was put in place in the early 90s⁶. It is not successfully balancing environmental and commercial objectives and should be fundamentally reformed to re-prioritise the environment; and
- ❖ continued logging in public-owned native forests is not returning dividends to the public, yet is costing the public considerably in terms of water yields, ecosystem vitality, carbon stores and lost tourism opportunities, subsidies aside. Expanding the reserve system to prioritise management for these latter objectives, and focussing on transitioning the small number of individuals employed in native forest logging to other sectors, is more economically rational.

LFF notes that it could not find a single prescription in the draft Code or draft Management Standards that increases protection for threatened species and communities in Victoria. This comes despite the science indicating that many threatened species and communities have declined since the prescriptions were written, and in some instances drastically, such as the Leadbeater's Possum⁷.

Notwithstanding the above position, LFF generally supports the objective of consolidating and simplifying the regulatory framework applying to forest management in Victoria, in particular consolidating all mandatory flora and fauna detection-based prescriptions into 1 document.

LFF also supports the separation of environmental regulation from other forms of regulation such as occupational health and safety. However, consistent with this approach, the purpose of the draft Management Standards should be clearly expressed as protection of environmental values, rather than a balance with sustainable timber production. Other documents such as allocation orders and timber release plans will continue to operate, those documents have the purposes of sustained timber production. Such purposes should be separated out of the draft Management Standards. The document should clearly state its purpose as protection of environmental values, including to make clear the manner in which the prescriptions should be interpreted.

Introduction

LFF has a number of serious concerns in respect of the content of the draft Code and the draft Management Standards. These can be summarised as follows:

1. Provision for the granting of exemptions from compliance with the Management Standards;
2. Apparent drafting errors, either typographical or more substantive, and a cumbersome structure, that make interpretation of some prescriptions extremely difficult or unnecessarily convoluted;
3. Lack of defined terms and some poor definitions;
4. Failure to include particular species-specific prescriptions from the FMPs or some Action Statements, and poor redrafting of some prescriptions that appear to have been sourced from the FMPs or Action Statements but are not transcribed verbatim;
5. Failure to include many regulations and procedures relating to regeneration and coupe finalisation, and a lack of clarity as to the future of existing subordinate instruments that deal with these matters (in particular the Coupe Finalisation Procedures and Native Silviculture

5 As above n1, pp72, 110.

6 See, for eg, as above n1, pp 83-84.

7 Ibid, and for eg Lindemayer, D., 'Sending the Leadbeater's Possum down the road to extinction', The Conversation, 14 December 2012, available at <http://theconversation.com/sending-leadbeaters-possum-down-the-road-to-extinction-11249>

Guidelines, both currently mandatory under the existing Management Procedures for Timber Harvesting Roding and Regeneration of Victoria's State Forests 2009);

6. Removal of requirement for officers with expertise in biodiversity to action threatened species zoning prescriptions; and
7. Uncertainty about the status of new Action Statements as they are made, and a lack of clarity that existing Action Statements should be used to aid interpretation of prescriptions consolidated into the draft Management Procedures.

1. Provision for the granting of exemptions from the Management Standards

The provisions for seeking exemptions and temporary variations to the Management Standards at 1.3.1.2 and 1.4 should be removed. The prescriptions set out in the Management Standards will become the only mandatory protection measures for threatened species and communities in Victoria's State forests. Such measures must remain mandatory and it should not be at the discretion of the Secretary to exempt compliance, where it is inconvenient or difficult. The exemption provisions are a serious watering-down of the mandatory prescriptions in the FMPs and Action Statements, and among other things, raise concerns about compliance with the RFAs.

2. Drafting errors and structure

There appear to be a number of errors, some typographic and others more substantial, across both the draft Code and the draft Management Procedures, rendering interpretation of some provisions extremely difficult. In particular, but by no means an exhaustive list, are the following:

- Management Procedures at 3.4.1.3; 3.4.2.1; 3.4.4.1; 4.3.1.4; 4.3.2.1; 4.3.3.1; 4.3.4.1; 4.3.5.1; 4.3.6.1; 5.1.1.1(b); pg 69 item 1.
- Code 2.2.2.2 iv “be approved by the Secretary to DEPI or delegate for timber harvesting operations occurring within SPZ or outside the area allocated to or licensed to the harvesting entity”, we cannot understand what is meant by “or delegate for timber harvesting operations occurring within SPZ” considering timber harvesting operations are precluded from the SPZ. In our view, the Secretary should be required to approve all coupe plans in any event, there should be no exception or alternative to this rule. It is important to maintain government oversight, and ensure that an independent approval process occurs given coupe plans are intended to balance environmental prescriptions with timber production, and are otherwise prepared by the same agency that benefits/profits from the timber production.

We cannot see the purpose of the split and partial duplication of mandatory prescriptions between both Appendix 3 and Appendix 5. The two should be merged into a single table, particularly given the overarching purpose of the review of the Code was to consolidate all mandatory prescriptions into one place – this is then undermined by the inclusion of both Appendix 3 and 5. It leads to some very peculiar outcomes. For example, for the Leadbeater's Possum, the Zone 1B prescription is in Appendix 3 and Zone 1A in Appendix 5. About 80% of the prescriptions in Appendix 3 refer to Appendix 5. Both Appendixes need to be carefully reviewed, cross-referenced and merged.

Appendix 5 (or hopefully a future merged Appendix 3& 5) should contain numbers for each item in the table to enable simple referencing to and from prescriptions in that document.

3. Definitions

The definition of “Mature” in the Management Standards is confusing and imprecise, and is not sourced from any scientific document. It is untenable that such an important, and complex, concept be defined by Departmental staff alone with no reference to peer-reviewed science. Adopting a definition from the scientific community would not only lend credibility to the definition used but also provide a more fulsome aid in interpretation. Given some prescriptions are based on the identification of mature trees, particularly Leadbeater's possum Zone 1A and 1B habitat, the definition used should be as certain

as possible, and adopt a precautionary approach. That is, a lack of certainty as to whether a tree is mature or not should not be a reason to avoid protection measures.

“Compartment” is not a defined term in either the Management Procedures or the Draft Code. If it is to be used as the unit of measurement for the purpose of the fire salvage prescriptions at 8.1.8, its definition should be made clear in the same document and not left to interpret via other, unnamed Acts or subordinate instruments. Without this term defined, the prescriptions at 8.1.8 are unclear, and more likely to be subject to future disputes between conservationists and VicForests.

Mixed Forest should be unambiguously added to the definition of rainforest in the draft Code. It is now accepted that Mixed forest is a class of rainforest in Victoria, termed “Cool Temperate Mixed Forest community”⁸. The definition of rainforest in the draft Code should reflect this so there is no ambiguity that the rainforest protection prescriptions also apply to this community.

Other than by interpreting the current rainforest definition used so as to include this community, Mixed Forest is entirely absent from the draft Code and the draft Management Standards.

4. Threatened species and communities prescriptions

LFF refers to and repeats its comments on page 1 above in respect of threatened species prescriptions. The following comments are based on problems identified as between the prescriptions in the draft Management Standards and those contained in the source documents, noting that in LFF's view the content of most is inadequate for the protection of the species.

Leadbeater's Possum

As set out above, the prescription should not be split between Appendix 3 and Appendix 5.

The wording of both is imprecise and poorly drafted, notwithstanding that this prescription was poorly drafted in its source documents as well. The draft Management Standards only make matters worse in terms of uncertainty. The construction “Establish a SPZ around areas of Zone 1A habitat where there are more than than 12 hollow bearing trees per 3 ha in patches greater than 3 ha”, does not make clear that the SPZ should comprise the Zone 1A identified due to the use of the word 'around'.

Owl Zones

The detection-based prescriptions in the Action Statements for the Sooty, Powerful and Masked Owls provide for 3ha SPZs plus 250-300 SMZs around nest and roost sites currently and frequently in use.

The detection-based prescription for these species for the Central Highlands FMA in Draft Appendix 5 is sourced from the Central Highlands FMP. The Action Statements for all 3 of these species post-date the Central Highlands FMP, offer greater protection for these species, and are binding. The Action Statement prescriptions should be used in place of the FMP prescriptions for these species in Appendix 5. That is, the detection-based prescription in Draft Appendix 5 for the East Gippsland FMA for these species should also be in place for the Central Highlands FMA. Incongruence between the Action Statement prescription and that in Appendix 5 creates uncertainty as to the prescription to be applied and is likely to lead to future conflict between conservationists and VicForests.

The Barking Owl detection-based prescription is entirely absent from both Appendix 3 and Appendix 5 for the East Gippsland Forest Management Area. The relevant Action Statement prescriptions should be added for East Gippsland FMA for this species. While the bulk of this species' preferred habitat is

8 Flora and Fauna Guarantee Act 1988 – Threatened List: Characteristics of Threatened Communities, p4, available at http://www.depi.vic.gov.au/_data/assets/pdf_file/0005/229703/Flora-and-Fauna-Guarantee-Characteristics-of-Threatened-Communities-.pdf

outside the East Gippsland FMA, the species is known to occur and has been recorded in East Gippsland FMA (see the map titled ‘Distribution in Victoria’ on page 1 of the Barking Owl Action Statement No. 116, and records of the species published on DEPI’s Biodiversity Interactive Maps).

The fixed zoning prescription for the Powerful Owl in East Gippsland is incorrect. The East Gippsland FMP specifies that POMAs should be approximately 800 ha per pair in East Gippsland, see pg 30 EG FMP. The fixed-zoning prescription in Appendix 5 incorrectly specifies minimum 500 ha. This should be amended.

In general, the complexity and detail of the fixed zone owl prescriptions contained in Appendix J to the East Gippsland FMP have not been transferred to the draft Management Procedures. In LFF’s view, the best course would be to simply cross-reference the fixed zone owl prescriptions in Appendix 5 with the existing Appendix J of the East Gippsland FMP, for example by adding ‘refer to Appendix J of the East Gippsland FMP for further guidelines detailing the distribution of POMA/SOMA/MOMA across the FMA’.

Smokey Mouse

There seems to be an error in the prescription for this species in Appendix 5 – it refers to POMAs, clearly not relevant to this species. The relevant detection-based prescription from the Action Statement should be inserted.

Pre-1900 // 100 years old trees

The prescription at 8.1.9.1 of the Draft Management Standards should refer to all trees 100 years old or more, given that was the intention of the pre-1900 prescription when it was drafted into the Central Highlands FMP in 1998. It is absurd that trees have to get older to be protected as time goes on due to that use of terminology in drafting the prescription. The intention is clear. There is no basis for the prescription to become increasingly stringent over time, particularly considering the loss of old and hollow-bearing trees is increasing in severity⁹.

Rainforest prescriptions

The activities prohibited within protected rainforest stands at 3.4.7 of the draft Management Procedures should be listed. These are set out in the appendix to the Rainforest Action Statement but have not been included in the prescription set out in the draft Management Procedures. Their exclusion will create uncertainty as to what activities are and are not prohibited within protected rainforest stands.

Rainforest Sites of Significance

The prescription to “[i]nclude in the SPZ all rainforest to the nearest watershed boundary surrounding core areas (priority 1 areas) of rainforest stands in National Sites of Significance for Rainforest” at 5.6.1 of Appendix 5 of the draft Management Standards, is, with respect, incomprehensible, including because:

- all rainforest plus a buffer area must be included in the SPZ regardless under the prescription at 3.4.7 of the draft Management Procedures, we wonder whether “Include in the SPZ all rainforest to the nearest...” was intended to read “Include in the SPZ all forest to the nearest...” ; and
- there is no such thing as “core areas (priority 1) of rainforest stands”, core areas (priority 1) are mapped subsets of Rainforest Sites of Significance, not subsets of rainforest stands within rainforest sites of significance;

⁹ See, for eg, Lindenmayer, D. B., Blanchard, W., McBurney, L., Blair, D., Banks, S., Likens, G. E., Franklin, J. F., Laurance, W. F., Stein, J. and Gibbons, P. 2012a. Interacting factors driving a major loss of large trees with cavities in a forest ecosystem. PLOS One 7: e41864. <http://dx.doi.org/10.1371/journal.pone.0041864>

- it is unclear whether “all rainforest to the nearest watershed boundary” is qualified by “in National Sites of Significance” or whether the latter is only intended to qualify “core areas (priority 1) of rainforest stands”.

Unclear prescriptions, such as this, create uncertainty as to the regulatory requirements VicForests must comply with and are more likely to be subject to future disputes.

Fixed Zoning for vegetation

5.6.4.4.5 of Appendix 5 to the draft Management Standards will result in a continued depletion of the number of hectares of old growth forest protected over time by use of the words “at the time of assessment”. This prescription was intended to protect 60% of old growth forest in East Gippsland FMA at the time of writing the east Gippsland FMP, being in the mid-90s. Clearly, given ongoing logging of old-growth pursuant to that FMP, there is now less old-growth forest in East Gippsland. The prescription is meaningless if it protects 60% of old growth forest at any given time.

5.6.3 of Appendix 5 to the draft Management Standards does not include the requirements for percentages of each EVC to be protected provided on page 12 of the Central Highlands FMP, these should be included.

Cave roosting bats

The mandatory prescription on page 29 of the East Gippsland FMP for cave-roosting bats has not been included in the draft Management Standards. It should be inserted into Appendix 5.

Butterflies

The mandatory prescription on page 33 of the East Gippsland FMP for butterflies has not been included in the draft Management Standards. It should be inserted into Appendix 5.

Spotted Tree Frog and Barred Galaxias

The prescriptions included in Appendix 5 to the draft Management Standards for these species do not include the progressive closure and rehabilitation of roads, minimisation of stream crossings or seasonal closure of roads in catchments of these species, and some other prescriptions to manage roading impacts. Those prescriptions are mandatory under the Central Highlands FMP, see pages 25 and 27, and should be included the draft Management Standards.

5. Regeneration and coupe finalisation

LFF is concerned that the prohibition on conversion of native forest to plantation, at ??? of the current Code of Practice, has been removed from the draft Code and has not been transcribed into the draft Management Procedures. LFF considers this is a fundamental environmental obligation contained in the Code, and should not be done away with. It has a long historical evolution, through the FMPs and the Regional Forest Agreements. The community does not accept that public native forests managed for biodiversity be converted to tree farms. This prescription should be maintained.

LFF has serious concerns regarding the removal of a number of record keeping obligations relevant to regeneration. In particular, the removal of the requirement to record the species present pre-logging, currently contained at least in the Silviculture Guidelines. 2.2.3 of the draft Code should be expanded to include far greater requirements for record keeping, including both canopy and understorey species present pre and post logging.

Neither the draft Code nor the draft Management Procedures address coupe finalisation - the process for handing back regenerated coupes to DEPI. Previously, the Coupe Finalisation Procedures, mandatory via the Management Procedures, regulated this process. It is unclear whether the Coupe Finalisation Procedures will remain on foot, and if so, by what mechanism they will be enforceable.

Coupe finalisation is a key aspect of native forest management, as it regulates the process by which logged areas allocated to VicForests are returned to the public under DEPI's management. Without a clear, enforceable process, that includes standards for regenerated forest and stringent auditing and record-keeping requirements, it is likely that:

- the standard of regeneration will decline;
- auditing of regenerated coupes will decline;
- the data base against which to assess regeneration will decline;
- logged coupes will be “lost” between VicForests and DEPI's management.

The latter has occurred in the past – where coupes not formally handed back to DEPI in accordance with the Coupe Finalisation Procedures have nevertheless dropped off the TRPs, rendering these areas in a sort of management vacuum where it is unclear which agency is responsible. Such a situation must not only be avoided by ensuring strict compliance with current standards, but DEPI should take the opportunity of the review of the Code to clarify and improve the coupe finalisation process. It seems the review of the Code has done the opposite – the draft Code and Management Procedures leave the coupe finalisation process out entirely.

6. Removal of requirement for officers with expertise in biodiversity to action threatened species zones

The failure to include these procedural requirements, currently mandatory via the existing Management Procedures, is of serious concern and will lead to poorer threatened species outcomes. Clearly, those within the Department with expertise in biodiversity should be tasked with interpreting and implementing threatened species protections to ensure action taken maximises biodiversity outcomes. These requirements should be maintained, and strengthened.

7. Future Action Statements and the status of existing Action Statements

It is unclear whether prescriptions in future action statements will be automatically mandatory, or whether consequent amendment to the Management Standards will be required in order to give effect to such prescriptions. Future Action Statements should be binding in and of themselves until any consequent amendment to the Management Standards.

Should future action statements come into force without consequent amendment to the Management Standards, and with this position remaining unclear, there will be uncertainty as to the regulatory requirements, and a greater likelihood of dispute.

It should also be made clear in the draft Code and the draft Management Standards that action Statements and FMPs should be used as aids in interpreting prescriptions. Those documents include far more detail about species, threats and management than has been extracted into the new documents. Such information should not be lost via the consolidation process.

Conclusion

LFF has serious concerns about the approach taken to the review of the existing Code, and the drafting of the new Management Standards. Many prescriptions have been poorly drafted, poorly transcribed, or poorly defined. The overwhelming majority are in urgent need of review based on current science, and should be strengthened. The opportunity provided for exemptions from the inadequate protections that exist is drastically regressive. The approach taken by the Victorian Government in failing to strengthen protection for a single threatened species or community across the State is indicative of the failure to base environmental law and policy on science and economics.