

CONSTRUCTION OF NEW "FIRE BREAKS" IN  
VICTORIA'S CENTRAL HIGHLANDS:

Application for approval under the Environment Protection &  
Biodiversity Conservation Act 1999 (Cth) by the Victorian  
Department of Sustainability & Environment

PUBLIC COMMENT ON REFERRAL:

IS THE PROPOSED ACTION A CONTROLLED ACTION

by LAWYERS FOR FORESTS INC



20 December 2007

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## 1. Introduction

- (a) Lawyers for Forests Inc (“LFF”) has considered the referral, with annexures, wherein the Victorian Department of Sustainability & Environment (“DSE”) seeks to resume the construction of a significant logging coupe referred to as a “fire break” in the Central Highlands in Victoria.
- (b) LFF has seen that the Department of Environment, Heritage and the Arts (“the Department”) has, in accordance with s74(3) of the Environment Protection & Biodiversity Conservation Act 1999 (Cth) (“the Act”), published on the Internet the referral and an invitation for anyone to give the Minister comments within 10 business days on whether the action therein is a controlled action under s75 of the Act.
- (c) LFF is of the view that the action is a controlled action as it will have a significant impact on threatened species. The area within which the action is proposed to take place has outstanding natural heritage values unique to any other place in Australia. It is home to a number of uncommon, rare and endangered species. Some of those species are endemic only to the area. The area is a site of national geological and botanical significance and is one of the only few sites of global zoological significance in Victoria.

## 2. Action is a controlled action: threatened species endemic to the area

- (a) The action is a controlled action, as s18 of the Act is applicable. This is because the action will have a significant impact on listed threatened species. The listed threatened species include the Baw Baw Frog, the Leadbeater’s Possum and the Smoky Mouse.
- (b) The Baw Baw Frog is completely confined to the Central Highlands. It does not inhabit any other place in the world. It is listed under the IUCN red list as “critically endangered”.<sup>1</sup> It is listed as a threatened species under the Act and a Recovery Plan was made.<sup>2</sup> It is listed as a threatened species under the Flora and Fauna Guarantee Act 1988 (VIC) (“the FFG Act”). It has the highest degree of protection afforded to any species of frog in Australia.
- (c) The Leadbeater’s possum is Victoria’s faunal emblem. The species is confined only to the forests of the Central Highlands in Victoria. It was thought to be extinct for the first half of the 20th Century until it was rediscovered in 1961.<sup>3</sup> The species is listed as

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<sup>1</sup> [www.iucnredlist.org](http://www.iucnredlist.org).

<sup>2</sup> G Hollis, *Recovery Plan for the Baw Baw Frog (*Philoria frosti*) 1997-2001*, Department of Natural Resources & Environment, 1997. It should be noted that the Recovery Plan expired in 2001 and another Recovery Plan has not been made.

<sup>3</sup> D Lindenmayer, H Possingham, *Modelling the inter-relationships between habitat patchiness, dispersal capability and metapopulation persistence of the endangered species, Leadbeater’s Possum, in south-eastern Australia*, *Landscape Ecology*, 11(2), 1996, pp 79-105.

“endangered” under the IUCN red list.<sup>4</sup> It is listed as a threatened species under the Act and a Recovery Plan was made.<sup>5</sup> It is listed as a threatened species under the FFG Act and as endangered under “The Advisory List of Threatened Vertebrate Fauna in Victoria 2003”.<sup>6</sup>

(d) The Smoky Mouse inhabits three distinct Victorian biogeographic regions: the Greater Grampians, the Central Highlands and the Victorian Alps. The Smoky Mouse does not inhabit any other place in the world.<sup>7</sup> The Smoky Mouse is listed as “endangered” at the national level under the Act. It is also listed as a threatened species under the FFG Act and is considered endangered in Victoria according to “The Advisory List of Threatened Vertebrate Fauna in Victoria 2003”.<sup>8</sup>

(e) There are more uncommon, rare or endangered species of fauna in the Central Highlands area including the spotted tree frog (listed as “critically endangered”),<sup>9</sup> sooty owl<sup>10</sup> and powerful owl.<sup>11</sup>

### 3. Action is a controlled action: significant impact

(a) The action will have a significant impact on the threatened species. Despite that the action is being referred to as construction of a “fire break”, the stark reality is that the action comprises logging for a commercial benefit. It is well-known and should be uncontroversial that logging has a significant impact on threatened species, including those referred to above.

(b) The Baw Baw frog is under threat from logging. The species has recently experienced a massive population decline and is extremely sensitive to logging and other forms of environmental stress. The “loss, degradation or modification of habitat is... the most documented cause of amphibian decline”.<sup>12</sup> In 2004 it was found that its population count has decreased by 98%.<sup>13</sup>

(c) The Leadbeater’s Possum requires hollow-bearing trees to survive. Clearfell logging poses a serious threat to the survival of the species through the loss of hollow bearing trees. The loss of hollow bearing trees is a threatening process under the FFG Act, so it

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<sup>4</sup> [www.iucnredlist.org](http://www.iucnredlist.org).

<sup>5</sup> Malcolm Macfarlane, Jill Smith & Kim Lowe, *Leadbeater's Possum (Gymnobelideus leadbeateri) Recovery Plan*, Department of Natural Resources & Environment, 1997.

<sup>6</sup> Department of Sustainability & Environment, *The Advisory List of Threatened Vertebrate Fauna in Victoria – 2003*, 2003, p 7.

<sup>7</sup> Department of Sustainability & Environment, *Action Statement: Flora and Fauna Guarantee Act 1998*, No. 196, 2004, p 1.

<sup>8</sup> DSE, *op cit*, n 6.

<sup>9</sup> [www.iucnredlist.org](http://www.iucnredlist.org). It is also listed as a threatened species under the FFG Act.

<sup>10</sup> Listed as a threatened species under the FFG Act.

<sup>11</sup> Listed as a threatened species under the FFG Act.

<sup>12</sup> Hollis, *op cit*, n 2, p 4.

<sup>13</sup> Hollis, *op cit*, n 2, p 37.

is ironic that the DSE seeks to clearfell them in the referral. As most logged sites around the Central Highlands are clearfelled, the forest structure has been undergoing dramatic change rendering the landscape unsuitable for the Leadbeater's Possum to inhabit.<sup>14</sup>

- (d) LFF was recently provided with a report prepared in 1993 by a group of scientists retained by the then Department of Conservation and Natural Resources ("the Report").<sup>15</sup> The Report was referred to in Hansard.<sup>16</sup> The Report was requested from the DSE under the Freedom of Information Act 1982 (Vic). The complete version of the Report was eventually released in June 2006. The complete version of the Report has not previously been released to the public.<sup>17</sup> The Report confirms the outstanding significance of the Central Highlands and the existence of uncommon, rare and endangered species in the area. The Report introduces for the first time acute scientific documentation that any logging of the area would be a real and serious threat to the uncommon, rare and endangered species in the area. The Report found that:

"Clearfelled forests will be prevented from ever developing the structural characteristics of old-growth forests, resulting in a long term decline in some important habitat components, particularly the numbers of hollow bearing trees and large fallen logs."<sup>18</sup>

The Leadbeater's Possum population trend is in decline. The last count in 2006 stands at approximately 2,500 individuals.<sup>19</sup>

- (e) The Smoky Mouse is a ridge-dependant species. Roads and tracks associated with logging are often constructed along ridgelines in dry forest. In some areas within the Central Highlands area there are few substantial ridges that do not have roads or tracks constructed on them. This is a threat to the Smoky Mouse and the population is in decline. Clear-fell logging, and the associated soil disturbance and regeneration burns, destroy Smoky Mouse habitat.<sup>20</sup> Given that this action proposes to construct the majority of the "fire breaks" along ridge tops, it is impossible to see how the DSE can maintain that the action will not have a significant impact upon the Smoky Mouse.

- (e) LFF is of the view that the action will have a significant impact upon the threatened species referred to above. It is clear that logging already undertaken in the Central

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<sup>14</sup> The Central Highlands Alliance Inc, *Mount Baw Baw: an Investigation on Logging within Sites of Natural Significance*, 2006, pp 92-97.

<sup>15</sup> J Davies, R Carter, M Drummond, G Hollis, C Pascoe, R Wallis, K Lester, *Flora and Fauna of the Eastern and Western Tyers Forest Blocks and Adjacent South-Eastern Slopes of Baw Baw National Park, Central Gippsland, Victoria*, Department of Conservation & Natural Resources, 1994, attached as appendix 2 to TCHA, *op cit*, n 14, p 167.

<sup>16</sup> Official Committee Hansard Senate, *Rural and Regional Affairs and Transport Legislation Committee - Reference: Regional Forest Agreements Bill 1998*, 1 February 1999.

<sup>17</sup> TCHA, *op cit*, n 14, p 55.

<sup>18</sup> Davies et al, *op cit*, n 15.

<sup>19</sup> [www.iucnredlist.org](http://www.iucnredlist.org).

<sup>20</sup> DSE, *op cit*, n 7, p 4.

Highlands has been a significant contributor to the loss of suitable habitat for these threatened species. The continuing loss of habitat for these species is the primary reason for their threatened status, making any further destruction of their habitat inconsistent with their continued existence. Approval of the action will play a significant role in causing the extinction of these species.

#### 4. Utility of fire breaks

(a) LFF has been provided with a copy of:

(i) a document titled "Fire Submission" dated 20 May 2007 prepared by Professor David Lindenmayer; and

(ii) a document titled "Submission to the Inquiry into the Impact of Public Land Management Practices on Bushfires in Victoria" dated 25 May 2007 prepared by Dr Kevin Tolhurst,

both of which were submitted to the Victorian Environment and Natural Resources Committee in respect of the inquiry into the impact of public land management on bushfires in Victoria. The documents are attached to this submission.

(b) Both documents explain that the utility of fire breaks are negligible in the event of a wildfire, while the practice of constructing them is far from perfected. At best, fire breaks require more research to determine their impact and effectiveness. According to Professor Lindenmayer and Dr Tolhurst fire break construction around Melbourne's water catchments will not protect them from fire, but will have the adverse effect. LFF refers to and supports the explanations and conclusions in the documents.

#### 5. Prior "fire break" construction

(a) On 15 February 2007, LFF together with The Central Highlands Alliance Inc wrote to the Department's Compliance and Enforcement Section, Approvals and Wildlife Division to advise the Department of the "fire break" construction that was proceeding without approval under the Act. A copy of the 15 February letter is attached. LFF understands that the referral the subject of this submission has been lodged with the Department at least partly as a result of the 15 February letter. In the 15 February letter, LFF submitted to the effect that the "fire break" required approval under the Act. LFF believes the DSE took the appropriate course of action in lodging the referral with the Department.

(b) LFF is concerned that, as far as it is aware, there has not yet been a determination regarding the already constructed "fire break", which formed the subject of our 15 February letter. Given the lodging of the referral, it is clear that the already constructed "fire break" would have required approval under the Act. No doubt the Department is aware that it now needs to impose civil penalties on the DSE and/or Vicforests in respect of the already constructed "fire break". Would you kindly contact us and let us know the status of that matter.

## 6. Information

- (a) The referral comprises 38 pages. The appendices to the referral exceed 200 pages. Only 10 working days has been afforded to interested members of the public to comment on whether the action is a controlled action. This is insufficient time to provide proper comment. Given, among other things, the volume and nature of the referral and annexures, LFF is of the view that it has not been afforded a reasonable opportunity to provide comments.
- (b) There is a significant amount of information relevant to whether the proposed action will have a significant impact on threatened species, including the documents cited in this submission. That information should be considered in determining whether the action is a controlled action.

## 7. Conclusion

- (a) It is difficult to comprehend how the DSE can submit in its referral that the proposed action is not a controlled action in contradiction of, among other things, reports and information that it has produced in the past and that have been produced by its predecessor and federal departments.
- (b) The proposed action is a controlled action, as it will undoubtedly have a significant impact on threatened species including the critically endangered Baw Baw frog and Leadbeaters Possum. If the Minister determines that the proposed action is not a controlled action, LFF is of the view that the Minister will err as a matter of law.

Prepared by the Executive Committee of Lawyers for Forests Inc and Jeffery Holowaychuk on behalf of Lawyers for Forests Inc

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