14 September 2009

The Manager
Resource and Conservation Unit
Department of Environment and Climate Change NSW
PO Box A 280
Sydney South
NSW 1232

Attention: Paul Campbell, via email

Review of NSW RFA's

Dear sir/madam,

I refer to my submission of 7 September 2009. I said then I would put in the details of my comments in a few days - if this was acceptable. They are attached and it is at your Department's discretion whether you accept them or not.

I experienced delays prior to the 7th in getting my submission ready due to 2 matters in the Administrative Appeals Tribunal with Forests NSW - which took up a considerable amount of time in preparation.

One matter was about seriously false revenue figures provided under FOI by Forests NSW - which they refused to correct. The second matter was about the area of regrowth forest in Eden and South Coast Southern. Figures for the area of regrowth forest and multi age forest for Eden were provided - however, they were significantly in error - they did not add up to the net harvestable area by an amount of 23,312 ha. Forests NSW would not fix the error and provide the correct figures.

The details in this submission have previously gone to Forests NSW - as part of my submissions on the proposed Forestry Regulation 2009. I have made a few minor changes.

I have also added an alternative suggestion - that DECC take over managed Native Forests and rename Forests NSW Forestry NSW - who would have plantations.

Yours faithfully,

Terrence Digwood

A) Strategy for Profitable and Sustainable Forests

1) Remove all managed Native Forests from Forests NSW control as an alternative to sorting out management of Native Forests within Forests NSW.

Forests NSW have demonstrated they can't manage native forests.

a) They made a loss of $14.4 mn on Native Forests inn 07/08 and have made losses for many years - even though they have free use of the forests.
b) The CEO of Forests NSW proposes to subsidise this loss from plantations - this is poor management. Native Forests should be profitable in their own right.
c) The forests are generally not being managed in practical terms on the ground, for a sustainable timber yield.
The Auditor General's report said that the North Coast forests were being overcut.

2) Rename Forests NSW Forestry NSW. They manage plantations, provide forestry services and re-create Native Forests destroyed for plantation plantings by the Forestry Commission. This is done out of their profits.

3) Set up a new organisation to control managed Native Forests under the control of DECC. These forests are managed for sawlogs, carbon credits, ecotourism - adventure recreation, cafes and internet, interactive education. A different tourism focus from National Parks.

4) Reduce sustainable yields - in line with actual yields obtained from logging over the last decade. Then make a further reduction of 5% as a safety margin. This enables the forests to repair themselves and takes account factor X.

5) End woodchipping.

a) It puts too much strain on forest health,
b) Requires excessive resources to manage and monitor.
c) Forests NSW will subsidise the Eden chipmill by $142 million over the 20 year life of the 2 RFAs - Eden and Southern.
d) Forests NSW has become trapped by the chipmill - it can't pay more than $23-$25 per tonne for pulplogs. To just keep ahead of inflation Forests NSW should be charging $30 per tonne. The average price for pulp in 07/08 was $11.51/t. Forests NSW has changed the Eden forests to regrowth specifically for the chipmill with a moderate amount for sawlogs. They are locked in to a low price loss making situation and they don't know how to get out of it.

6) Reduce labour costs for Native Forest management. Sell unwanted properties eg Eden office of Forests NSW and rationalise as necessary.

7) Streamline regulation

This is certainly possible - particularly if sustainable yields are lower and there is less strain on the forests.

8) Ask the woodchipping companies for money.

9) Employ people who actually care for the forests as living things. By overcutting Forests NSW is harming the forests.

B) Cost Characteristics:

Forests NSW Compared to Australian Industry and VicForests

Cost Characteristics

	Forests NSW 07/08 %	Total Selected Industries 07/08 %	Agric. F'try & Fish 07/08 %	VicForests 05/06 %
Wages & Salaries % of Income	46.5 *	15.5 Aust	9.3 Aust	34.1
Total Expenses % of Income	85.1 *	88.8 Aust	90.5 Aust	87.1

Sources:
Forests NSW Annual Report 2007-08
* excludes income and expenditure on contract harvest & haul and valuation effects; interest and finance charges added back to total expenses.
ABS: 81550DOoo1_ Australian Industry, 2007-08, Table 1
VicForests Annual Report 2006 - figures exclude valuation effects,
06/07 figures excluded as it was an abnormal year

The figures show that Forests NSW spends 3 times as much on labour costs per income dollar than the average over all selected Australian industries. (The descriptor 'Selected Industries' is what the ABS uses.)

The figures show that forestry is labour intensive. However, Forests NSW spends 36% more on labour costs per income dollar than VicForests.

The way forward is to reduce labour costs - coupled with moderate price increases for high quality products. Get rid of woodchipping - pulplogs are a low price product - and manage for high quality products.

Thinnings could be combined with green waste to produce an organic mulch. Done at a local level. To reduce transport costs for thinnings get the green waste delivered to sites just outside the forests and produce the mulch on site. Organic mulch sells for a good price. Sawmill waste could be handled similarly.

Reducing labour costs means reducing the intensity with which the forests are used and reducing the burden of regulation. Substitute technology for labour where feasible.

C) Sustainable Timber Supply

Sustainable timber supply is a fundamental corner stone of the RFA's.

The method I have used to assess sustainable timber supply is:

a) I computed the required (theoretical) sustainable yield/ha for HQL sawlogs using standing volume information and area available for harvesting. These figures were in the Auditor General's report. I applied a maxima condition for sustainable yield:
population size = carrying capacity divided by 2. (Carrying capacity is obtained from standing volume, population size is required sustainable yield/ha). The division by 2 is obvious as the idea of sustainable yield is that at the end of the rotation cycle you end up with what you started with. It is also the maxima condition from the model.

b) I then computed actual yields/ha for HQL sawlogs - obtained from FOI data supplied by Forests NSW

c) If the actual yield/ha is less than the required yield/ha the logging is not sustainable.

The results showed that the current sustainable yields are too high. For North Coast the figure fell to 75% of Forests NSW figure for years 1-5. For years 6-20 it was 79%. For Tumut-Southern the figure is 69%. For South Coast the figure fell from 42,070 cu m to 37,330 cu m - 89%. Forests NSW have increased the figure from 42,070 cu m to 48,500 cu m - by buying or leasing private land.

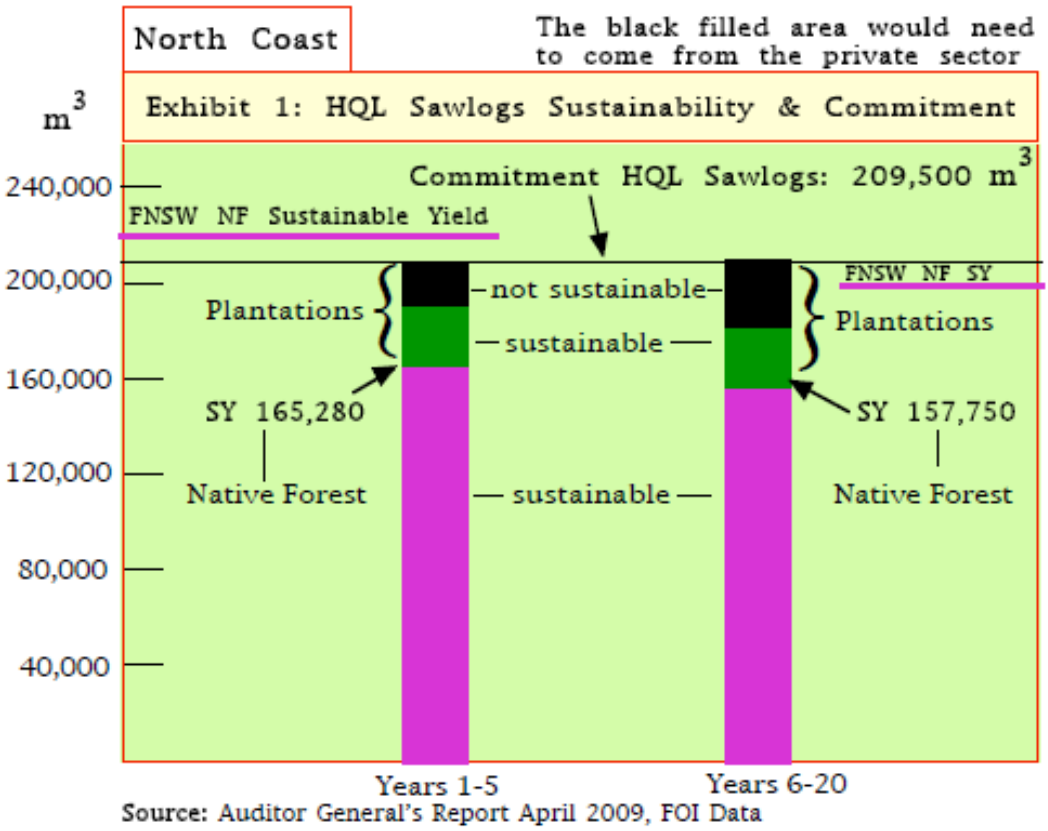
Comments

The results I have obtained are in broad agreement with the 80% differential reported in the 2002 study of projected North Coast timber yields by Jerome Vanclay. However, he found that 220,000 cu m/pa for HQL sawlogs for 20 years was assured. I did not come to that conclusion.

This conclusion - supply was assured - was not what I inferred from the 2004 Valuation study by Partington and Stevenson. They indicated that the yield estimates coming out of FRAMES were proving difficult to achieve and that FRAMES had a number of problems. They also said - quoting Forests NSW - that the inventory data can no longer be considered a reliable description of the resource due to the level of harvesting over the last five years and the lack of a replacement programme for harvested plots.

I have used a simple method based on actual data looking at it from a broad perspective. Differentials in yield by area within one region or sub region ought to be smoothed out over the rotation cycle.

The results show - for the North Coast, South Coast-Southern and Tumut-Southern - that the sustainable timber supply figures for supply of HQL sawlogs from Native Forests, as set out in the ESFM plans, are too high.



Commitments can be met - by logging plantations more than what is wise. This suggests turning to the private sector to obtain the black filled area in Exhibit 1.

1) North Coast Years 1-5
The AG's report found that the North Coast Native Forests were being cut faster than they could grow back - not sustainable - the AG said commitments could be met from plantations.

I found the sustainable yield for years 1-5 from Native Forests was 165,280 cu m/pa - a decrease of 54,720 cu m p.a. compared to the 220,000 cu m p.a. supplied to the AG by Forests NSW - due to falls in actual yield of HQL/ha. 75% of the 220,000.

This fall in sustainable yield is made up of 2 components.
1) The sustainable yield from Native Forests drops from 220,000 cu m to 176,920 i.e. about 80% on account of the fall in actual yield/ha.
2) A 5% adjustment was then made to account for factor 'X' - namely a further fall in actual yield/ha - which is likely due to the overcutting identified by the Auditor General.

I found that an amount of 44,220 cu m would need to be supplied from plantations to meet the commitment of 209,500 cu m - of which about 20,600 cu m p.a. would have to be cut above that which is wise.

The 20,600 cu m p.a. could be supplied from the private sector - i.e. either plantations or Native Forest. If from Native Forest this amount would need to be supplied sustainably.

2) North Coast Years 6-20

I found the sustainable yield for years 6-20 from NF was 157,750 cu m/pa - a decrease of 42,250 cu m pa compared to the 200,000 cu m p.a. supplied to the AG by FNSW - due to falls in actual yield of HQL/ha: 78.9% of the 200,000.

The decrease is not as large as in years 1-5 because I factored in a smaller rate of decline in actual yields compared to what is implied in the AG's report. This was due to the fact that I had already reduced the sustainable yield in years 1-5 and this may operate to ameliorate the effect of further falls in yields/ha in years 6-20.

I found that an amount of 51,750 cu m would need to be supplied from plantations to meet the commitment of 209,500 cu m - of which 28,150 cu m pa would have to be cut above that which is wise.

The 28,150 cu m p.a. could be supplied from the private sector - i.e. either plantations or Native Forest. If from Native Forest this amount would need to be supplied sustainably.

Area logged and Output of HQL Sawlogs

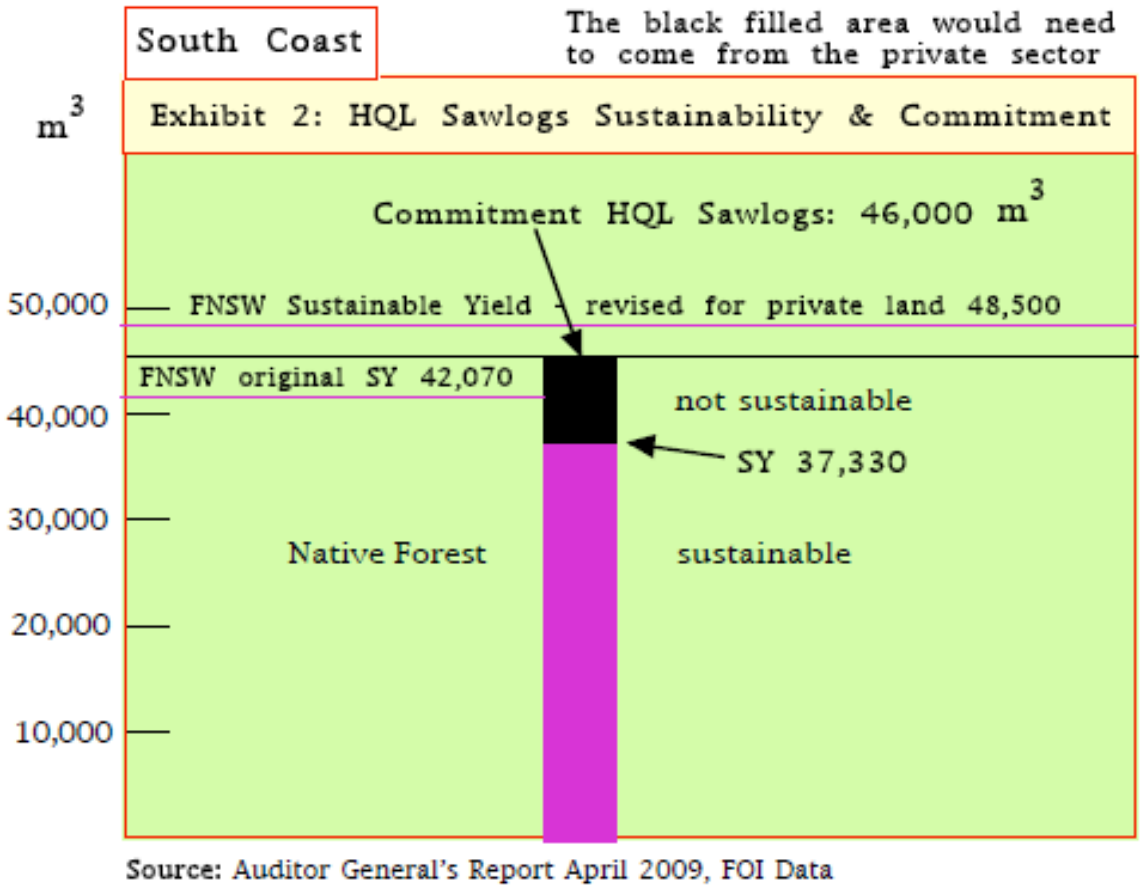
North Coast

	Area logged ha	HQL Sawlogs m^3	Actual Yield HQL/ha m^3/ha
04/05	18,049	197,928	10.97
05/06	20,821	206,077	9.90
06/07	20,716	178,351	8.61
07/08	17,766	191,086	10.76
Total	77,352	773,442	10.00

Source: FOI data Forests NSW, Auditor General's Report

Sample size: approximately 97 compartments - based on a compartment size of 800 ha. The range of variation in the data is not abnormal.

For 07/08 there is a data problem - FOI data shows there is a 35,036 cu m fall for graded sawlogs - large & small - plus veneer logs plus girders, comparing FOI figures to the figures provided by Forests NSW to the Auditor General. This would bring the yield/ha down. To maintain consistency I used the figures in the AG's report.



Source: Auditor General's Report April 2009, FOI Data

The commitment cannot be supplied from public Native Forests.
The sustainable yield has fallen from 42,070 cu m - to 37,330 cu m for 2 reasons

1) The fall in actual yield/ha compared to the yield/ha required to maintain the annual sustainable yield - 91%.

2) A 2.25% adjustment to account for a further fall in actual yield due to overcutting - which is not as bad as on the North Coast.

The sustainable yield is 37,330 - 88.7% of the 42,070 figure in the AG's report.

Forests NSW have increased the sustainable yield to 48,500 cu m compared to the 42,070 cu m in the AG's report. This is shown in Forests NSW Corporate Business Strategy 2006-07. However, there has been no increase shown in the net harvestable area.

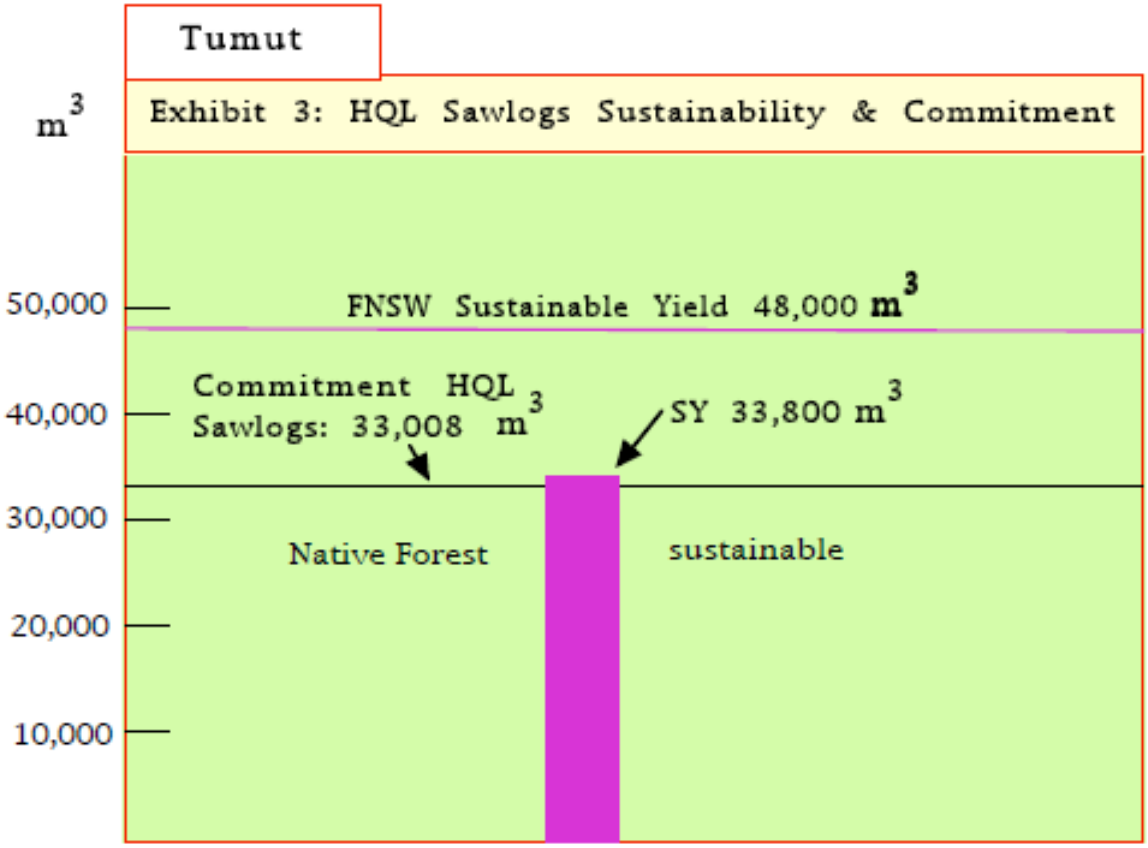
Forests NSW have advised that private land has been bought and/or leased.
Based on the original sustainable yield of 42,070 the amount should be - 15,600 ha
Based on the actual sustainable yield of 37,330 the amount should be - 27,100 ha
Assumes that the original required yield/ha will be achieved.

South Coast-Southern

	Area logged ha	HQL Sawlogs m^3	Actual Yield HQL/ha m^3/ha
01/02	3,794	29,108	7.67
02/03	3,710	46,736	12.60
03/04	4,363	44,525	10.21
04/05	3,361	37,238	11.08
05/06	5,095	43,945	8.63
06/07	7,618	42,731	5.61
07/08	3,924	47,750	12.17
Total	31,865	292,033	9.16
Adjusted			9.69

Source: FOI data Forests NSW, Auditor General's Report, IFOA data

Sample size: approximately 40 compartments - based on a compartment size of 800 ha. The data show more variability than for North Coast. 06/07 is an outlier. The outlier cannot be dismissed but it needs to be adjusted to smooth out variation as the sample size of 40 is a little low. I don't have access to the compartment data - therefore I obtained the weighted average of 01/02, 05/06 and 06/07 and substituted it for the 06/07 yield figure. Using this adjustment the actual yield/ha rises to 9.69 cu m/ha.



Source: Auditor General's Report April 2009, FOI Data

Note: I have had to use a factor to convert gross standing volume to net standing volume - i.e. on same basis as yields from actual area logged. Neither Forests NSW nor DAFF could supply this figure, without an undue dislocation in resource priorities. I have estimated that the factor is 2. If it is less than 2, e.g. 1.9, the annual theoretical sustainable yield would rise - to 34,800 cu m - but the actual logging would not be on a sustainable basis.

I also had to make an assumption about the rotation cycle - I made it 51.2 years.

Commitments are just slightly below the sustainable yield based on actual yields/ha.

The theoretical sustainable yield is approximately 33,000 cu m p.a - falls from the 48,000 cu m shown in the ESFM Plan.

The sustainable yield based on actual yields/ha is 33,800 cu m p.a.

Tumut-Southern

	Area logged	HQL Sawlogs	Actual Yield HQL/ha
	ha	m^3	m^3/ha
01/02	394	13,621	34.57
02/03	718	19,081	26.58
03/04	1,110	27,856	25.10
04/05	851	14,257	16.75
05/06	828	16,956	20.48
06/07	1,727	18,925	10.96
07/08	1,675	23,933	14.29
Total	7,303	134,629	18.43
Adjusted			18.17

Source: FOI data Forests NSW, Auditor General's Report, IFOA data

Sample size: approximately 9 compartments - based on a compartment size of 800 ha. Sample size is insufficient.

The data show wide variability. 01/02 is an outlier, i.e. it appears area logged is understated.

There is a problem with the data - logging occurs in Ingebirah State Forest - and the logs are sent to Eden, so I understand from the manager of the Southern Regional Office who gave me this advice several weeks ago. It does appear that the area logged and quantity figures are not being recorded to reflect this in head office records Precisely what has occurred in the past I cannot reliably determine at this time. I have therefore used the figures as provided with the exception of 07/08 which I was able to adjust - added 389 ha - based on the figures in the WORD document from Paul Sykes of Forests NSW.

The outlier cannot be dismissed but it needs to be adjusted to smooth out variation as the sample size of 9 is too low. I don't have access to the compartment data - therefore I obtained the weighted average of 01/02, 02/03 and 03/04 and substituted it for the 01/02 yield figure. This has the effect of reducing the average yield to 18.17 cu m/ha.

I have included my work in progress so you can see where I got my figures from. Not complete.

Exhibit 4: Native Forest & Plantations - Selected Characteristics

	Standing Vol HQL Sawlogs m^3	Net Harvestable Area ha	Sustainable Yield HQL m^3	Rotation Period years
North Coast	7,819,737	314,036	220,000 (1-5 yrs) 200,000 (6-20 yrs)	35.5 39.1
Plantations	577,872	48,140	23,600?	24.5?
Southern				
Eden	201,196 * 201,196	15,494 MAF 119,258 Total	23,000	9
South Coast	2,177,043	102,200	42,070	51.75
Tumut	1,691,610 E	47,635	~~48,000??~~ 33,000	51.2 E
Western				
Cypress	3,257,504	329,739	60,320	54
Redgum	2,229,498	311,600	23,450	95
Total	5,487,002	641,339	83,750	66

Source: Auditor General's Report, Sustaining Native Forest Operations, April 2009
* refers to the Multi age forest (MAF) only, nil in regrowth forest
E my estimate

Exhibit 5: Sustainability

	Yield - HQL/ha Required m^3/ha	Yield - HQL/ha Actual m^3/ha	Rotation Time Sustainable years	Rotation Time Actual years	Sustainable
North Coast 1-5	12.45	10.00	36	29	No
6-20			39	31	No
Plantations	6.0	na	24	na	na
Southern					
Eden - MAF	6.5	not complete			
- Total	See separate assessment - not complete				
South Coast	10.65	9.69	52	47	No
Tumut	17.76	18.17	51	51	Yes
Western					
Cypress	5.0	not complete			
Redgum	3.6	not complete			
Sub total	4.3	not complete			

Source: Exhibit 4. FOI data

D) Legal Issues - Part 1

Forestry Operations in Native Forests Not Legal under

State Law when Losses are made on those Operations.

1) Brief Outline

a) The FNPE Act separated out Native Forests from plantations and created the IFOA's.
b) The logging under the IFOA's are commercial operations.
c) The FNPE Act does not deal with finances - it does not authorise commercial operations. They are authorised under the Forestry Act.
See the statement at the top of p42 of the Eden ESFM Plan.
d) Under the Forestry Act an economic return has to be made.
e) The IFOA's - created under the FNPE Act - should have been authorised on their own account under the Forestry Act. However, I cannot find any evidence that they were so authorised.
f) The Native Forest IFOA commercial forestry operations have to be profitable on their own account.
f) If they are not profitable on their own account - the IFOA's break their authorisation if it is considered that they were authorised. (As I said I cannot find any evidence that they were so authorised.) The authorisation, if it exists, is not once off but is continuing i.e. is subject to continuing review as the dedication of State Forests - where the IFOA operations are conducted - is subject to a continuing review under s 17 A of the Forestry Act

Conclude - the IFOA's either break their authorisation or were never authorised. The logging in Native Forests is not legal under NSW law.

However, it seems more likely that the IFOA's were never authorised and the logging has been illegal ever since the IFOA's were introduced.

Another effect is that the requirement to make profits applies separately for each region or sub region where there is an IFOA.

Another issue is that of a forestry right. When losses are made the forestry right appears to me to be extinguished. See pages 18 and 19.

2) Detailed Analysis

1) The FNPE Act separated out Native Forests from plantations and created the IFOA's.

This was done under the FNPE Act - see s 24(1) and s 24(2)(b). See also the Plantations and Reafforestation Act 1999 s 5(2) and s 5(4).
The IFOA does not deal with finances. It provides a framework for forestry operations - See s 25 FNPE Act.
The IFOA's - under the FNPE Act - do not prevent or affect the carrying out of forestry operations authorised by the Forestry Act 1916 - see s 26(2) FNPE Act.
This simply means the IFOA's do not impede themselves as the IFOA operations themselves are commercial operations. See also point 10 p14.

2) All commercial operations - including those under an IFOA - are authorised by the Forestry Act.

3) The FNPE Act does not authorise commercial operations. The FNPE Act simply created the IFOA framework.
The FNPE Act does not deal with finances.

4) Under the Forestry Act an economic return has to be made.
s 8A(1)(a) best advantage to the State, s 11(1)(a) public interest, s 17(2) public interest, s17(3)(a), effective and economic control, utilisation and management, s 17(3)(c), economic value, s 17(3)(e) economic timber production,
s 17(3)(f) - not an escape route - as the making of losses is improper management and doesn't fall into s 17(3)(f)
s 17(3(f) - does not include employment considerations - these are included in s 8A(1)(a), s 11(1)a and s 17(2)
In the definitions, the Forestry Act refers to products as being of 'economic value'.
s 17A continuing review based on criteria in s 17,
Answer to parliamentary question 0034 about the meaning of 'economic' - revenue greater than costs.
The ESFM plans under the Forestry Act - under cl. 5 Forestry Regulations- where there is a separate part - usually no. 7 - on Economic Development - which has a policy statement about maximising economic returns from the forests - which does mean revenue greater than costs. Native Forests treated separately from plantations.
More detail on the ESFM plans is at point 15 p16.
See also - profit à prendre p18

5) The IFOA's - created under the FNPE Act - should have been authorised separately on their own account under the Forestry Act. There is no automatic authorisation.

6) The Native Forest IFOA forestry operations have to be profitable on their own account as the Forestry Act requires economic returns - these are in the public interest and to the best advantage of the State - not losses.

See point 14, p15 on public interest.

7) If they are not profitable on their own account - then the IFOA's break their authorisation, if it is considered that such an authorisation exists.

8) The authorisation is not once off but is continuing - see s 17, s 17A of Forestry Act.

9) The Forestry Act does not have to comply with the IFOA's - this is a logical impossibility and can be disproved from:
   i) The authorisation under the Forestry Act.
   ii) An examination of s 26(2) in the FNPE act - see point 10 below.
   iii) The RFA's - see pages 21 & 22.

Note: the words 'shall endeavour' in s 17(3) - do not protect the making of losses - because the making of losses is improper management and means Forests NSW is making losses to keep others in business. ie. Forests NSW is endeavouring to keep others profitable.

Conclude - the IFOA's break their authorisation, if one were thought to exist The logging is not legal.

However, it seems more likely that the logging has not been legal ever since the IFOA's were introduced.

Another effect is that the requirement to make profits applies separately for each region or sub region where there is an IFOA.

A once off loss - doubtful if alright - depends on size. The Minister said in Parliament on 25 June 2008 that losses had been made for many years - so the once off issue doesn't arise.

10) The IFOAs are not Protected by the FNPE Act nor Do the Forest

Agreements protect the IFOA's

The FNPE Act does not protect the IFOA's - they are created by the FNPE Act, but by virtue of s 26(2) the FNPE Act departs the scene as it were once it has created the IFOA's. The FNPE Act can't prevent or affect logging operations authorised by the Forestry Act - irrespective of whether they are commercial or not. The FNPE Act can't affect the IFOA's once they are created, as the IFOA operations - being commercial operations - are authorised under the Forestry Act.

11) The Forest Agreements - which are under the FNPE Act - cannot prevent or affect forestry operations authorised under the Forestry Act.

12) Operation of Sections 17(3)(b) to 17(3)(e) In Forestry Act
Section 17(3)(b) does not mention the making of losses to establish, maintain or expand the timber industry.
Section 17(3)(c) strengthens the point - products from State Forests must be of economic value i.e. to the Forestry Commission itself and to others.
Section 17(3)(d) is about protection of necessary tree cover in the public interest.
Section 17(3)(e) strengthens the point - lands not suitable for agriculture or grazing are to be assessed for their potential for economic timber production as plantations by planting suitable commercial species. The emphasis here is on the economic production of timber by the Forestry Commission.

13) Consolidation of Losses

The CEO of Forests NSW has said that the losses are consolidated - and implies this makes the losses on Native Forest OK in his letter in the Auditor General's report - as the organisation can still fund itself.

Naturally the figures for Native Forests and plantations can be consolidated - this is an accounting procedure which reflects the fact that Forests NSW has control of all State Forests. To address the issue of legality the Acts have to be looked at. The fact is it is not legal to make losses on Native Forests - because the instruments under which the commercial logging operations operate - the IFOA's - break their authorisation, if it is thought that the correct authorisation existed in the first instance.

14.1) Public Interest - and Employment

Is the public interest best served by Forests NSW making losses for many years in exchange for employment? - No. This is not healthy.

In times of recession or depression, expenditure deficits are used by governments to provide employment. As part of an ongoing policy it is not in the public interest nor in the interests of Forests NSW to expect it to bear losses for many years in order to generate employment in the wider timber industry. It's not the way to do things.

In the private sector this does not happen. Private companies are not expected to make losses to keep employment going. From time to time - for example now - governments have stepped in to prop up large companies. The risk was a catastrophic collapse of whole economies.

This is not the case here - the State is not at risk, but it will have to develop alternative strategies to deal with the problem.

14.2) The Public Interest and the $14.4 mn Loss

Forests NSW wants to raise prices to get over the loss - they will need to go up but the real trouble is labour costs.

The loss is equivalent to $10.66/cu m - 35% of all Native Forest sawlog and pulp sales

To cover the loss using graded sawlogs only - excluding the very top end products and all low quality products (salvage sawlogs, pulplogs, other) - the average price would have to rise 61% - to $89/cu m **JUST TO BREAK EVEN.**
To make a profit - the price would have to rise to over $100/cu m.

If the very top end products are included - the average would have to go to $91/cu m to break even - but since the very high end products are going up, the average price rise for a graded sawlog would fall - but not by much.
I can't see that there is a lot of scope to put the very high end products up much further, other than by a moderate amount.

Sawmills will consider this outrageous - and rightly so - it's not in the public interest to do it.

14.3) Public Interest - and Grants and Privileges to Forests NSW

Forests NSW has received $38 million since 01/02 to 07/08, for the performance of specific services including tasks associated with the Interim Assessment Process and the Comprehensive Resource Assessments.
There are also capital expenditure grants - but not in 07/08.
There are also payments for Community Service Obligations - which cover around 95% of the cost.

Forests NSW does not have to pay for the use of the forests - this means prices for products should be able to be kept lower than they would be - if a rental for the use of the forests had to be paid. But now, it is proposed to put prices up - and the rise would have to be significant, even if cost savings can be found.

15) The ESFM plans are legally enforceable documents under the

Forestry Act - they are Management Plans Under the Forestry

Regulations 2004 - under Clause 5

There is a clause in the Forest Agreements - Eden at p5 Southern at p6 - that the regional ESFM plans MUST be considered as management plans under the Forestry Act 1916. They are under Clause 5 in the Forestry Regulations 2004.

The ESFM plans have a policy statement that the logging will generate economic returns - i.e. revenue greater than costs.
It is said by generating economic returns on the forests - the community's economic well being will benefit.

In the Eden, South Coast-Southern, Upper NE ESFM plans the heading 'Commercial Use of State Forests' discusses Native Forests only.

In the LNE ESFM plan the heading 'Commercial Use of State Forest' includes plantations - softwood and hardwood and Native Forest. The plantations represent 40,589 ha out of 489,322 ha in total.

In the Riverina ESFM plan the amount of plantations shown is small - 265 ha out of a total of 410,716 ha.

In the Western ESFM plan the amount of plantations shown is small - 83 ha out of a total of 485,086 ha

The 'Native Forest Timber Industry' and the 'Plantation Timber Industry' are treated separately in the ESFM plans.
Economic returns must be made separately on Native Forests and plantations.

The Native Forest logging has to generate economic returns i.e. profitable -and this applies to each region and sub region for which there is an ESFM plan.

16) Licences and Wood Supply Agreements

16.1) Licences

IFOA Clause 5(1) says the approval relates to **forestry operations** - as described in sub clauses 5(2) to 5(9).
Clause 5(2)(a) - refers to the 23,000 cu m Eden, sustainable supply of HQL sawlogs p.a.

IFOA Clause 6(2) says that any person carrying out **forestry operations** is taken to hold, and is bound by, a licence. i.e. it is a deemed condition.

FNPE Act s 34(4) - gives some exemptions to the terms of the licence - but a licence still applies - either in actuality or deemed.

The exemptions to the terms of the licence are given on page 10 of the IFOA approval document in the note under (3) - these are conditions 1, 2i and 3 n the Protection of the Environment Operations Act 1997.

Licence conditions in the Protection of the Environment Operations Act 1997 - s 43, s 47, s 48 s 63, Schedule 1.
Premises-based - includes land.
The logging operations in Native Forest under the PEO Act 1997 - would generally be a scheduled activity, but may also be non-scheduled,

This triggers a number of conditions in the Act. The exemptions at p10 in the IFOA to the PEO Act premises based licences mean that not all, if any, of the terms of such a licence would apply. But there would still be a licence required or deemed to be held, even if none of the terms applied.

However, something has been overlooked.

The PEO Act with regard to licences refers to timber getting - within the meaning of the Forestry Act.
The PEO Act doesn't affect the operation of other Acts - the Forestry Act is not affected. See s 7(1).

The Forestry Act and Licences

The Forestry Act comes into the issue of licences - because that is where the meaning of 'timber getting' comes from.

In other words the IFOA licence - actual or deemed - would have to comply with general licence conditions in the Forestry Act - and specific ones where appropriate. Timber licences are in s 24, s 27A, B, C of the Forestry Act and also in the Regulations.

The holder of a Timber Licence has to comply with the Forestry Regulations - which is where the ESFM plans are.

DECC says the terms of the IFOA prevail - this means over the ESFM plans. In other words the holder of an IFOA licence would not have to comply with the ESFM plans to the extent of inconsistencies, but they would have to - to hold their licence. This is a case of the IFOA breaking its own terms.
This is a contradiction.

In other words the holder of an IFOA licence - actual or deemed - has to comply with the ESFM plans, the IFOA notwithstanding.

16.2) Wood Supply Agreements

Wood Supply Agreements are agreements with customers - usually for a long period e.g. 20 years. They are a higher form of a licence. In the RFA's in the definitions, a Wood Supply Agreement is defined as agreements in writing between State Forests of NSW and another person or company or organisation to supply and take native hardwoods. Wood Supply Agreement includes term agreements and Wood Supply Agreements of more than 12 months duration.

According to this definition, agreements shorter than 12 months could also be considered to be a Wood Supply Agreement.

For example, a deemed licence under clause 6(2) in the IFOA could be considered to be a Wood Supply Agreement under the definition of Wood Supply Agreement in the RFA's.

17) Profit à Prendre - Possible Effect on Forestry Right in Native Forests

(assuming a forestry right is deemed to exist)

The notion of profit à prendre further strengthens the point that economic returns have to be made on Native Forests.

However, the making of losses for many years may affect the forestry right to take timber in Native Forests - if such a right exists in respect of the Forestry Commission.

1) Section 25F of the Forestry Act refers to a profit à prendre right in respect of purchase-tenure land.

A forestry right to timber is deemed to be a profit à prendre *[See s.88AB Conveyancing Act 1919]*.

What is a Profit à Prendre? - Source, Dept of Lands Website

A profit à prendre is a right to take from the land owned by another person part of the natural produce grown on that land or part of the soil, earth or rock comprising the land. Like an easement a profit à prendre may be enjoyed as an appurtenance to other land or it may exist in gross. An instrument creating a profit à prendre has limited enforceability unless it indicates the land which is subject to the burden and the land to which the benefit is appurtenant. *[See s.88AA Conveyancing Act 1919]*
A profit à prendre may exist in perpetuity or for a specified number of years.
A profit à prendre may be varied in the same manner as an easement.

A forestry right is deemed to be a profit à prendre.
[See s.88AB Conveyancing Act 1919]

Profit à Prendre and the Forestry Regulations 2004 - SCHEDULE 2
Clause 72 (3)

Forestry Act 1916

Certificate of release of land from profit à prendre

The land described below is land in respect of which a profit à prendre as to the timber and products on that land has been reserved to the Crown under section 25F of the Forestry Act 1916 . The Forestry Commission of New South Wales now certifies, in accordance with section 25I (1) of that Act, that that land is free from the profit à prendre

Clause 72(3) indicates that Crown land can be released from profit à prendre - suggesting that land not so released is still subject to profit à prendre.

In as much as the Forestry Commission's land under the IFOA's is generally land in State Forests - i.e does not directly belong to the Forestry Commission - then this land appears as if it would be deemed to be profit à prendre - subject to the particular instrument - the dedication of the State Forests?

By the very nature of the term - profit à prendre or in English, profit to take - we are led to believe there are profits for the taking under the commercial IFOA logging. However, these profits are now losses.

Does this mean, that a forestry right existed in the first instance i.e at dedication of the State Forest and if so, how is it affected by the making of losses?

One is led to think that a forestry right to take timber no longer exists when losses are made.

18) Operation of Clause 45(2) in the IFOA and the Forestry Act

The IFOA at Clause 45(2) refers to conflict with any other document that the IFOA would be required to comply with - and the IFOA prevails. An Act is more than a document - much more.

The IFOA could not prevail over its own authorisation and it would contravene s 26(2) in the FNPE Act.

A question arises - as to what is the form of authorisation under the Forestry Act? p42 of the Eden ESFM Plan says that all commercial forestry operations are authorised under the Forestry Act.

If the IFOA could prevail over the Forestry Act then:
i) the IFOA could break its own terms.
ii) the IFOA's could prevail over the licences and Wood Supply Agreements.

This just doesn't appear to be sensible to me. This would bring in the whole area of contract law - which would be a headache.

E) Legal Issues - Part 2

Consideration of the RFA's, the IFOA's and the Forestry Act

I contend that the RFA's are no longer valid when losses are made on Native Forest logging.

To begin with I note that I have looked at the Eden RFA - the other RFA's are similar in form.

Another Act comes into play - the RFA Agreement Act 2002 - this allows amendments to the RFA to be made. Probably unwise right now, as may do more harm than good.

1) The Eden Forest Agreement at Clause 1.7 at p2 says the Forest Agreements are one means by which the government must implement obligations under the RFA's. The RFA's prevail over the Forest Agreements - which according to advice from DECC are not enforceable. The Forest Agreements are under s 14 FNPE Act.

2) The basis of the Agreement (the RFA) was the 1992 National Forest Policy Statement - this led to the NSW government's 1995 Forests Policy - which was given effect by the FNPE Act.

3) Clause 18 of RFA says the RFA cannot impose an obligation that is inconsistent with a law of New South Wales. When losses are made on the Native Forest forestry operations this is what is occurring.

4) Clause 33 says that the Eden Forest Agreement and the IFOA are part of the NSW Forest Management system and are the means by which New South Wales will implement obligations and undertakings arising from this Agreement. The means to implement the obligations and undertakings has broken its authorisation. The other issue here is that there may never have been an appropriate authorisation.

5) The Forestry Act comes into the matter - through the definition of forest products. See page 5 of RFA.

6) The EPBC Act 1999 does not apply to an RFA forestry operation which is in accordance with an RFA.

Right now the operations would not be in accordance with the RFA. Therefore the EPBC Act would now apply.

7) Attachment 7 Clause 11 at page 64 presents a problem.
The ESFM plans are meant to be consistent with the IFOA approvals.
However, advice from DECC is that Clause 5(3) in the IFOA - no limitations are imposed on the amount of products that can be harvested, subject to contractual arrangements - prevails over the provision to supply an ecological sustainable amount.
This renders the ESFM plans in regard to sustainable timber supply useless.

Once again, one comes to the point of view that the IFOA does not prevail.

8) Definition of Forestry Operations - RFA compared to IFOA

There is a very significant problem here.

The IFOA definition takes things much further than in the RFA and imposes a condition that is fundamentally inconsistent with the RFA and the ESFM Plans.
A second inconsistency can be found in regard to thinnings - but it may not be of much significance in the wider scheme of things.

The RFA Act refers to RFA forestry operations - as defined in the RFA's. Forestry Operations are defined at page 5. The IFOA definition is shown at Clause 5 in the IFOA.

1) **Significant Inconsistency**
Clause 5(3) in the IFOA says that the quantities of timber products specified in paragraphs (a) and (b) - which refer to HQL sawlogs and pulpwood - do not impose any limitations on the quantities of those products that may be harvested under this approval.

The IFOA is the principal vehicle for implementing the sustainable timber supply objectives in the RFA - according to the RFA. if there is no limitation on the amounts that can be supplied, these objectives under the RFA cannot be implemented.

For example Clause 16 in Attachment 7 of the RFA says that the ESFM Plans will be one of the means to implement the IFOA approval and Clause 11 in Attachment 7 says that sustainable timber yield is one of the things that has to be done under the ESFM plans. Similar statements about Ecologically Sustainable Forest Management are made at Clause 76 in the RFA.
Yet the IFOA at Clause 5(3) contradicts this and contradicts itself at Clause 7.

I conclude that the RFA over rules the IFOA. In effect the ESFM Plans prevail over the IFOA.

2nd Inconsistency - may not be of significant importance

The second inconsistency refers to thinnings.

Clause 5(6) in the IFOA says that subclause (4) does not apply to thinnings.

Subclause 4 - page 7 - refers to logging operations carried out in State forests and then goes on to refer to alternate coupe harvesting.
The inference here is two fold.
i) thinning operations can be conducted in other than alternate coupe operations.
ii) thinning operations could be conducted in areas outside of State forests.

There seems to be 2 inconsistencies w.r.t. the RFA
1) Clause 17(c) in the RFA.

2) The RFA indicates that thinning operations apply to the forests covered by the Agreement - if on private land sustainability applies.
Thinnings appear to be covered by the term Ecological Sustainable Forest Management.

However, the way the IFOA puts it at Clause 5(6) bearing in mind Clause 5(3) indicates thinnings would not be subject to 'Ecological Sustainable Forest Management'. as per the RFA. Clause 7 in the IFOA indicates that 'Ecological sustainable forest management' applies generally - but this Clause is opposed by Clause 5(3).

Losses and the Forestry Act

The Forestry Act requires economic returns. When losses are made the Forestry Act is breached and the IFOA's are invalidated.

Conclusion

If view of 2 considerations I conclude that the RFA's are not valid.

1) The interconnecting contradictions and inconsistencies between the IFOA's, the Forestry Act, the ESFM plans and the RFA's themselves.

2) Losses being made on Native Forest logging which invalidates the IFOA's. Another issue here is that the IFOA's may never have been correctly authorised to allow for commercial logging operations to be conducted under the IFOA's.

Legal Issues - Part 3

Interconnections Between the IFOA's and the Forestry Act

These affect consideration of the RFA's - since the IFOA's are a cornerstone of the RFA's.

I have previously put all these things to Forests NSW as part of my submissions on the proposed Forestry Regulation 2009. I simply reproduce them here for your convenience.

I refer also to my Part 4 submission on the Forestry Regulation - my comments on legal issues in that submission are reproduced in this submission - with some modifications - at pages 12-20.

22 May 2009

Mr. Lal Wimalaratne
Legal officer
Forests NSW
PO Box 100
Beecroft
NSW 2119
by email

Dear Mr. Wimalaratne,

Part 1 of Submission on Forestry Regulations 2009

Contradiction in s 6.3 - Violates s 26(2) of the FNPE Act

S 26(2) of the FNPE Act says that the FNPE Act cannot prevent or affect forestry operations authorised under the Forestry Act. It goes on to say that operations under an IFOA are subject to the terms of the IFOA.

The IFOA's were created under the FNPE Act.

The IFOA's cannot prevent or affect operations authorised under the Forestry Act - if they could the IFOA operations could prevent themselves from being undertaken - since they themselves are commercial operations authorised under the Forestry Act.

The ESFM plans are under the Forestry Act. - being in s 5 of the Regulations. Therefore the IFOA's cannot affect them. Therefore the last sentence in s 6(3) in the Regulations is a contradiction. It violates s 26(2) in the FNPE Act. i.e. the IFOA cannot prevail over the ESFM plans.

s 6(3) A management plan for a forest that is wholly or partly located in a relevant area must be consistent with the terms of the integrated forestry operations approval for the area. To the extent that the provisions of any such management plan are inconsistent with the terms of the integrated forestry operations approval, the terms of the approval prevail.

Clause 45(2) in the IFOA does not remedy the situation - because it refers to inconsistencies between documents and the IFOA . The Forestry Act is more than a document - it is an Act.

Even if the Forestry Act was taken to be a document, the contradiction would remain.

Implications
1) The IFOA's could prevail over their authorisation - boomerang effect
If the last sentence in s 6(3) were to stand - then the IFOA prevails over the Forestry Act - yet as commercial operations the Forestry Act authorised the IFOA operations. IFOA operations cannot prevail over their own authorisation.
If there were so, then s 17(3) in the Forestry Act would not stand nor s 17A. There would be others as well. E.g. 8A(1)(a), 11(1)(a) and 17(2) would - at the very least - have doubt attached to them.

2) If the IFOA's could prevail over their authorisation they could prevail over many over Acts - those linked to the Forestry Act.

3) The IFOA's could prevail over licence conditions in the Forestry Act and so on.

4) The IFOA could breach it own terms - boomerang effect
The last sentence in s 26(2) in the FNPE Act is to the effect that operations under an IFOA are subject to the terms of the IFOA. However, if the IFOA can prevail over the Forestry Act - then s 26(2) in the FNPE Act would not prevail and operations under an IFOA could breach the terms of the IFOA.

Conclusion
The last sentence in s 6(3) needs to be removed.

I will submit the second part of my submission in due course.

s 26(2) of FNPE Act
(2) This Act does not prevent or affect the carrying out of forestry operations authorised by the *Forestry Act 1916* or any other Act or law. However, the carrying out of forestry operations to which an integrated forestry operations approval applies is subject to the terms of the approval.

Yours faithfully,

T. Digwood

15 June 2009
Mr. Lal Wimalaratne
Legal officer
Forests NSW
PO Box 100
Beecroft
NSW 2119
by email

Dear Lal,

Part 2 of Submission on Forestry Regulations 2009
Certain Effects Overlooked

1) The Terms of the IFOA's do not have to be Complied with by Commercial Forestry Operations

The terms of the IFOA's are under the FNPE Act - see last sentence s 26(2). Commercial forestry operations are authorised under the Forestry Act.

s 26(2) FNPE Act says that the FNPE Act can't affect or prevent forestry operations authorised under the Forestry Act. It goes on to say that the carrying out of forestry operations to which an IFOA applies is subject to the terms of the approval.

The IFOA is considered to be independent of the commercial side. I don't see how this can be. In the Eden IFOA the quantities are said to reflect contractual commitments existing at the date of this approval. In the other IFOA's the quantities in the IFOA's ought to be reflected in commercial arrangements via the mechanism of sustainability.

The operations under the IFOA's are commercial operations under the Forestry Act. It seems to me the terms of the IFOA's cannot affect the commercial IFOA logging operations - unless the terms of the IFOA's were authorised under the Forestry Act. The second part of s 26(2) would not prevail because it seems the Forestry Act prevails to the extent of inconsistencies - otherwise there would be problems with the commercial contracts.

Note it seems the terms of the IFOA's could not be authorised under some other Act in view of s 26(2).

At this point, there is no evidence and nothing to suggest that the terms of the IFOA's were authorised under the Forestry Act. The Timber Licences and Wood Supply Agreements do not authorise the terms of the IFOA's as applying to commercial operations under the Forestry Act simply because of the mention of royalty rates in those instruments. That's how it appears.

Conclude: the terms of the IFOA's do not have to be complied with by commercial forestry operations - this includes commercial operations conducted under an IFOA.

2) To Change the Terms in an IFOA Would Require Suspending the Dedication of all State Forests that are Covered by that IFOA

Once again we look to clause 6(3) in the Forestry Regulations.

As noted previously, the clause says the terms of the IFOA - which are under the FNPE Act - prevail over management plans - which are under Clause 5 of the Regulations and hence under the Forestry Act, to the extent of inconsistencies.

As previously noted, clause 6(3) leads to all sorts of problems - specifically, an activity that is not commercial under the FNPE Act - and is subsequently authorised as commercial under the Forestry Act can prevail over its authorisation.

This doesn't make sense and leads to a contradiction. I therefore conclude that the original statement i.e. clause 6(3) in the Regulations - the terms of the IFOA's prevail over management plans under Clause 5 in the Regulations to the extent of inconsistencies - is in error. The same conclusion is reached when one looks at the RAF's - see p 25 of my Part 4 submission, where the ESFM Plans would have to prevail over the IFOA's.

We now turn to the IFOA's. The terms of the IFOA are under the FNPE Act.
To change these terms and to have them implemented we would first have to change the authorisation of the commercial forestry operations. As noted earlier commercial operations don't have to comply with these terms - but let us look at it assuming they do have to comply.

We cannot change the authorisation of the commercial operations using the FNPE Act. We turn to the Forestry Act to do this.

We find that one element of the authorisation would be:
The State forests where the commercial logging operations are conducted.

This element of the authorisation is not once off - but is continuing. The Forestry Commission is required under s 17A to maintain a continuing review of all lands dedicated as State forests - it is a continuous obligation i.e. it exists at all points in time.

To change the terms of the IFOA's means we have to stop the authorisation of the commercial operations at a point in time, change the terms of the IFOA's and then put the authorisation of the commercial operations back in place.

Therefore we suspend this element of the authorisation - dedication of the State forests where the commercial operations are occurring. This enables us to dart in as it were and change the terms of the IFOA. We then release our suspension of the dedication of the affected State forests. This element of the authorisation of the IFOA commercial operations can now continue and our changed terms could be implemented - or could they? We would also have to do something about the Timber Licences and Wood Supply Agreements, where presumably the changed terms would have effect - being commercial operations. This would lead to another set of problems.

3) The IFOA Could Change its Own Terms

We now turn to another oddity.

We have that the terms of the IFOA need to be authorised under the Forestry Act - in order for the terms of the IFOA to be implemented in commercial forestry operations.

Let us assume that somehow these terms were authorised under the Forestry Act.

Clause 6(3) in the Regulations says that the terms of the IFOA prevails to the extent of inconsistencies. If there were any inconsistencies of the terms of the IFOA's with the ESFM Plans - which there are - the IFOA prevails - and therefore could change its own terms to rectify the inconsistencies if this were necessary. Alternatively, if there are internal inconsistencies in the terms of an individual IFOA the IFOA could resolve its own inconsistencies, taking the course of least resistance - parsimony.

That is, the IFOA's can prevail over the authorisation of their own terms under the Forestry Act.

But this is contrary to what we found in point 2 - the IFOA needs the authorisation of the Forestry Act to change its terms in order for the changed terms to be implemented in commercial operations.

This is one of the points I made in my Part 1 submission - put another way.

All of this suggests that Clause 6(3) in the Regulations is a problem.

4) Legality of Forestry Operations if Losses are Made
In my Part 4 submission I referred to the IFOA's breaking their authorisation if losses are made - and this made the forestry operations not legal for each region/sub region where there is an IFOA. I have now come to the view that it is not necessary to have this condition - i.e. the IFOA's break their authorisation.

This argument can be put more simply to show the operations are not legal if losses are made - provided the point is accepted that the Forestry Act requires economic returns. I will do this in due course.

5) Suggestions
I did have some suggestions about these issues but have come to the conclusion that it would not be appropriate for me to say what they are. This would be an intrusion into your role and the role of the Committee.

However, if you did want me to say what I thought could be done - I am happy to supply it. I could make it a supplement to this submission, but it would be after 5 pm. Otherwise I could write to you separately,

Yours faithfully,

Terrence Digwood

7 June 2009

Mr. Lal Wimalaratne
Legal officer
Forests NSW
PO Box 100
Beecroft
NSW 2110
by email

Dear Lal,

Part 5 - Submission On Proposed Forestry Regulations 2009

1) Regulations Not Independent of IFOA
Clause 6 in the Regulations brings in the IFOA - relevant area, terms of the IFOA, the extent of inconsistencies, additional requirements to clause 5 for a management plan e.g. an ESFM Plan.

2) Regulations Not Enforceable - Land Covered by an IFOA
None of the Regulations w.r.t. an area of land covered by an IFOA in respect of commercial forestry operations can be enforced - according to your current advice, what is in the Acts and clause 6 in the Regulations.

The IFOA is not an approval for commercial forestry operations - as is evident from the creation of the IFOA under the FNPE Act. The Forestry Act, which authorises commercial operations does not automatically make the IFOA an approval for commercial operations. None of the commercial forestry operations in Native Forests covered by an IFOA has approval. In view of clause 6 in the Regulations the IFOA prevails. Where is your evidence that the IFOA is an approval that approves commercial operations? See also point 5.

3) Collection of Royalties
Your agency cannot legitimately collect or receive royalty payments under the various licences in s 27 A, B and C in the Act or the Wood Supply Agreements or under the Regulations - because the IFOA does not approve commercial operations - as it stands and on the basis of your current advice.

4) Timber, Products and Materials Licences - Part 1
Clause 6(1) in the IFOA refers to licences under the PEO Act and clause 6(3) is also relevant: the licences are premises based, this includes land. This refers to the same land that Timber, Products and Materials licences are issued in respect of in the Act and the Regulations. Clause 5 in the IFOA covers the same activities that Timber, Products and Materials licences are issued in respect of. These licences are affected by the IFOA - because the land and activities components are the same.

If it is the Regulation making power your are referring to - it would be over ruled by the IFOA, to the extent of inconsistencies, according to DECC's current advice and Clause 6 in the Regulations.

5) Timber, Products and Materials Licences - Part 2
The main distinguishing characteristic of the Timber, Products and Materials licences from those referred to in Clause 6(1) in the IFOA is the royalty rate.

There is something of importance here. Your comment about the Timber, Products and Materials licences show that the IFOA is not a commercial approval. As does the statement at p42 of the Eden ESFM Plan. It is not an approval for commercial forestry operations. The way you have put it is:

> Timber, Products and Materials licences are governed under the Forestry Act and the Regulations irrespective of whether or not IFOA's are in place.

This means:
In the first instance the actual logging is not commercial, the logging is the activity, the IFOA approves it, the Timber, Products and Materials licences make it commercial. This doesn't hold water. The logging is a commercial activity in the first instance - that is its purpose. In addition, in most cases, the Timber, Products and Materials licences and Wood Supply Agreements are already in place.

In the Eden ESFM Plan at p42 the situation is described as:
"All commercial operations are authorised under the *Forestry Act, 1916*....."

The operations are described for what they are - commercial operations.

You have demonstrated my second point - the IFOA approval does not approve the commercial forestry operations and the Regulations are not enforceable.

6) Regulation Making Power s 41 Forestry Act
S 41 (l) and (m) Forestry Act refer to records, declarations and statements about timber, products and forest materials and returns to be made.

Assuming the returns, declarations and statements to be true - which they may not always be - they go into your agency and in the collation process come out the other end with material errors. That has been explained as data base interrogation errors. I understand you to say this is OK w.r.t. material errors. This is not what I infer from S 45 in the Forestry Act.

7) Control and Management of State Forests
There is an issue here. You can't change the terms of an IFOA without first suspending the dedication of all State forests that are covered by that IFOA. This would have the effect of suspending the management plans for the land so affected by the IFOA, in particular an ESFM Plan.

This point is explained in my Part 2 submission. This situation occurs because the authorisation of the IFOA - assuming an authorisation can be found - and the forestry operations is not once off but is continuous - as the Forestry Commission is required to maintain a continuing review of the dedication of State forests under s 17 A of the Forestry Act 1916.

4) Legality of Forestry Operations if Losses are Made
In my Part 4 submission I referred to the IFOA's breaking their authorisation if losses are made - and this made the forestry operations not legal for each region/sub region where there is an IFOA. I have now come to the view that it is not necessary to have this condition - i.e. the IFOA's break their authorisation.

This argument can be put more simply to show the operations are not legal if losses are made - provided the point is accepted that the Forestry Act requires economic returns. I will do this in due course.

5) Suggestions
I did have some suggestions about these issues but have come to the conclusion that it would not be appropriate for me to say what they are. This would be an intrusion into your role and the role of the Committee.

However, if you did want me to say what I thought could be done - I am happy to supply it. I could make it a supplement to this submission, but it would be after 5 pm. Otherwise I could write to you separately,

Yours faithfully,

Terrence Digwood