

Public submission

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Stuart Coppock – [REDACTED]

This submission focuses on legal issues.

Issue 1

Summary of this issue

The underlying principles of contracts between holders of wood supply agreements with the State of NSW and the Forestry Corporation of NSW should be ones based on equity, transparency, equality and environmental sustainability. It is inappropriate to have one agreement with favourable commercial terms when all other agreements are similar in form and content save timber volume and specifications relevant to either sawlog, girders or poles.

Topic 1 - Sustainability of current and future forestry operations in NSW.

Topic 5 – The role of State Forests in maximizing the delivery of a range of environmental, economic and social outcomes

Run of the bush in selective harvesting

Forestry Corporation of NSW (FCNSW) has as one of its functions the harvesting and supplying of timber to meet contractual obligations made between the State of NSW, FCNSW and saw millers. The importance of these contracts as an environmental tool has been overlooked by the State of NSW and FCNSW (and its predecessors) for at least two decades through the commercial favoritism shown by both the ALP and the Coalition when in Government. The reasons for this whilst part speculation had to do with the politics of Green preferences and the favouring of one listed business over small commercial enterprises in a move to having one contract in place and no others in the enterprise of Type A sawlogs contracts.

Native forests in NSW grow and produce what the natural environment permits. Nature rules even though the forests are under the control and management of FCNSW and managed in terms of the science of silviculture.

The native forest in any given area is a mixture of tree species. Tree species are spread out like a mosaic pattern made up of this mixture. The growth of a tree is determined by the rainfall, the soil type, the elevation and topography and the point of the compass which a particular area faces. This variability of growing conditions leads directly into what a native forest might produce in any harvest. Particularly a selective harvest which is what is the practice of FCNSW in its harvesting methodology and the controlling delegated legislation being the 'integrated forestry operations approval'.

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Selectivity in harvesting is sound science as it helps the native forest to produce straight trees for high quality saw logs, poles and girders for the next round of harvesting through the use of the science of silviculture. It is sound sustainable environment as disturbance to the native forest is minimal and sunlight entering the forest is increased, aiding growth that assist biodiversity. Whilst this last point is contested, the work of the Science Division of the Department of Agriculture suggest the point has longitudinal data in koala research supporting its validity.

This element of unpredictability of species yield in a selective harvest gives what is sometimes known as the “run of the bush”. To put words to this colloquialism, the native forest can only produce for harvest mature trees that are available due to the natural environment and man-made regulations.

All of this forms part of what might be considered sustainable forestry.

“Run of the bush” is an environmental principle that emanates from the natural growth patterns of the native forest to selective harvesting and supply contracts. The results of selective harvesting must govern the wood supply agreement rather than the wood supply agreement governing timber obtained from selective harvesting. To do the latter would ultimately result in an impact on the sustainability of timber from working native forests. Working being a term that is applicable to those State Forests which have been managed for decades to produce regrowth for timber supply over decades. It makes the distinction between the conservation areas managed by FCNSW and those which are available for selective harvesting.

The legal obligation to supply timber in a wood supply agreement should simply address specifications and volume. The ‘run of the bush’ principle will operate here as what can be cut makes up the supply, maintaining an environmental and sustainable native forest timber industry.

The opposite to following the ‘Run of the bush’ is to have specified species supplied in a wood supply agreement. This means that whilst selective harvesting selects trees for timber supply there is a bias to meet species and volume rather than just volume of timber.

In 2014 under the last Coalition Government a contract change occurred whereby the species listed had floored and capped volumes and it added a further distortion to the environmental principle of “run of the bush”. It is not surprising that these particular provisions capped the less commercial species of timber and placed a floor under the most commercial and valuable species for flooring.

What occurs in the first instance in the allocation to saw millers, is the capped and floored wood supply agreement obtains first pick of the harvest. In practical terms all Blackbutt timber (the highly prized commercial flooring timber) needed to meet the supply of the preferred contract goes to one company. Previously these logs would have been shared with equity amongst the Type A wood supply agreement holders. The capped timber in the preferred wood supply contract are New England highland species. These are the least commercial timbers. Again, these timbers have been going to all other saw millers other than the preferred wood supply agreement, to make up volume.

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Whilst there is an essentially unfairness in this current system to those wood supply agreements without preference clauses, the native forest can be sustainable in its timber supply when there is plenty of timber available in the compartments going forward. But if this was altered, to avoid being sued for lack of supply which has occurred under the preferred contract on one occasion, the run of the bush principle would have to be adjusted, and selective harvesting would be based on contract species and not just volume based.

When the supply of timber compartments is impacted by wildfire, bushfires, heavy rain, environmental activism or legal actions, then timber supply is further impacted. This establishes variability in timber supply that requires a contract that has flexibility. Supply of specified species in an environment of limited supply, will activate legal rights and possible damages well before a wood supply agreement based only on volume and timber specifications. This points to another element of sustainability in the native forest to wood supply agreement cycle. Those wood supply agreements with only volume and timber specifications and not timber species have supported businesses for some considerable time.

For equity, the wood supply agreements need to be based on volume and timber specifications, not species and volume.

Run of the bush should be the abiding and underlying principle for supply in a wood supply agreement to support a sustainable, diverse and equitable native forest industry.

The issue of a State-owned monopoly in considering sustainability

A monopoly is a market structure that consists of a single seller or producer and no close substitute. FCNSW as State-owned corporation can be seen as operating a monopoly in the supply of a hardwood from State owned native forests. There are other sources of hardwood timber from privately owned native hardwood forests and privately owned native hardwood plantations, but the reliability of these sources is uncertain.

Hardwood production from all these sources is heavily regulated by NSW State legislation and regulations.

The underlying issue of a sovereign monopoly supplying a commercial commodity should have principles that aids competitiveness and utilizes the publicly owned resource for the common good of the Sovereign State. This calls for certain principles that form the operating basis for the commercial exploitation of the resource. It is submitted that, in a representative democracy, these governing principles are ones of equity of participation, transparency and equality of access and supporting competition, support of local communities through jobs and a final product that the Sovereign State needs to assist the functioning of the economy.

On these principles, it is submitted that with contracting of State-owned resources all contracts in a similar class should have the same key operational terms to promote transparency and equity and equality of access.

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With the supply of State-owned native forests timber through wood supply agreements this means all agreements should have the same terms on volume and timber specification. This promotes equality of access and equity of participation. There is a difference here in these principles. Access is continued timber supply and participation is the lack of commercial differentiation between contractors.

In the North East Regional Forest of NSW, the Wood Supply Agreements Type A (WSA) fall into two groups:

- The Common Agreement WSA Holders, and
- Allen Taylor and Company WSA.

Type “A” WSA is the supply agreement for the best saw logs available.

As the best sawlogs, they are the most valuable of all FCNSW timber products commercially as sawlogs and as a manufactured product. There are two levels of Type A agreements – the most valuable are poles, piles and girders followed by the normal type A used for flooring and decking and appearance grade products.

The difference with wood supply agreements in the North East Regional Forest of NSW 2024 is one wood supply agreement has specifications for volumes of certain species which are capped and floored whilst all other wood supply agreements do not have such terms. The point needs to be made that the one wood supply agreement with species specification has the highest volume for the more commercially profitable species. The balance of the wood supply agreement sometimes referred to as the Common Agreement Holders have volume only.

All wood supply contracts have timber specifications relating to log diameter and such like.

There is a fundamental issue with equity and equality of a State resource in one contract of supply being given preference to one party over that of many others. The supply of a State-owned resource which effectively is a monopolistic product should be made available under the same principles, guidelines or rules. What is available to one is available to all without favour or preference. Without this principle, any preference has the capacity to disrupt the industry. As an example, in respect to the native forestry industry in the North East region a supply of timber on volume and timber specifications only built a thriving and diverse industry in hardwood products.

All the common agreement holders of wood supply agreements have all created their own differing markets with the State-owned product. Accordingly, issues of competition policy fall away. The supply of the State resource has in one sense fostered this over time.

Each saw miller innovated to build their own market has created differentiation in the market place. Some contract with the State Government for heavy infrastructure, others local government authorities in the area of public infrastructure. Each of these differentiated businesses maintain an established skilled work force and a local community into which their residency and income support others. All of this could be easily disrupted by wood supply

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agreements giving commercial preference in the most commercial species because of the impact of a change in the available timber supply. This is not the place to develop why preference clauses traditionally had no place in the supply of native forest timbers, save to say contracting principles outlined were in play and the need to maintain an equality of participation and equity of access.

It is submitted that only terms of this nature should be the provisions in a wood supply agreement to ensure “run of the Bush’ as an environmental principle runs through to the wood supply agreement and contracting principles with a sovereign State are transparent and equitable. Both arguments ensure a sustainable and environmentally sensitive native forestry industry.

Issue 2

Sovereign governance issues

Summary of the submission

The Native hardwood industry is entitled to have the law of NSW applied correctly to the industry by the NSW Government.

Issue no 2.1

The Forestry Act 2012, in certain provisions, places both the Department of Primary Industries and the Department of Environment as policy makers. The compliance officer or “policeman” is the NSW Environment Protection Agency (NSW EPA).

This is sound governance as the policy maker should not be the regulator.

But this principle has not been followed. The NSW EPA has functioned as policy maker without any legislative authority under the Forestry Act 2012 when it comes to the delegated legislation of the “integrated forestry operations approval”.

This is a technical legal argument which requires careful tracking and has three distinct parts.

No apparent authority in regard to drafting instructions.

In reply dated 6 August 2024 to a GIPA request of the NSW Parliamentary Counsel requesting a copy of the drafting instructions for the Forestry Legislation Amendment Act 2018 it was advised that:

“Drafting instructions and related advice provided by the Parliamentary Counsel’s Office in the drafting of a Bill are covered under legal professional privilege, which is exempt from public release unless that privilege is waived by the instructing agency. The NSW Environment Protection Agency was the instructing agency for this Bill”.

A GIPA request had previously been lodged with the Department of Primary Industries who advised they had no records regarding any drafting instructions concerning section 69P of the

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Forestry Act 2012. This GIPA request was forwarded to the NSW EPA as GIPA Request EPA 1015. The EPA in its decision denied access to the drafting instructions. Drafting Instructions were found in two documents dated March 2018 and February 2018. The denial was made on the basis that the documents were Cabinet information. The issue here is that drafting instructions do not normally comprise part of the Cabinet information. Drafting instructions are a derivative of the Cabinet decision. The protection of Cabinet papers and records of discussions is to protect those participating in the Cabinet deliberations so those deliberations can be carried out without fear or favour or incrimination. This is the first point and there are others.

The question is at large, why in 2018 did not the Department of Primary Industry and the Department of Environment instruct on the drafting instructions for the Forestry Legislation Amendment Act 2018? The provisions were to be part of Part 5B of the Forestry Act 2012. The Executive Orders in the form of the Administrative Arrangements (Administration of Acts – General Orders and Others) govern who has the delegated authority to administer respective legislation. Cabinet or anyone else in Government cannot override these orders. Links to these Orders are set out below with a short commentary to assist the reader.

In 2015 The Administrative Arrangements (Administration of Acts – General) Order) 2015 allocated the Forestry Act 2012 to the Minister for Primary Industries except parts allocated to the Minister for the Environment being Parts 5A and 5B of the Forestry Act 2012.

<https://legislation.nsw.gov.au/view/pdf/asmade/sl-2015-164>

In 2017 the Orders allocated the Forestry Act 2012 to the Minister for Lands and Forestry except parts allocated to the Minister for the Environment being Parts 5A and 5B of the Forestry Act 2012.

<https://legislation.nsw.gov.au/view/pdf/asmade/sl-2017-17>

Neither of these Executive Orders include the NSW EPA as having responsibility for the Forestry Act 2012. This has continued to the present times.

The Administrative (Administration of Acts General Orders) 2019 moved the Forestry Act 2012 to the Minister for Planning and Public Spaces.

<https://legislation.nsw.gov.au/view/pdf/asmade/sl-2019-157>

The Administrative Arrangements (Second Perrottet Ministry – Allocation of Acts and Agencies) Order 2021 moved the Forestry Act 2012 to the Minister for Agriculture Parts 5A and 5B jointly with the Minister for the Environment and Heritage,

<https://legislation.nsw.gov.au/view/pdf/asmade/sl-2021-789>

The Administrative Arrangements (Minns Ministry - Administration of Acts) Order 2023 retained the Forestry Act 2012 with the Minister for Agriculture except Part 5A and 5B, jointly with the Minister for the Environment.

<https://legislation.nsw.gov.au/view/html/inforce/current/sl-2023-0139>

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Issue no 2.2

The second issue is how does the Forestry Legislation Amendment Act 2018 provide the NSW EPA with the authority to amend 'protocols' in the 'integrated forestry operations approval' in the manner in which they do by issuing an amendment on their website after advising the FCNSW?

The Forestry Legislation Amendment Act 2018

In 2018, the *Forestry Legislation Amendment Act 2018* introduced section 69P into the *Forestry Act 2012* as a section in Part 5B of the Act which introduced 'integrated forestry operations approval'. The NSW EPA acts as if this section has provided the authority for the NSW EPA to issue amendments to the Integrated Forestry Operations Approval (IFOA).

NSW EPA practice

The NSW EPA has adopted the opinion that it simply can amend a term, an IFOA and now the Coastal Forestry Operations Approval (CIFOA) as it thinks appropriate and without any public consultation or Ministerial approval. In particular, excluding the legislative role of the Minister for Agriculture and the Minister for the Environment and their Departmental officials.

NSW EPA website notes the NSW EPA has this authority; see under the heading Protocols.

<https://www.epa.nsw.gov.au/your-environment/native-forestry/public-native-forestry/integrated-forestry-operations-approvals/coastal-ifoa>

Firstly, these amendments over a number of years are notably not compliance matters but policy matters. Compliance actions do not extend to clarification of existing delegated legislation or the introduction of new matters such as 'site specific conditions'. These are policy matters that under section 69P should be the responsibility of the two stated departments, the Department of Primary Industry and the Department of the Environment.

Approvals have to be granted jointly by the relevant Ministers (section 69N). There is to be public consultation on proposed approvals (section 69NA). the approval is called an IFOA. (section 69M). Only the relevant Ministers can authorise the amendment, suspension or revocation of an IFOA (section 69R). The approved IFOA is found in the terms of the delegated legislation, approved by the relevant Ministers.

There has been no public consultation on the NSW EPA amendments and the relevant Ministers have not signed off either. Regulations to the *Forestry Act 2012* does allow the Ministers to delegate this authority to the CEO of the Department of the Environment. This delegation seems not to have occurred and certainly the CEO of the Environment Department has not signed off any of the alterations or amendments to the IFOA.

There might be another view that the protocols should be ones made pursuant to the *Protection of the Environment Operations Act 1991*. This will be reviewed later.

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The *Forestry Act 2012* can be viewed at:

<https://legislation.nsw.gov.au/view/html/inforce/current/act-2012-096>

Section 69P is extracted:

Section 69P

69P Terms of approval

- (1) An integrated forestry operations approval is to describe the forestry operations covered by the approval, including a description of the area of the State to which it applies.
- (2) An integrated forestry operations approval is—
 - (a) to make provision for or with respect to the carrying out of forestry operations covered by the approval, and
 - (b) to set out conditions subject to which those forestry operations are to be carried out, including conditions that may be imposed under any of the following—
 - (i) a biodiversity conservation licence under the Biodiversity Conservation Act 2016,
 - (ii) a licence under Part 7A of the Fisheries Management Act 1994,
 - (iii) an environment protection licence under the Protection of the Environment Operations Act 1997.
- (3) An integrated forestry operations approval may apply or adopt protocols, codes, standards, or other instruments that are publicly available and in force from time to time.
- (4) Without limiting subsection (3), any such protocols may include those prepared by the Environment Protection Authority.

The key interesting question is how one interprets subsections 69P (3) and (4) in the context of the section and Part 5B.

Section 69(3) clearly allows protocols and other instruments to be applied to an integrated forestry operations approval but provided they are:

- publicly available, and
- in force from time to time.

Section 69(4) clearly states that these may include protocols prepared by the NSW EPA.

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Remember, the NSW EPA drafted the instructions for this legislation.

Looking to the Notes of the amending legislation the following is written:

Notes to Item 25 of Schedule 2 are at:

<https://www.parliament.nsw.gov.au/bill/files/3511/XN%20Forestry%20Legislation%20Amendment%20Bill.pdf>

(Text of the Notes to Item 25)

Schedule 2 [25], [26], [30] and [32] make the necessary amendments so that integrated forestry operations approvals will no longer contain separate deemed licences to harm animals, plants, or fish or to pollute waters so that a single set of forestry rules can be made for public forestry operations that cover those matters and also administrative conditions of approvals. The relevant legislation that regulates harm to animals, plants or fish or preventing the pollution of waters will contain the relevant defence for the Forestry Corporation if forestry operations are conducted in accordance with the terms of the approvals (see section 2.8 of the Biodiversity Conservation Act 2016 and the amendments made by Schedule 3.4 and 3.11). The current separate enforcement regimes in relation to those deemed licences will be replaced by a single enforcement regime under the Biodiversity Conservation Act 2016.

Set out below are the amendment associated with this Note. It will be observed there is no commentary in relation to the word protocol or code, standards, or other instruments, as contained in section 69P (3).

Schedule 2 – Item 25 – Section 69P

Schedule 2 – Item 26 – Section 69R text Omit 69R (2)”

Schedule 2 – Item 30 – Part 5B Division 3 Terms of relevant licences under integrated licences Omit the Division.”

Schedule 2 Item 32 – Section 69ZA Application of statutory provisions relating to proceedings by third parties Omit section 69ZA (2) (b) and (c). Insert instead:

(b) a breach of an integrated forestry operations approval,

(c) a breach of an Act or law that arises because any defence provided by an

integrated forestry operations approval is not available as a result of a breach of the approval,

The word ‘protocol’ is not defined in the Forestry Act 2012 or The *Forestry Legislation Amendment Act 2018*, but it is used in the *Protection of the Environment Administration Act 1991* (POEA). Note this legislation is referred to in section 69P(2)(ii) which is in keeping with the legislative objective of having a single enforcement regime”. It is suggested that it also points to why the words; protocols, codes, standards, or other instruments” were used.

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The quandary is how to explain the word 'protocol'.

The working papers, work procedures of the predecessors of the Forestry Corporation of NSW used the word 'protocol' as did many government departments, the military and large businesses in past times. But in a legislative context it has an association with the NSW EPA, as do the words 'codes, standards, other instruments'. These or similar words are used together in the *Protection of the Environment Administration Act 1991* (POEA).

The EPA is established by the POEA.

Section 11 of the POEA allows the EPA to create Protection of the Environment Policies (PEPs). Section 11 is headed 'content of the PEPs'. Section 11 of POEA names the policy as a 'goal', 'standard', 'guideline' and 'protocol'. The words 'standard' and 'protocol' are used in section 69P (3) of the *Forestry Act 2012*. Section 11 (4) sets out what the policy may be made in respect of, being in part in subsection (c) any activity that may impact, or has impacted, on the environment. In respect to the IOFA in the Forestry Act 2012 this is clearly an objective of the legislation. It is submitted that section 11 is the source of the word 'protocol' in subsections 69P (3) and (4) particularly as a single approval and enforcement regime was being intended.

Part 2.3 of the POEA requires public consultation as part of the general procedure for preparing draft policies. A PEP, as a protocol prepared under these provisions, would be in force from time to time" and publicly available as required by Subsection 69P (3) of the *Forestry Act 2012*. The question is the timing of when a protocol should be in force from time to time and publicly available. This is the key point of why the NSW EPA acts the way it does.

It is submitted that the wording of subsection 69P (3) requires the protocol, code, standard or other instrument to be adopted into the IOFA to be existing. This becomes relevant to the making of a protocol that might be subject to subsections 69P (3) and (4).

Of interest is the role of public consultation in other parts of the POEA. In Section 12, the EPA has power to give direction to public authorities. This power has a disputes provision that permits the Premier, at their discretion, to hold public consultations. The consistent theme of public consultation in relation to policies around the environment is seemingly a key public policy of NSW administration.

Part 5B of the *Forestry Act 2012* has a similar approach. Section 69R concerns revocation, suspension or amendment of an approval. The relevant Ministers have to be involved.

Section 69RA requires public consultation on proposed amendment or revocation of an approval. An amendment takes its ordinary meaning and means any change or alteration to an IOFA.

Submission

It is noted that the NSW EPA does not undertake public consultation with its amendments to the IFOA or the CIFOA. Whilst subsection 69P (4) includes NSW EPA protocols, the actions of the NSW EPA ignore the provisions of section 69P on amending an IFOA which they are surely doing. The relevant sections do not carve out the provisions of subsection 69P (3) and (4) in regard to public consultation or Ministerial approval.

Recent case law is one issue that looms large in regard to which item of legislation governs the IFOA or CIFOA protocols. None of the above material has been the subject of any judicial review as it was absent from any submissions made by the legal team representing any of the parties. Certainly, their Justices did not reflect same in their judgements.

Case law

Recently FCNSW conceded the point in the Land and Environment Court proceedings **North East Forest Alliance Incorporated (Inc 1601738) v Forestry Corporation of NSW** [2023] NSWLEC 124 that the amendments by the NSW EPA are made under section 69P.

During its submissions, in relation to the amendment of protocols, in the case, North East Forest Alliance Incorporated (NEFA) contended that the CIFOA was a "static instrument that can only be amended under the less versatile processes prescribed by s 69R". [s 69R concerns amendment of an approval, by the Ministers.]

Pritchard J, in her judgment delivered on 20 November 2023 (holding that the applicant did have standing but dismissing the proceedings):

- (a) expressly rejected that submission; and
- (b) expressly accepted a contrary submission by FCNSW, that the EPA has power to amend protocols, pursuant to condition 23.2(b) of the CIFOA and s 69P (3) and (4) of the Forestry Act: see [208], [218(13)].

There has been more recent Judicial review.

Three months later, in February 2024, Pritchard J delivered judgment in **South East Forest Rescue Inc v Forestry Corporation of NSW** [2024] NSWLEC 7 (the South East LEC decision). In that case the applicant (SEFR) sought to restrain FCNSW from conducting any forestry operation unless "broad area habitat searches" were conducted in a particular manner under Condition 57 of the CIFOA. FCNSW, again the respondent, again challenged the standing of the applicant (this time SEFR) to bring the proceedings.

During her judgment, her Honour referred, at [79] ff, to Part 5B of the Forestry Act said: "The CIFOA contains in the order of 12 conditions, and some 40 protocols which support various requirements in the CIFOA." Elsewhere her Honour noted a submission by FCNSW (on which her Honour did not specifically rule) "that the CIFOA is a 'living document' that permits adaptation to changing circumstances by a variety of methods, including the following: that the CIFOA can be amended by the Ministers that made it; [and] that Protocols to the CIFOA can be amended by the EPA".

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Her Honour held that SEFA did not have standing to bring the proceedings. SEFA appealed to the Court of Appeal.

In an interlocutory decision on 22 March 2024, **South East Forest Rescue Inc v Forestry Corporation of NSW** [2024] NSWCA 64 (the first South East CA decision), Griffiths AJA in the Court of Appeal summarised the relevant "legislative framework", referring specifically to Part 5B of the Forestry Act including s 69P (3), and noting at [10] that the CIFOA "adopts protocols under s 69P (3) which have been made by the [EPA]".

There is no suggestion in either the South East LEC decision or the first South East CA decision that any part of the legislative framework is or may be invalid.

But it is interesting to note that the view is taken that the protocols are made by the EPA. It is submitted that the process for making these protocols is found in the PEOA. But as stated, this point was never submitted to the Court.

On 16 May 2024 the Court of Appeal allowed the appeal by SEFR on the standing issue: **South East Forest Rescue Inc v Forestry Corporation of NSW** (No 2) [2024] NSWCA 13 (the second South East CA decision). At [52] - [76], Griffiths AJA (with whom Adamson AJ and Basten AJA agreed) laid out, at greater length than in his earlier interlocutory decision, the statutory framework for NSW forestry operations, including Part 5B of the Forestry Act, s 69P thereof, and the CIFOA (referring specifically in that regard to Condition 12 and Protocol 31.3 as to SSBCs). Again, the judgment contains no suggestion that any part of the legislative framework is or may be invalid.

These judgements did not look at how the protocols might be made and where the legislative authority to do so is based, being protocols that are "in force from time" and publicly available .

The key issue remains is publication after a decision by the NSW EPA sufficient for a protocol to meet the tests contained in subsection 69P (3) of the *Forestry Act 2012*.

How does this measure override the public consultation provisions in Part 5B of the *Forestry Act 2012* when there is no legislative exception made?

Section 69P of the Forestry Act is about the source of the terms of the IOFA. How does this extend to an amendment of the approval and ensure compliance with the provisions of Part 5B for public consultation and Ministerial approval?

If the view of the NSW EPA is correct, then why, when public consultation is a feature of Part 5B of the *Forestry Act 2012* and the POEA framework, is the IOFA protocol amendment process the exception? When is that exception not explicitly set out in the Forestry Act Part 5B? The Courts have said that there are two systems. If this is correct, why do the notes to the relevant amendment say the relevant legislation was intended to have a single system?

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Is it because the NSW EPA, as the regulator, issued the drafting instructions?

A sustainable native forestry industry deserves more certainty in its governance and a better governance structure that actually reflects its governing legislation than what is currently being administered.

Stuart Coppock

13 October 2024

Submission

Annexure One

Type A WSA – NSW North Coast

Forestry Corporation lists the North Coast Wood Supply Agreements at:

<https://www.forestrycorporation.com.au/about/sales-and-supply>

The holders of Type A Wood Supply Agreements are listed as

1. Allen Taylor and Company Wood Supply Agreement Type A includes variation (veneer):

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0009/1466433/Allen-Taylor-and-Company-Wood-Supply-Agreement-Type-A-includes-variation.pdf

2. Big River Group Wood Supply Agreement Type A includes variations:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0010/1481761/Big-River-Group-Wood-Supply-Agreement-Type-A-includes-variation.pdf

3. CJ and A Wood Wood Supply Agreement Type A includes variations:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0003/1481763/CJ-and-A-Wood-Supply-Agreement-Type-A-includes-variation.pdf

4. Hurford Hardwood Kempsey Wood Supply Agreement Type A includes variation and assignment:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0011/1466435/Hurford-Hardwood-Kempsey-Wood-Supply-Agreement-Type-A-includes-variation-and-assignment.pdf

5. Hurford Resources Wood Supply Agreement Type A includes variation:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0004/1466437/Hurford-Resources-Wood-Supply-Agreement-Type-A-includes-variation.pdf

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6. Machins Sawmill Wood Supply Agreement Type A includes variation and assignment:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0006/1466439/Machins-Sawmill-Wood-Supply-Agreement-Type-A-includes-variation.pdf

7. Marshall Notaras Hardwoods Wood Supply Agreement Type A includes variation and assignment:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0007/1466440/Marshall-Notaras-Hardwoods-Wood-Supply-Agreement-Type-A-includes-variation-and-assignment.pdf

8. Newells Creek Sawmilling Wood Supply Agreement Type A includes variation:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0009/1466442/Newells-Creek-Sawmilling-Wood-Supply-Agreement-Type-A-includes-variation.pdf

9. SA Relf & Sons Pty Limited Wood Supply Agreement includes variation:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0003/1466445/SA-Relf-and-Sons-Wood-Supply-Agreement-Type-A-includes-variation.pdf

10. Thora Sawmilling Wood Supply Agreement Type A includes variation:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0004/1466446/Thora-Sawmilling-Wood-Supply-Agreement-Type-A-includes-variation.pdf

11. Williams Timber Wood Supply Agreement Type A includes variation:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0007/1466431/Williams-Timber-Wood-Supply-Agreement-Type-A-includes-variation.pdf

12. Yates Bros Stratford Wood Supply Agreement Type A includes variation and assignment:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0008/1466432/Yates-Bros-Stratford-Wood-Supply-Agreement-Type-A-includes-variation-and-assignment.pdf

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Annexure Two

The one-off wood supply agreement with timber supply in terms of timber species capped and floored.

The Wood Supply Agreement is on the website of FCNSW as:

Allen Taylor & Company Limited and Duncan's Holding Limited.

The Wood Supply Agreement history

Taylor and Duncan entered a WSA on 5 March 1999.

By WSA Agreement on 26 August 2003 the 1999 WSA was to be extended to 31 December 2023.

By Variation Deed dated 19 June 2014 the Wood Supply Agreement was amended in the terms of Schedule 2.

The Wood Supply Agreement can be found at:

https://www.forestrycorporation.com.au/_data/assets/pdf_file/0009/1466433/Allen-Taylor-and-Company-Wood-Supply-Agreement-Type-A-includes-variation.pdf

Extract 2023 Agreement Type A Agreement

(Definitions are contained in clause 2 of the 2003 Agreement. For convenience, these definitions are footnoted)

Clause 6 amended by Schedule 2 of the Variation Deed 2014. Clause 2 of the 2003 Agreement is interlined and substitute clause 6 in the 2014 Deed of Variation is placed below the interlined (deleted) section of Clause 6, 2003).

~~Clause 6 BASE Allocation¹ (page 7-8 of the WSA)~~

~~6.1 Each year State Forests² must make the Base Allocation available to the Companies³.~~

6.1-Each Year State Forests must make the Base Allocation⁴ (or such greater or lesser quantity as may be requested by the Companies in accordance with this Agreement) available to the Companies.

¹ Clause 2: 'Base Allocation': means the quantity of Timber specified in Schedule 2.

² Forestry Act 2012 and State-Owned Corporations Act 1989 'State Forests' became the Forestry Corporation of NSW.

³ Recital 1.5.1 Companies defined as Allan Taylor & Company Limited and Duncan Holdings Limited.

⁴ Definition of Base Allocation remained the same as the 2003 Agreement.

Submission

~~6.2 Subject to Clause 6.11, each Year⁵ State Forests may substitute up to 24,350 cubic metres of the Base Allocation of Quota Quality Logs⁶ with Small Logs⁷ as follows:~~

~~6.2.1 The substitution rate will be 1.25 cubic metres of Small Logs equals 1 cubic metre of Quota Quality Logs;~~

~~6.2.2 State Forests must consult with the Companies before determining a substitution;~~

~~6.2.3 Subject to availability of supply and the requirements of proper forest management, State Forests must use its reasonable endeavours to minimize substantial variations in the amount of substitution from One Year to the next and to make the substitution Small Logs available at an even rate throughout the Year.~~

6.2 Each Year State Forests may make available as part of the Timber supplied under this Agreement:

6.2.1 a quantity of Small Logs of the species Blackbutt that does not exceed 85% of the quantity of Blackbutt Small Logs harvested by State Forests in the Area of Supply⁸ during the Year;

6.2.2 a quantity of Small Logs of the species Spotted Gum that does not exceed 49% of the quantity of Spotted Gum Small Logs harvested by the State Forests in the Area of Supply during the Year; and

⁵ Clause 2: 'Year' means a period of twelve months commencing on 1 July in any year.

⁶ Clause 2: "Quota Quality Logs" means the hardwood timber described as Quota Quality Logs in the Specifications. Clause 2 "Specifications" means the specifications for the hardwood timber set out in Schedule 1.

⁷ Clause 2: 'Small Logs' means the hardwood timber described as Small Logs in the Specifications.

⁸ Schedule 2 of the 2014 Deed of Variation removed the 2003 definition of 'Area of Supply' which meant the Crown-timber lands within the Chichester, Coffs Harbour, Coopernook, Dorrigo, Glen Innes, Gloucester, Grafton, Kempsey, Kendal, Mt Marsh, Taree, Urunga, Wauchope and Wingham Management Area on the North Coast of NSW to mean "the Crown-timber lands within Supply Zones 1-6 inclusive," These are defined in the 2003 Agreement in Schedule 3 as Zone 1 to Zone 6. This covers the entire North Coast from Morisset to Tweed and from the Coast to Walcha-Nundle and Styx River.

Submission

6.2.3 a quantity of Small Logs of any other species of Timber up to but not exceeding 25% of the total volume of those other species supplied to the Companies during the Year.

~~6.3 In each Year State Forests must make that part of the Base Allocation comprising Quota Quality Logs available to the Company:~~

~~6.3.1 firstly by making available, from the Crown-Timber lands within each of the Supply Zones⁹, the quantity of Timber¹⁰ represented by the lesser of either:~~

~~(a) the percentage of the total production of Quota Quality Logs from Crown-timber lands in the Supply Zone during that Year which is specified in Schedule 2 as the Percentage of Production for that Supply Zone or~~

~~(b) the Maximum Allocation specified in that Schedule for the Supply Zone;~~

~~6.3.2 secondly, the balance, if any from alternative areas determined by State Forests within Supply Zones 1, 5 and 6.~~

6.3 Each Year State Forests must take no less than the Blackbutt Base Quantity¹¹ for the Year available to the Companies as part of the Timber supplied under this Agreement.

~~6.4 In determining the alternative areas referred to in Clause 6.3.2:~~

~~6.4.1 State Forests must consult with the Companies; and~~

⁹ Clause 2: 'Supply Zones' means Supply Zones 2,3 and 4.

¹⁰ Clause 2 "Timber" means the timber described in the Specifications. (Note distinguished from 'timber' with lower case forest letter.)

¹¹ Schedule 2 2014 Deed of Variation: Blackbutt Base Quantity for a year means a quantity of Timber of the species Blackbutt calculated by multiplying 58,000 cubic metres by the Base Allocation Percentage for the Year. In the same document "Base Allocation Percentage" is defined. Base Allocation Percentage for a year means the percentage of the Base Allocation taken by the Companies during the Year where the quantity taken is deemed to include any quantity requested by the Companies but not made available by State Forests during the Year by default of State Forests.

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~~6.4.2 Subject always to State Forests not being required to breach its obligations to supply Quota Quality Logs under contracts with third parties, State Forests must select areas using its best endeavours to minimize timber haulage distances and to duplicate the species mix expected from the Supply Zones.~~

6.4 Without limiting Clause 6.3, each Year State Forests must use its best endeavours to make available to the Companies a minimum percentage of all Timber of the species Blackbutt harvested by State Forests in the Area of Supply during the Year determined in accordance with the formula:

$$(BAP \times 58,000) / (BAP \times 58,000) + 10,200),$$

Where BAP means the Base Allocation Percentage and Timber for the purpose of the Clause 6.4 shall not include Blackbutt that is harvested as poles, piles girder or veneer logs.

~~6.5 State Forests must not unfairly or inequitably disadvantage the Companies in its selection of the Compartments from within which the Base Allocation is to be made available.~~

6.5 Each Year State Forests must make no less than the B4 Base Quantity¹² for the Year available to the Companies as part of the Timber supplied under this Agreement.

~~6.6 When applying Small Diameter Timber in accordance with the terms of the Agreement, State Forests must comply with the table set out in Schedule 10 both in relation to the Management Areas¹³ from which the Small Diameter Timber is to be supplied and the maximum volume of Small Diameter Timber that can be supplied to the nominated Delivery Sites.~~

6.6 Without limiting Clause 6.5, each Year State Forests must use its best endeavours to make available to the Companies a minimum percentage of all Timber of the species Spotted Gum, Tallowwood, Brushbox and Blue Gum harvested by State Forests in the Area of Supply during the Year determined in accordance with the formula:

$$(BAP \times 24,000) / (BAP \times 24,000) + 25,100),$$

¹² Schedule 2 2014 Deed of Variation: B4 Base Quantity for a Year means a quantity of Timber of the group of species Spotted Gum, Brush Box, Tallowwood and Blue Gum calculated by multiplying 24,000 cubic metres by the Base Allocation Percentage for the Year.

¹³ Clause 2 "Management Areas" means an area of land designated as a "management Area" on the plan prepared by State Forests and attached as Schedule 3.

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Where BAP means the Base Allocation Percentage and Timber for the purpose of this Clause 6.6 shall not include Spotted Gum, Tallowwood, Brushbox and Blue Gum that is harvested as poles, piles, girder or veneer logs.

~~6.7 In the course of the consultation process referred to in Clause 11.2, State Forests must consult with the Companies regarding the degree of substitution referred to in Clause 6.2 (“the Quota Quality Log/Small Log Ratio”) and the anticipated sources of the Small Log involved. Following that consultation State Forests must provide the Companies with a schedule providing indicative information regarding the Quota Quality Log/Small Log Ratio and anticipated sources of the Small Log involved during the following Year:~~

~~6.7.1 The purpose of such a schedule is to provide information relating to possible sources of Timber;~~

~~6.7.2 State Forests is not able to make any firm commitments that all the Timber will be available as indicated in such a schedule.~~

6.7 Each Year State Forests must make available to the Companies as part of the Timber supplied under this Agreement the following minimum quantities of the species Spotted Gum, Tallowwood, Brushbox, and Blue Gum”

6.7.1 In the case of Spotted Gum: the quantity of Timber calculated by multiplying 8,000 cubic metres by the relevant base Allocation Percentage and including in that quantity a quantity of Timber other than Small Diameter Timber¹⁴ calculated by multiplying 5,000 cubic metres by the relevant Base Allocation Percentage;

6.7.2 In the case of Tallowwood: the quantity of Timber calculated by multiplying 4,000 cubic metres by the relevant Base Allocation Percentage;

¹⁴ Clause 2 2003 Agreement; “Small Diameter Timber” means Small Logs and Quota Quality Logs which have centre diameter under bark of less than 40cms. Deed of Variation 2014 alters the definition of Quota Quality Logs to: “Quota Quality Logs means “Small Logs and” the hardwood timber described as Quota Quality Logs in the Specifications”. In Clause 2 2003 Agreement “Small Logs” means the hardwood timber described as Small Logs in the Specifications.”

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6.7.3 In the case of Brushbox: the quantity of Timber calculated by multiplying 2,000 cubic metres by the relevant Base Allocation Percentage; and

6.7.4 In the case of Blue Gum: the quantity of Timber calculated by multiplying 4,000 cubic metres by the relevant Base Allocation Percentage.

6.8 In any Year the Companies may take more or less than the Base Allocation in accordance with the following conditions:

~~6.8.1 in any Year the quantity of Timber taken by the Companies must not exceed 110 percent of the Base Allocation;~~

~~6.8.2 in any Year the minimum quantity of Timber taken during that Year must not be less than 90 percent of the Base Allocation;~~

~~6.8.3 the cumulative Undercut¹⁵ or Overcut¹⁶ aggregated at the end of any Year must not be greater than 10 percent of the Base Allocation; and~~

~~6.8.4 unless otherwise agreed between State Forests and the Companies, an Overcut or an Undercut in a Year must compromise the same ration of Quota Quality Logs to Small Logs as the Quota Quality Log/Small Log Ratio indicated in the schedule provided to the Companies by State Forests under Clause 6.7 for that Year.~~

6.8 Each Year the quantity of Timber comprising New England Hardwood species made available by State Forests must exceed 6,000 cubic metres.

6.9 The Companies are not entitled to an Undercut or Overcut except in accordance with the conditions set out in Clause 6.8. Despite the requirements of Clause 6.8 if the Companies apply for an Overcut by giving less than 6 months notice State Forests will use reasonable endeavours to make the Overcut available.

¹⁵ Clause 2: "Undercut" means the amount by which the actual quantity of Timber taken by Companies in any Year is less than the Base Allocation.

¹⁶ Clause 2 "Overcut" means the amount by which the actual quantity of Timber taken by the Companies in any Year is greater than the Base Allocation.

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6.9 In each Year State Forests must make Timber available to the Company:

6.9.1 firstly by making no less than 90% of the base Allocation (or such greater or lesser quantity as may be requested by the Companies in accordance with this Agreement) available from the Crown-timber lands within the Supply Zones; and

6.9.2 secondly, any balance required to be supplied to the Companies from alternate areas determined in accordance with the Agreement by State Forests within Supply Zones 1, 5 and 6.

~~6.10 The parties acknowledge that as the last six months of this Agreement is a half Year, their respective obligations to make available and to take Timber in those periods require modification. To that end, and despite any other provisions of this Agreement, in the last six months of this Agreement, the Base Allocation shall be one half of quality specified in Schedule 2 and all State Forests rights and obligations in relation to making that quantity available under this Clause 6 and all the Companies' obligations to take a proportion of the Base Allocation under Clause 8 are adjusted accordingly.~~

6.10 In determining the alternative areas referred to in Clause 6.9.2

6.10.1 State Forests must consult with the Companies; and

6.10.2 Subject always to State Forests not being required to breach its obligations with third parties, State Forests must select areas using its best endeavours to minimise timber haulage distances.

~~6.11 Despite any other provisions of this Agreement State Forests must not apply or require the Companies to take more than 35,000 cubic metres of Small Diameter in any year.~~

6.11 State Forests must not unfairly or inequitably disadvantage the Companies in its selection of the Compartments from within which the Base Allocation is to be made available.

6.12 From the time the Companies may give written notice to State Forests of an intention to:

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6.12.1 vary a previously advised intention to take an Overcut or accept an Undercut, or the extent of an Overcut or Undercut, in the Year in which the notice is given; and/or

6.12.2 take an Overcut or accept an Undercut in a subsequent Year,

("Intake Notice")

The Intake Notice must specify the rate at which the Companies intend to take Timber when the notice takes effect expressed as a percentage of the Base Allocation ("Intake Rate").

6.13 Subject to Clauses 6.14 to 6.19 inclusive State Forests must make Timber available in accordance with an Intake Notice.

6.14 In any Year the Companies may take more or less than the Base Allocation in accordance with the following conditions:

6.14.1 in any Year the quantity of Timber taken by the Companies must not exceed 115 percent of the Base Allocation;

6.14.2 in any Year the quantity of Timber taken during that Year must not be less 85 percent of the Base Allocation; and

6.14.3 the cumulative Undercut or Overcut aggregated at the end of any Year must not be greater than 15 percent of the Base Allocation.

6.15 An Intake Notice must comply with the following requirements:

6.15.1 in the case of a 0.5% variation, at least 3 months' written notice;

6.15.2 in the case of a 5.01% - 10% variation, at least 6 months' written notice; and

6.15.4 in the case of a variation greater than 15% at least 12 months written notice, provided:

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6.15.5 the reference to a percentage variation is a reference to the percentage variation between the Intake Rate specified in the Intake Notice and the Intake Rate specified in the last Intake Notice provided by the Companies (the latter being “the Base Rate”, which shall be deemed to be 100% in the case of the first Intake Notice issued by the Companies);

6.15.6 the variation must be implemented in the month following the month during which the notice period expires; and

6.15.7 the Companies may issue Intake Notices whose notice periods overlap (“Concurrent Notices”) provided:

- (a) The cumulative effect of those notices must not purport to achieve a percentage variation in the Intake Rate in a shorter period than would be possible were a single Intake Notice to be issued under this Clause 6.15;
- (b) All the Concurrent Notices must request either an increase in the Intake Rate, or a decrease in the Intake Rate; and
- (c) The Base Rate for each of the Concurrent Notices must be treated as being the Intake Rate for the last Intake Notice issued before the series of Concurrent Notices; and

6.15.8 an Intake Notice may be withdrawn by the Companies by giving State Forests:

- (a) In the case of an Intake Notice involving a 0 – 10% variation, written notice no less than 3 months prior to the scheduled implementation of that notice; and
- (b) In the case of an Intake Notice involving a greater than 10% variation, written notice no less than 6 months prior to the scheduled implementation of that notice.

6.16 If an Intake Notice takes effect prior to the end of the Year in which the notice is given, the Intake Notice shall be given effect by varying the Monthly Quantities

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specified in the Annual delivery Plan¹⁷ for the remaining months of the Year after the notice takes effect by the percentage determined by the formula:

NEWIR/Old IR.

Where;

NewIR means the Intake Rate specified in the Intake Notice;

And

OldIR means the Intake Rate specified in the last Intake Notice provided by the Companies except:

- (a) In the case of a Concurrent Notice where OldIR means the Base Rate associated with the Concurrent Notice; and
- (b) OldIR shall be deemed to be 100% in the case of the first Intake Notice issued by the Companies.

6.17 If an Intake Notice takes effect after the end of the Year in which the notice is given, the Annual delivery Plan for that subsequent Year must provide:

6.17.1 In the months before the Intake Notice takes effect, an Intake reflecting the last Intake Notice provided by the Companies that takes effect prior to the start of the subsequent Year, and

6.17.2 in the months after the Intake Notice takes effect, the Intake determined in accordance with Clause 6.16.

¹⁷ Deed of Variation 2014 alters meaning of Annual Delivery Plan from 2003 definition. Interlined means words deleted and underlined means words added to the 2003 definition. "Annual delivery Plan" means a schedule for the Year to which it applies setting out indicative information regarding the supply of the base Allocation (or such greater or lesser volume as the Companies are entitled to require State Forests to make available) particularly the areas from which it is intended the Timber be taken and the most ~~monthly volumes of Timber~~ "Monthly Quantity" proposed to be delivered to each of the Delivery Site each month during the Year. The Annual Deliver Plan must recognise: (i) the need for the Companies to stockpile Timber in some months to compensate for events preventing delivery such as wet weather preventing harvesting of Timber; (ii) the need for the Companies to otherwise manage its millsite stockpiles to control inventory costs and minimize deterioration in the quality of stockpiled Timber; (iii) unless otherwise agreed the supply of 55% of the Bae Allocation in the first half of each Year and the balance in the second half of each Year. "Monthly Quantity for a month means the quantity of Timber to be made available to Companies in the month."

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6.18 In no case will State Forests be required to make available more Timber to the Companies during the term of this Agreement than the Total Allocation (less any deductions under Clause 8.1)

6.19 The Companies are not entitled to an Undercut or Overcut except in accordance with the conditions set out in Clause 6.14.

6.20 The parties acknowledge that as the last six months of this Agreement is a half Year, their respective obligations to make available and to take Timber in those periods require modification. To that end, and despite any other provision of this Agreement, in the last six months of this Agreement, the base Allocation shall be one half of the quantity specified in Schedule 2 and State Forests rights and obligations in relation to making that quantity available under Clause 6 and all the Companies' obligations to take a proportion of the Base Allocation under Clause 8 are adjusted accordingly.

Schedule 2

~~165,000 cubic metres of Quota Quality Logs (subject to Clause 6.2)~~¹⁸

In the period from the Effective Date to 30 June 2014, 165,000 cubic metres of Quota Quality Logs.

In the period from 1 July 2014 to 31 December 2028, 116,000 cubic metres of Quota Quality Logs.

Supply Zone	Maximum Allocation (Quota Quality Logs)	% of Production (Quota Quality Logs)
2	55,000	72%
3	95,000	88%
4	15,000	52%

¹⁸ Deleted in the Variation Deed 2014 and replaced with other text.

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(2003 Clause unaltered by 2014 Deed of Variation.)

Clause 15 : Specifications

- 15.1 The Companies must accept any timber which conforms with the Specifications.
- 15.2 Timber will be deemed to conform with the Specifications if the Timber is accepted by a Company at the Delivery Site and that Company does not object to its failure to meet Specifications by notice in writing to State Forests within seven days of its delivery.
- 15.3 If a Company objects to timber in terms of Clause 15.2 it must set the timber aside for inspection. State Forests must arrange for the inspection of the timber by a suitably qualified State Forests officer within 7 days after receipt of the objection.
- 15.4 A decision of a suitably qualified State Forests officer, that the timber is Timber, will be accepted by the Company as final, and the timber will be deemed to meet the specifications.
- 15.5 If the suitably qualified State Forests officer decided the timber does not meet the Specifications and the parties cannot agree on terms upon which the Company would purchase the timber, State Forests must within 7 days remove the timber from the Delivery Site at its own cost.
- 15.6 If the timber is removed from the Delivery Site by State Forests in accordance with Clause 15.5, the Company will be entitled to charge State Forests the handling fee determined in accordance with Schedule 9 for unloading and reloading the timber, such fee to be payable by State Forests within 30 days of receipt of invoice.
- 15.7 If quantities of Timber which conform to the Specifications are not available in a Year for any reason including Force Majeure the Companies and State Forests must confer with a view to exploring the possibility of the Companies accepting timber from categories of logs which are not with the Specifications. State Forests must give written notice to the Companies as soon as practicable and in event within 28 days of becoming aware of a likely shortage and will in the same notice provide an opportunity for the Companies to meet with State Forests and provide details of other timber which could not be supplied. In any circumstances where but for this Clause State Forests would have committed a breach or a material breach of this Agreement, the Companies will not be entitled to invoke the provisions of Clause 28.6.1, or to claim any damages for breach against State Forests unless both parties have in good faith made all reasonable endeavours to meet the Companies' needs for Timber from timber available from State Forests but outside the scope of the Specifications.

Submission

15.8 Other timber supplied to the Companies under the provisions of Clause 15.7 will be deemed to be Timber supplied under this Agreement subject to the price for the timber being determined under the Price System.

15.9 State Forests recognises the importance, to the operation of the sawmills at the Delivery Sites, of consistency in species, diameter and length of delivered Timber. The Companies also recognise the difficulties associated with supplying a delivered log mix that does not vary to reflect the inherent variability of the forest from which it is harvested. Subject always to State Forests' sole discretion to determine from time to time the location of Contract Harvesting operations necessary to supply Timber under this Agreement, in accordance with State Forests' opinion of good forest management, and the limitations that flow from the exercise of that discretion, State Forests will use its best endeavours to deliver Timber:

15.9.1 which companies, on an annual basis, with the following requirements regarding volume by major species:

Major Species	Maximum or Minimum	Percentage of base Allocation
Blackbutt	Maximum	60%
Spotted Gum	Minimum	5%
Tallowwood	Minimum	3%
Brushbox	Minimum	3%
New England Hardwood (including E. viminalis, E. fastigata, E. andrewsii, E. cameronii, E. obliqua, E. laevopinea, E. radiata, E. deanii, E. albens, E. dunii)	Maximum	12%

15.9.2 which complies on an annual basis with the following requirements regarding volume by diameter:

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Diameter Range Centre Diameter Under Bark	Maximum or Minimum	Percentage of Base Allocation
40-49 centimetres	Maximum	55%
50-59 centimetres	Minimum	15%
60 + centimetres	Minimum	10%

15.9.3 which complies on an annual basis with the following requirements regarding volume by preferred lengths (124 decimetres (dm), 118dm, 112dm, 100dm, 94dm, 62dm, 59dm, 50dm and 47dm):

Major Species	Maximum or Minimum	Percentage of Major Species Volume per Year in Preferred Lengths
Blackbutt	Minimum	50%
New England Hardwood (including <i>E. viminalis</i> , <i>E. fastigata</i> , <i>E. andrewsii</i> , <i>E. cameronii</i> , <i>E. obliqua</i> , <i>E. laevopinea</i> , <i>E. radiata</i> , <i>E. deanii</i> , <i>E. albens</i> , <i>E. dunii</i>)	Minimum	40%

The Timber NSW Submission to the Portfolio Committee No 4 dated June 2021 for the NSW Legislative Council Inquiry into the long-term sustainability and future of the timber and forest products industry sets out in more details the circumstances surrounding the Allen Taylor and Company Type A Wood Supply Agreement and the impact overall on the hardwood industry on the NSW North Coast can be seen at pages 17 -21, and 26 – 37.