



Environmental
Defenders Office

Submission to Draft Private Native Forestry (PNF) Codes of Practice (NSW)

19 May 2020

About EDO

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Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

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Environmental Defenders Office is a legal centre dedicated to protecting the environment.

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Introduction

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the draft Private Native Forestry (**PNF**) Codes of Practice (the **Draft Codes**).

The exhibition of the PNF Draft Codes is part of the broader PNF Review being undertaken by the NSW Government.¹ EDO has previously made a number of recommendations as part of the broader PNF Review, including in relation to the PNF Codes of Practice (see specifically previous EDO recommendations 19 - 25).²

Our submission to the Draft Codes responds to the key features of the draft PNF Codes of Practice set out in the Local Land Services (**LLS**) Fact Sheet³ (**LLS Fact Sheet**) and other key issues identified by EDO, namely:

1. Forest Stewardship Plans for active and adaptive management
2. Enhanced reporting requirements
3. Protection of old growth forest and rainforest
4. Small scale harvesting
5. Single tree selection and Australian group selection
6. Forest regeneration
7. Fire, pest and weed management
8. Environmental protections and threatened species
9. Managing the impact of bushfires in private native forests
10. Other issues

A number of our previous PNF Review recommendations (recommendations 3 - 9 and 16 - 18) relate specifically to the regulatory settings for PNF, including Part 5B of the *Local Land Services Act 2013* (**LLS Act**) and therefore are not addressed by the Draft Codes. Those recommendations are still relevant to the broader PNF Review. At this stage there is no additional public information as to whether there will be regulatory change, including amendments to Part 5B of the LLS Act, arising from the PNF Review.

The Government should provide updated information on the outcomes of the broader PNF before finalising the Draft Codes.

For the purpose of this submission, we refer primarily to the Draft Code for Northern NSW acknowledging that the other three Draft Codes (Southern NSW, River Red Gum Forest and Cypress & Western Hardwood Forests) on public exhibition generally have the same content and structure. Where our comments apply to the Draft Code for Northern NSW, they should also be considered as a submission on the other Draft Codes, unless the comment is specific to Northern NSW.

¹ See <https://www.lls.nsw.gov.au/help-and-advice/private-native-forestry/private-native-forestry-review>

² Please refer to *EDO Submission to the Private Native Forestry Review 2018*, dated 24 January 2019, available at <https://www.edo.org.au/publication/private-native-forestry-review/>

³ See https://www.lls.nsw.gov.au/data/assets/pdf_file/0003/1206138/Fact-sheet-on-the-draft-PNF-Codes-of-Practice.pdf

Summary of Recommendations

Recommendation 1: Amend clause 2.2(3) to require that variations are only ‘minor’, consistent with current PNF Codes and the terminology in the Note following clause 2.2(3) (i.e. ... is satisfied that the variation is minor, for a legitimate outcome, is reasonable and ...).

Recommendation 2: Amend clause 2.2(3) to require no net loss of biodiversity and no other significant adverse environmental impacts, including maintaining soil and water quality.

Recommendation 3: Forest Stewardship Plans (**FSPs**) should include a statement of reasons for allowing the variation to the PNF Codes.

Recommendation 4: Prepare guidelines that provide additional guidance on preparing FSPs, including what constitutes legitimate outcomes, is reasonable, and what constitutes a significant adverse environmental impact. The guidelines should also provide examples of site-specific conditions and agreed actions for delivering forest management and environmental objectives.

Recommendation 5: FSP amendments must require approval by the LLS (or, at least, any amendments to details of the conditions and agreed actions consistent with clause 2.2(3) that are the basis of the FSP (cl2.2(6)(b)(iii)), must require approval from the LLS).

Recommendation 6: Ensure that details of relevant silvicultural treatments that may be carried out are required to be included in FSPs, for each of the Draft Codes.

Recommendation 7: PNF Codes should more clearly explain that either a Forest Operation Plan (**FOP**) or a FSP (not both) is required under the PNF Code.

Recommendation 8: Strengthen reporting requirements by:

- Maintaining annual reporting requirements;
- Requiring reporting on forest regeneration activities; and
- Requiring landholders to report on how forest stewardship conditions and agreed actions under an FSP are being met.

Recommendation 9: Ensure that the protocols for identifying old growth forest and rainforest are based on rigorous, independent scientific assessment and clarify that the protocols apply for the purpose of PNF under Part 5B of the LLS Act.

Recommendation 10: The PNF Codes should include optimum post-harvest basal area range for different forest types for small scale harvesting.

Recommendation 11: Existing standards for single tree selection should be retained.

Recommendation 12: Existing standards for forest regeneration should be retained.

Recommendation 13: Protections for streams, unmapped drainage lines and steep slopes should be strengthened.

Recommendation 14: PNF Codes should better address the impacts of Bell Miner Associated Dieback, including through clear requirements for pest and weed management and prohibitions on logging affected forests.

Recommendation 15: Where possible, landscape features of environmental and cultural significance requiring protection (identified in Table B) should be mapped based on rigorous, independent scientific assessment, to ensure consistent identification and protection across the State.

Recommendation 16: The current requirement to protect 10 live hollow bearing trees per 2 hectares where available should be retained. Alternative incentives or protections for dead wood and dead trees should be considered.

Recommendation 17: Any further updates to Appendix A must be subject to public consultation in accordance with s60ZU of the LLS Act.

Recommendation 18: PNF Codes should set limits on noise (both in terms of hours of operation, and decibel limits).

Recommendation 19: Site threatened species and habit surveys must be carried out by an accredited ecologist before logging operations can occur.

Recommendation 20: Clarify how the EPA will carry out forest monitoring activities.

Recommendation 21: Update SEPP 44 references in the Draft Codes to *State Environmental Planning Policy (Koala Habitat Protection) 2019*, and prohibit PNF logging within any area identified in the *Site Investigation Area for Koala Plans of Management Map*.

Key Features and Issues:

1. Forest Stewardship Plans for active and adaptive management

Outline of key change:

The Draft Codes introduce Forest Stewardship Plans (**FSPs**). The LLS Fact Sheet explains that FSPs are intended to encourage landholders to undertake active and adaptive management, improving long-term forest management and environmental outcomes.

An FSP is an alternative to a Forest Operation Plan (**FOP**), and is intended to be used when a variation to the PNF Codes is sought (that is, if forestry operations are being undertaken in accordance with the PNF Code then a FOP is prepared, but if a variation is requested then a FSP is prepared).

FSPs replace the existing mechanism for ‘minor variations’ of the Code. That is, current PNF Codes of Practice include provisions that allow minor variations of the Codes to be requested by a landholder and approved by an accredited officer as part of a PNF Property Vegetation Plan (**PVP**),⁴ if an accredited officer is satisfied that:

- the variation of the environmental prescriptions is minor;
- the proposed clearing will improve or maintain environmental outcomes; and
- strict adherence to the Code is in the particular case unreasonable and unnecessary.

The Draft Codes now provide that a FSP may vary provisions of a Code if the Chief Executive Officer of LLS and the Chief Executive Officer of the NSW Environment Protection Authority (**EPA**) is satisfied that:

- the variation is for a legitimate outcome;
- is reasonable; and
- will have no significant adverse environmental impacts.

We note that this has changed as the previous “maintain or improve environmental outcomes” test under the *Native Vegetation Act 2003* has been repealed. We reiterate our long-held concerns about the move away from an objective test underpinned by an assessment methodology to a subjective test of reasonableness.

A FSP is to include details of the conditions and agreed actions that are the basis of the FSP (see clause 2.2(6)(b)(iii)). The LLS Fact Sheet explains this to mean that a FSP will create site-specific conditions and agreed actions consistent with the landholder’s long-term forest management and environmental objectives.

Feedback:

We provide the following feedback on proposed FSPs:

⁴ Property Vegetation Plans, including for Private Native Forestry, were the approval mechanism for clearing under the former *Native Vegetation Act 2003*.

- **Purpose of FSPs**

FSPs are described as being to encourage active and adaptive management and environmental outcomes. This is misleading. The sole purpose of an FSP is to vary a PNF Code of Practice. It also implies that FOPs do not have a role in achieving environmental outcomes (when in fact a FOP that complies with the Code would achieve the environmental outcomes set by the Code, whereas varying the Codes could put those environmental outcomes at risk). If FSPs are to truly ensure forest stewardship then the criteria for allowing variations must ensure this (see comments below).

- **'Criteria' for variations**

We are concerned that the 'criteria' for allowing a variation have been watered down in the Draft Codes. Specifically:

- Variations are no longer referred to as 'minor'. Although the Note under clause 2.2(3) uses the term 'minor variation', the substantive text no longer limits the mechanism to 'minor' variations.
- It is unclear what the difference is between the requirements that a variation be 'for a legitimate outcome' and 'is reasonable', and neither term is defined.
- The decision to replace the requirement that proposed clearing 'improve or maintain environmental outcomes' with a requirement that variations have 'no significant adverse environmental impacts' will lead to worse environmental outcomes. This is because the latter does not require environmental outcomes to be maintained (in fact, non-significant adverse impacts are allowed). This fails to address and halt current trends of biodiversity loss. EDO has previously objected to the removal of the 'improve and maintain' threshold which was part of the former native vegetation legal framework (including the regulation of PNF) and which was removed as part of the Biodiversity Legislation Review.⁵ At the least, we suggest that the requirement that there be 'no net loss of biodiversity' should be included as a requirement in the final PNF Codes, consistent with the requirement adopted by the Biodiversity Assessment Method under the *Biodiversity Conservation Act 2016* (**BC Act**),⁶ and that any variation must ensure that soil and water quality is maintained or improved.
- We have previously recommended that in order to improve transparency and accountability a publicly available statement of reasons for allowing the variation should be required. This could form part of the FSP.
- It would be useful to prepare guidelines for FSPs that provide additional guidance on what constitutes legitimate outcomes, is reasonable, and what constitutes a significant adverse environmental impact (and no net loss of biodiversity and maintain soil and water quality consistent with suggestion above). The guidelines should also provide examples of site-specific conditions and agreed actions for delivering forest management and environmental objectives.

⁵ See, for example, EDO *Submission on the Draft NSW Biodiversity Offsets Policy for Major Projects*, May 2014, available at http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/1455/attachments/original/1400219519/140516_NSW_Biodiversity_Offsets_Policy_for_Major_projects_-_EDO_NSW_Submission.pdf?1400219519

⁶ See section 6.7(3)(b) of the *Biodiversity Conservation Act 2016*.

Recommendation 1: Amend clause 2.2(3) to require that variations are only ‘minor’, consistent with current PNF Codes and the terminology in the Note following clause 2.2(3) (i.e. ... is satisfied that the variation is minor, for a legitimate outcome, is reasonable and ...).

Recommendation 2: Amend clause 2.2(3) to require **no net loss of biodiversity** and no **other** significant adverse environmental impacts, including **maintaining soil and water quality**.

Recommendation 3: FSPs should include a statement of reasons for allowing the variation to the PNF Codes.

Recommendation 4: Prepare guidelines that provide additional guidance on preparing FSPs, including what constitutes legitimate outcomes, is reasonable, and what constitutes a significant adverse environmental impact. The guidelines should also provide examples of site-specific conditions and agreed actions for delivering forest management and environmental objectives.

- ***Amendment of FSPs***

Clause 2.2(7) provides that a landholder may amend a FSP at any time, except for matters referred to in clause 2.2(6)(b)(iv) (which refers to a contemporary description of the pre-harvest forest condition). Any amendments to either the map or the written component must be noted on the FSP.

This clause appears to be a replication of the equivalent clause for FOPs (see clause 2.1(6)), however it should not be replicated in this same way for FSPs. This is because unlike FOPs, FSPs must be prepared by an officer from LLS or an accredited expert and be approved by LLS before forestry operations commence. Therefore, it is not appropriate for a landholder to amend an FSP at any time (in the same way that a landholder can amend an FOP). In particular clause 2.2(7) would operate to allow a landholder to amend the conditions and agreed actions for forest stewardship, without approval of the LLS. To avoid this, the ability for land holders to amend FSPs cannot replicate the amendment provisions for FOPs. Amendments to FSPs must require approval by the LLS.

Recommendation 5: FSP amendments must require approval by the LLS (or, at least, any amendments to details of the conditions and agreed actions consistent with clause 2.2(3) that are the basis of the FSP (cl2.2(6)(b)(iii)), must require approval from the LLS).

- ***Written component of FSPs (details of relevant silvicultural treatments)***

We believe there is a drafting error in clause 2.2(6)(b) which omits the requirement for details of relevant silvicultural treatments that may be carried out (cf. to the requirements listed for a FOP in clause 2.1, specifically, clause 2.1(5)(b)(viii)).

Recommendation 6: Ensure that details of relevant silvicultural treatments that may be carried out are required to be included in FSPs, for each of the Draft Codes.

- ***Relationship between FOPs and FSPs***

On the face of the Draft Codes, it is unclear that a FSP is an alternative to a FOP. For example, proposed clause 2.1 says “(a) Forest Operation Plan must be prepared before each forestry operation commences” and clause 2.2 says “(a) Forest Stewardship Plan must be prepared by an

officer from Local Land Services or an accredited expert and be approved by Local Land Services before forestry operations commence”. They are not presented as alternatives. However clause 3.2 and 3.3 provide that single tree selection and thinning or Australian Group Selection are permitted after the preparation of a FOP or after the approval of a FSP.

Recommendation 7: PNF Codes should more clearly explain that either a FOP or a FSP (not both) is required under the PNF Code.

2. Enhanced Reporting Requirements

Outline of key change:

Current PNF Codes require landowners to lodge a report with the EPA annually. The Draft PNF Codes propose to replace annual reporting with a pre-harvest and post-harvest notification system.

Feedback:

- The proposed pre-harvest and post-harvest notification system is useful as an additional transparency and accountability mechanism and is supported, however it should not replace annual reporting, which is important for providing regular, state-wide information that can be used to monitor and assess the impacts of PNF operations clearly and consistently.
- If pre-harvest and post-harvest reporting is used as a replacement for the current reporting framework, we are concerned that the scope of proposed pre-harvest and post-harvest reporting appears to be reduced. For example, current annual reporting requirements are for ‘forest operations’ and this includes regeneration,⁷ whereas the proposed reporting requirements under the Draft Codes are for forestry operations under clauses 3.1 to 3.3 of the Code only (namely Small scale harvesting (3.1) Single tree selection and thinning (3.2) and Australian Group Selection (3.3). Reporting requirements do not appear to extend to forest regeneration (3.4).
- It is also unclear how land holders are required to report on forest stewardship conditions and agreed actions under an FSP, including if and how conditions and agreed actions are being met.

Recommendation 8: Strengthen reporting requirements by:

- Maintaining annual reporting requirements;
- Requiring reporting on forest regeneration activities; and
- Requiring landholders to report on how forest stewardship conditions and agreed actions under an FSP are being met.

3. Protection of old growth forest and rainforest

We support protections for old growth forest and rainforest being retained, including that no PNF be undertaken in old growth forest and rainforest. This mapping should be based on rigorous, independent scientific assessment. We note that existing protocols continue to refer to the assessment

⁷ See for example the PNF reporting template includes regeneration planting under question 4, https://www.lls.nsw.gov.au/_data/assets/pdf_file/0007/807469/reportingtemplate.pdf

of private land for PNF PVPs under the *Native Vegetation Act 2003*. It may be necessary to clarify that the protocols apply to the assessment of PNF under Part 5B of the LLS.

Recommendation 9: Ensure that the protocols for identifying old growth forest and rainforest are based on rigorous, independent scientific assessment and clarify that the protocols apply for the purpose of PNF under Part 5B of the LLS Act.

4. Small scale harvesting

Outline of key change:

The Draft Codes introduce small scale harvesting, which will enable landholders to harvest 5 trees per hectare over no more than 5 hectares per year, after they obtain an approved PNF Plan (without the need for a FOP or FSP).

This is intended to address Recommendation 7 of the Independent Biodiversity Legislation Review Panel Report, which called for regulating sustainable forestry operations based on their scale and intensity rather than tenure.⁸

Feedback:

EDO has previously opposed Recommendation 7 of the Independent Biodiversity Legislation Review, particularly recommendations for permitting low-intensity operations on private land without the need for approval, on the basis that reduced oversight and inadequate environmental assessment will lead to poor environmental outcomes.⁹

We support the safeguards that have been put in place for small scale harvesting, including that an approved PNF Plan is still required, and that small scale harvesting is included in reporting requirements.

However, consistent with concerns raised below, we do not support a single standard for stand basal area below 10m²/hectare applied across the State. This fails to recognise the difference in forest types across the State, and sets a 'lowest common dominator' approach which leads to reduced environmental outcomes overall. The PNF Codes should include optimum post-harvest basal area range for different forest types for small scale harvesting, similar to the approach adopted in the existing *Private Native Forestry Code of Practice Silvicultural Guidelines*.¹⁰

⁸ See Byron N. et. al (2014) Independent Biodiversity Legislation Review Panel, [A review of biodiversity legislation in NSW, Final Report](#), Recommendation 7: Review regulatory arrangements for timber harvesting on private land as part of a separate process that:

- a) does not regulate the harvesting of native timber on private land as a form of land use changes
- b) considers options for regulating sustainable forestry operations based on their scale and intensity rather than tenure, including options for permitting low-intensity operations on private land without the need for approval and a focus on outcomes rather than process
- c) considers a range of options for improving the environmental performance of haulage and harvest contractors operating on private and public land, including licensing and minimum standards.

⁹ See EDO Submission to the Private Native Forestry Review 2018, above no 2, p 11.

¹⁰ *Private Native Forestry Code of Practice Silvicultural Guidelines*, 2009, <https://www.environment.nsw.gov.au/resources/vegetation/09585silviculture.pdf>

Recommendation 10: The PNF Codes should include optimum post-harvest basal area range for different forest types for small scale harvesting.

5. Single tree selection and Australian group selection

Outline of key change: The LLS Fact Sheet states that Single tree selection and Australian Group Selection have been simplified in the Draft Codes. This has been achieved by replacing standards based on forest types (see current PNF Codes) with a single standard across all forest types (10m²/ha). Australian Group Selection has been adjusted to allow harvest areas to be irregular shapes to account for existing landscape and environmental features.

Feedback: Our concern with introducing a single standard across all forest types is that this fails to recognise the difference in forest types across the State, and sets a ‘lowest common dominator’ approach which leads to reduced environmental outcomes overall. We do recognise a number of the Ecological Prescriptions in Appendix A, adopt 12m²/ha for some specific species (e.g. Black-striped wallaby, Eastern pygmy-possum).

Recommendation 11: Existing standards for single tree selection should be retained.

6. Forest regeneration

Outline of key change: The LLS Fact Sheet states that forest regeneration has been simplified to enable clearer interpretations of the PNF Codes while ensuring adequate regeneration.

Feedback: As noted above, our concern with introducing a single standard across all forest types (in the case of forest regeneration ≥55% minimum percentage of stocked plots within canopy openings and ≥ 65% elsewhere in the forest) is that, unlike the current PNF Codes, this fails to recognise the difference in forest types across the State, and sets a ‘lowest common dominator’ approach which leads to reduced environmental outcomes overall. Additionally, there should be active requirements to ensure forest regeneration is properly managed, such as through weed and pest management (see additional comments below).

Recommendation 12: Existing standards for forest regeneration should be retained.

7. Fire, pest and weed management

These sections of the Draft Codes do not include specific provisions relating to fire, pest and weed management, despite earlier submissions to the PNF Review indicating that submitters felt that weed and pest management require more consideration in the PNF Codes.¹¹ Instead, the Draft Codes include notes clarifying land holders options and responsibilities for managing pest plants and animals and carrying out burning activities, fire management, bush fire hazard reduction and bush fire recovery and response activities on land to which a PNF Plan applies.

¹¹ Elton Consulting, *Private Native Forestry Review Terms of Reference, Submissions Review Final Report*, p 29, available at https://www.lls.nsw.gov.au/_data/assets/pdf_file/0005/1148666/PNF-Review-Terms-of-Reference-Submissions-Review-Report.pdf

In our view, PNF Codes should include requirements for pest and weed management in order to achieve environmental outcomes in line with the principles of ecologically sustainable forest management.

Additionally, it is unclear how these sections of the Draft Codes could relate to forest stewardship actions under FSPs. Guidelines for preparing FSPs (as recommended above) may be able to clarify if and how fire, pest and weed management activities could be incorporated into FSPs.

8. Environmental protections and threatened species

Outline of key changes:

The Draft Codes include updated Appendix A: Listed Species Ecological Prescriptions with additional flora and fauna species. They also includes new incentives for landholders to protect dead, hollow-bearing trees as important habitat features for native fauna, specifically allowing land holders to count up to two *dead* standing trees towards calculating the required 10 hollow bearing trees per 2 hectares (minimum standards for tree retention).

Feedback:

- Previous concerns raised by environmental stakeholders, including in relation to increasing protections for streams (e.g. by increasing buffer distances around streams) and unmapped drainage lines (which currently have little protection), and steep slopes (e.g. for excluding all logging operations on slopes greater than 25 degrees), have not been addressed in the Draft Codes.
- The Draft Codes do not address concerns about the impacts of Bell Miner Associated Dieback. This could be done through clear requirements for pest and weed management in order to achieve environmental outcomes in line with the principles of ecologically sustainable forest management (as recommended above) and prohibitions on logging affected forests.
- In addition to old growth forest and rainforest (discussed above), other landscape features of environmental and cultural significance requiring protection (identified in Table B) should be mapped based on rigorous, independent scientific assessment, to ensure consistent identification and protection across the State.
- While we agree that it is important for dead wood and dead trees to be maintained in the landscape, particularly because of their role as important habitat for wildlife, the incentive to protect these features should not detract from existing requirements to protect live hollow bearing trees. The distinction is important, with both *loss of hollow bearing trees* and *removal of dead wood and dead trees* being listed as key threatening processes in NSW. Hollow bearing trees are commonly understood to be live trees.¹² Current PNF Codes require 10 hollow bearing trees per 2 hectares to be retained where available. This would be reduced to 8 hollow bearing trees if dead trees are able to be counted towards the total. The requirement to protect 10 **live** hollow bearing trees should be retained. The PNF Code should provide an alternative incentive for protecting dead trees and dead wood (for example, by better regulating the commercial

¹² See, for example, NSW Environment Protection Authority, *Guidance Note, Identifying hollow-bearing and recruitment trees*, 2014 which provides that “(h)ollow-bearing trees are dominant or co-dominant **living** trees where the trunk or tree branches have visible hollows, holes or cavities, or are likely to have these” <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/epa/140444pnfhols.pdf>

collection of firewood on private land, which is identified as a factor contributing to the *removal of dead wood and dead trees*).¹³

- The LLS Fact Sheet states that the NSW Government is considering further updates to Appendix A as part of the final PNF Codes of Practice. Any changes to Appendix A must be subject to public consultation in accordance with s60ZU of the LLS Act.

Recommendation 13: Protections for streams, unmapped drainage lines and steep slopes should be strengthened.

Recommendation 14: PNF Codes should better address the impacts of Bell Miner Associated Dieback, including through clear requirements for pest and weed management and prohibitions on logging affected forests.

Recommendation 15: Where possible, landscape features of environmental and cultural significance requiring protection (identified in Table B) should be mapped based on rigorous, independent scientific assessment, to ensure consistent identification and protection across the State.

Recommendation 16: The current requirement to protect 10 live hollow bearing trees per 2 hectares where available should be retained. Alternative incentives or protections for dead wood and dead trees should be considered.

Recommendation 17: Any further updates to Appendix A must be subject to public consultation in accordance with s60ZU of the LLS Act.

9. Managing the impact of bushfires in private native forests

We welcome clarification that salvage harvesting is not permitted in private native forests and material provided by LLS to land holders that provides guidance on PNF activities post-bushfire.¹⁴ EDO recognises the significant environmental impacts of post-bushfire logging.¹⁵

10. Other issues

We also provide the following feedback on other aspects of the Draft Codes:

- **Noise restrictions**

EDO has received inquiries from members of the community concerned about the impacts of noise from PNF operations. The PNF Codes do not set limits on noise (both in terms of hours of operation, and decibel limits). While concerns about noise may be addressed via other means (e.g. a noise abatement order or trespass proceedings, both of which are expensive and impose an unreasonable burden on the community), it would be appropriate for PNF Codes to set limits for noise, the same way that

¹³ NSW Scientific Committee - final determination, *Removal of dead wood and dead trees - key threatening process listing*, available at <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/nsw-threatened-species-scientific-committee/determinations/final-determinations/2000-2003/removal-of-dead-wood-and-dead-trees-key-threatening-process-listing>

¹⁴ See, for example, *LLS Fact Sheet Managing a Private Native Forestry area after a bushfire*, available at https://www.lls.nsw.gov.au/_data/assets/pdf_file/0009/1186785/Managing-a-Private-Native-Forestry-area-after-a-bushfire.pdf

¹⁵ See <https://www.edo.org.au/2020/02/21/bushfire-emergency-edo-legal-response/>

development consent conditions or Exempt and Complying Development Codes¹⁶ would . Those limits could then be enforced by the EPA as the regulator.

- **Site-based surveys**

The PNF regulatory framework does not require on-ground threatened species and habit surveys to be conducted by an accredited ecologist before logging operations can occur. The failure to require on-ground surveys was raised as an issue by various stakeholders, including environmental and local government stakeholders and Timber NSW earlier in the PNF Review.¹⁷ We maintain our earlier recommendation to require site threatened species and habit surveys to be carried out by an accredited ecologist before logging operations can occur.

- **Research and monitoring**

The Note at the top of page 5 provides that “(a)ny research or forest monitoring activities undertaken in PNF Plan areas can only occur with the written consent of the landholder. The written consent must outline the purpose of the research or monitoring, and how the data will be collected, stored and used, including how landholder confidentiality will be managed”. It is unclear what legal provisions are relied on for the purpose of this note and how it affects the regulator (which in this case, is the EPA, who has the function of monitoring the carrying out of PNF operations and enforcing compliance with the LLS Act).¹⁸ This note should not preclude the EPA from carrying out its functions and this should be clarified in the final PNF Codes.

- **Koala SEPP**

The Draft Codes refer to the former *State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP 44)*. We assume that this will be updated to reference the new *State Environmental Planning Policy (Koala Habitat Protection) 2019 (Koala SEPP 2019)*. Additionally, to strengthen protections for koalas, the Draft Codes should prohibit logging within any area identified in the *Site Investigation Area for Koala Plans of Management Map*.

Recommendation 18: PNF Codes should set limits on noise (both in terms of hours of operation, and decibel limits).

Recommendation 19: Site threatened species and habit surveys must be carried out by an accredited ecologist before logging operations can occur.

Recommendation 20: Clarify how the EPA will carry out forest monitoring activities.

Recommendation 21: Update SEPP 44 references in the Draft Codes to *State Environmental Planning Policy (Koala Habitat Protection) 2019*, and prohibit PNF logging within any area identified in the *Site Investigation Area for Koala Plans of Management Map*.

¹⁶ See *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

¹⁷ Elton Consulting, *Private Native Forestry Review Terms of Reference, Submissions Review Final Report*, p 18 and 19, above no 11.

¹⁸ See section 60ZZB of the *Local Land Services Act 2013* and relevant Parts of the *Biodiversity Conservation Act 2016*.