



Section 11.3 of the *Biodiversity Conservation Act 2016*

Stop Work Order

Forestry Corporation of New South Wales Trading as FORESTRY CORPORATION
ABN 43141857613
PO Box 100
BEECROFT NSW 2119

Attention: [REDACTED] Senior Compliance Manager

Email: compliance@fcnsw.com.au; [REDACTED]

File Number DOC23/771961-3

Date Original issued on 31 August 2023; signed
and reissued with amendments on 6
September 2023

NOTIFICATION OF STOP WORK ORDER MADE UNDER SECTION 11.3 OF THE *BIODIVERSITY CONSERVATION ACT 2016 (NSW)*

WHY IS THE EPA WRITING TO YOU?

The NSW Environment Protection Authority (**EPA**) has made an order under section 11.3 of the *Biodiversity Conservation Act 2016 (BC Act)* that relates to the carrying out of forestry operations in compartments 2447A, 2448A, 2449A, 2450A, 2451A, 2208A, 2209A of the Tallaganda State Forest (the **Stop Work Order**). The EPA is writing to you to provide written notification, under section 11.4(1)(b) of the BC Act, that the Stop Work Order below has been made.

This written notification confirms the verbal notification of the Stop Work Order given on 30 August 2023 at 4:43pm by [REDACTED] A/Executive Director Regulatory Operations, who has delegated authority to exercise the function in section 11.3 of the BC Act on behalf of the EPA.

WHAT ARE YOU REQUIRED TO DO?

Read the Stop Work Order carefully. Forestry Corporation of NSW (**FCNSW**) is required to cease particular actions set out below and to carry out other actions also set out below.

PURPOSE OF STOP WORK ORDER

This Stop Work Order has been made for the purposes of the BC Act and Part 5B of the *Forestry Act 2012 (Forestry Act)*.

BACKGROUND

- A. The EPA exercises functions in relation to the regulation and enforcement of forestry operations. This includes exercising functions under the Parts 11-14 of the BC Act and Part 5B of the Forestry Act.
- B. Pursuant to section 11.3 of the BC Act, if the Environment Agency Head is of the opinion that any action is being, or is about to be, carried out (or that any action that should be carried out is not being carried out) in any area of land that is likely to result in a contravention of the BC Act or the native vegetation legislation, the Environment Agency Head may order:
 - a. that the action cease and not be carried out within the period of 40 days (or a lesser specified period) after the order is made, or
 - b. in the case of action that is not being carried out—that the action be carried out within the period specified in the order.
- C. The reference to Environment Agency Head in section 11.3 of the BC Act is taken to include a reference to the EPA, pursuant to section 14.7A of the BC Act.
- D. Section 11.3(2) of the BC Act provides that, for the purpose of s 11.3, an action is likely to result in a contravention of the BC Act or native vegetation legislation if the EPA has reasonable cause to suspect it is likely to do so.
- E. Forestry operations in Tallaganda State Forest are authorised under the Coastal Integrated Forestry Operations Approval (**Coastal IFOA**), granted under Part 5B of the Forestry Act. Part 5B of the Forestry Act is native vegetation legislation for the purposes of sections 11.3 and 14.7A of the BC Act.
- F. EPA officers carried out an inspection of Tallaganda State Forest compartments 2447A, 2448A, 2449A, 2450A, 2451A, 2208A, 2209A (**the Compartments**) on 30 August 2023.
- G. Areas of the Tallaganda State Forest were severely burnt in the 2019 and 2020 bushfires, including compartment 2428A.
- H. The EPA understands that forestry operations, including harvesting operations, are being carried out in the compartments 2447A, 2448A, 2449A, 2450A, 2451A, 2208A, 2209A (**the Compartments**), under Harvest and Haul Plans 20003291 (for compartments 2208A and 2209A), 200000011 (for compartments (2447A, 2448A, 2449A and 2450A) and 20001448 (for compartment 2451A).
- I. The EPA understands that the Compartments fall within an area of unburnt refuge for the Southern Greater Glider.
- J. Since 28 August 2023, the EPA had received reports from members of the public which suggested that approximately 400 records of the Southern Greater Glider may have been identified in the Tallaganda State Forest where forestry operations were understood to be carried out by FCNSW.
- K. An inspection of compartments 2208A and 2209A was carried out by EPA officers on 30 August 2023, in response to the reports received by the EPA from members of the public.
- L. At approximately 1.16pm on 30 August 2023, EPA officers located the body of a dead animal at coordinates 55H 726475 6034643 within Tallaganda State Forest, about 50 metres from harvesting operations. The deceased animal appeared to the EPA officers to be a Southern Greater Glider (*Petauroides volans*) (**Southern Greater Glider**).

- M. The EPA officers observed that vegetation had been harvested in the vicinity of the deceased animal.
- N. The EPA officers took a photograph of the deceased animal (see **Attachment A** to this order). Attachment A was sent to [REDACTED], Acting Director Operations, at the EPA. [REDACTED]
- O. [REDACTED] identified the deceased animal in Attachment A as a Southern Greater Glider.
- P. The EPA understands that Southern Greater Gliders shelter in den trees during the day. A den tree is defined in Protocol 39 of the Coastal IFOA as, specifically in relation to the Southern Greater Glider, including, but not limited to:
...a tree-hollow or other hole, crevice or fissure in a tree, which the subject species is seen entering or leaving. The dens may be used by the animal for roosting, sleeping, resting, breeding, raising young and communal congregations sheltering and/or the rearing of young.
- Q. The EPA understands that Southern Greater Gliders use up to 18 den trees within their small home range of up to 3ha in area and feed and move within the habitat surrounding den trees.
- R. The EPA understands that FCNSW only identified one den tree as a result of habitat searches carried out in the Compartments. The existence of one den trees is noted in Harvest and Haul Plan 20001448 (for compartment 2451A).
- S. Under Condition 57.1, a forestry operation (other than road maintenance) must not be conducted in any part of an operational area unless:
- (a) at least 100 metres in advance of the forestry operation occurring in any part of the operational area, the base net area has been broken up into patches that are no more than 10 hectares in size and mapped in accordance with condition 117 of the approval;
 - (b) a broad area habitat search has been undertaken in accordance with condition 57 of the approval in the patch that contains that part of the operational area; and
 - (c) the broad area habitat survey was completed within a maximum of six months prior to the commencement of the forestry operation in that patch.
- T. Under Condition 57.2 of the Coastal IFOA, each broad area habitat search required under Condition 57.1 must be carried out by a suitably qualified person who is to look for, identify, and record the habitat features of the species listed in Table 2 of Condition 57. Den trees are listed in Table 2 of Condition 57 and Southern Greater Gliders are included in 'subject species', also listed in Table 2, being species listed in Protocol 31 Part 2 of the Coastal IFOA.
- U. Under Condition 18.1 of the Coastal IFOA, every forestry operation must be planned, implemented and conducted:
- (a) in accordance with the conditions of the approval;
 - (b) in a competent manner; and
 - (c) by a suitably qualified person.
- V. It is an offence under section 69SA of the Forestry Act to contravene a requirement imposed by the Coastal IFOA.
- W. Southern Greater Gliders are listed as an endangered species in Schedule 1 Part 2 Division 1 of the BC Act.

- X. Under section 2.4 of the BC Act, a person:
- (a) *who damages any habitat of a threatened species or threatened ecological community, and*
 - (b) *who knows that it is the habitat of any such species or community,*
is guilty of an offence.
- Y. Under section 1.6 of the BC Act:
- a. a **threatened species** is defined as a critically endangered species, an endangered species or a vulnerable species listed in Schedule 1 of the BC Act.
 - b. **habitat** includes:
 - i. an area periodically or occasionally occupied by a species or ecological community, and
 - ii. the biotic and abiotic components of an area.
 - c. **damage** to habitat includes damage caused by
 - i. removing or relocating any part of the habitat, and
 - ii. activities that prevent the continued use of the habitat by animals.
- Z. The defence under s 2.8(1) of the BC Act is not available for an offence under Part 2 Division 1 of the BC Act if forestry operations have been carried out contrary to the requirements of the Coastal IFOA.

BASIS FOR ISSUING STOP WORK ORDER

- AA. The EPA has reasonable cause to suspect that:
- a. FCNSW have not conducted detailed and thorough searches necessary to identify all Southern Greater Gliders and den trees within the Compartments, in contravention of condition 57.2 of the Coastal IFOA.
 - b. Forestry operations are not being planned, implemented and conducted in accordance with the conditions of the Coastal IFOA, in a competent manner and by a suitably qualified person, in contravention of condition 18.1 of the Coastal IFOA.
 - c. Den trees and the habitat around them were harvested in the Compartments, resulting in damage to the habitat of the Southern Greater Glider, in contravention of section 2.4 of the BC Act.
 - d. Forestry operations in the Compartments have resulted in and are likely to continue resulting in contraventions of section 69SA of the Forestry Act and section 2.4 of the BC Act.

STOP WORK ORDER

Under section 11.3 of the BC Act, I, [REDACTED] by delegation, am of the opinion that actions are being carried out in the Compartments that are likely to result in a contravention of s 69SA of the Forestry Act and s 2.4 of the BC Act. I am also of the opinion that actions that should be carried out in the Compartments are not being carried out. I accordingly make this Stop Work Order under section 11.3 of the BC Act as follows:

Required actions

1. For a period of 40 days from 30 August 2023 (being the date this Stop Work Order was verbally notified), FCNSW must cease and not carry out the following actions:
 - (a) all forestry operations in Tallaganda SF in the Compartments including all harvesting, haulage operations and roading and track construction, use or maintenance as defined by the IFOA Conditions and Protocols.

Amendment to Stop Work Order Dated 6 September 2023

2. The requirement to cease and not carry out actions under clause 1. of this Stop Work Order does not apply to the following actions specified in this clause 2:
 - (a) Seed collection:
 - (i) Seed collection activities may continue in the Compartments where those activities are comprised of the following actions:
 - (A.) accessing the Compartments using light vehicles on existing roads and trails;
 - (B.) the use of hand pruners to collect seed capsules from the heads of trees felled before the commencement of this Stop Work Order; and
 - (C.) the storage of seeds for the purposes of Regeneration.
 - (b) Firefighting:
 - (i) Firefighting activities may continue in the Compartments, where those activities are comprised of the following actions:
 - (A.) the use of heavy plant in the Compartments for the purposes of emergency firefighting in accordance with the *Rural Fires Act 1997* or to protect harvesting machinery that is already located in the Compartments in the event of a fire, including
 - a. floating heavy plant into the Compartments (unless the heavy plant is already located in the Compartments);
 - b. operating heavy plant and driving fire tankers in the Compartments in order to construct fire breaks or to undertake backburns or to conduct normal fire suppression activities;
 - c. using heavy plant and fire tankers within the Compartments to undertake any hazard reduction or fire trail maintenance activities that FCNSW is directed to undertake by notice under the *Rural Fires Act 1997*.
 - (c) Removal of harvested logs:
 - (i) From 5:00 am on 8 September 2023, the removal of harvested logs may continue in the Compartments, where those activities are comprised of the following actions:
 - (A.) processing logs into timber products, where those logs are located in log dumps that existed prior to the commencement of this Stop Work Order; and

(B.) loading and hauling timber products processed in accordance with clause (A.) along existing roads out of the Compartments.

(d) Drainage work:

(i) Drainage work may continue in the Compartments, where those activities are comprised of the following actions:

(A.) for the purposes of FCNSW complying with its existing obligations under the Coastal IFOA, using skidders and bulldozers to carry out:

- drainage work on open snig tracks where required; and
- road maintenance where required.

(e) Removal of equipment:

(i) From 5:00 am on 8 September 2023, the removal of equipment may continue from the Compartments, where those activities are comprised of the following actions:

(A.) transporting harvesting equipment from the Compartments using heavy vehicles on existing roads.

Application of Stop Work Order

3. This Stop Work Order applies to FCNSW and all authorised persons including FCNSW's employees, sub-contractors and agents.

When this Stop Work Order takes effect

4. This Stop Work Order takes effect immediately upon service of this Order.

When this Stop Work Order ends

5. This Stop Work Order remains in force for 40 days from 30 August 2023.

6. Under section 11.4 of the BC Act, the EPA may extend the operation of this Stop Work Order by making further order or orders.

Interpretation

7. Words used in this Stop Work Order have the same meaning as in the conditions of the Coastal IFOA, except where contrary intention appears.



**A/Executive Director, Operations
(By delegation)**

Date: Original signed 31 August 2023; signed and reissued with amendments on 6 September 2023

Contact officer:  Director Operations, ph: 

WARNING AND INFORMATION ABOUT THIS ORDER:

- It is an offence under section 11.5 of the BC Act to contravene this Stop Work Order.
- The maximum penalty that a court may impose for this offence is:
 - in the case of corporation – \$1,650,000 and \$165,000 for each day the offence continues;
 - in the case of an individual – \$330,000 and \$33,000 for each day the offence continues.
- A penalty notice may also be issued under section 13.5 of the BC Act. In circumstances where a penalty notice is issued, the potential penalties are:
 - \$16,500 for a corporation; or
 - \$3,300 for an individual.
- Under section 13.11 of the BC Act, your obligation to comply with the requirements of this Stop Work Order continues even if any due dates for compliance have passed.
- EPA may conduct inspections to determine whether this Stop Work Order is being complied with.
- This Stop Work Order is issued under section 11.3 of the BC Act.
-

APPEAL RIGHTS

- Under section 11.6 of the BC Act, you may appeal to the Land and Environment Court against the making of this Stop Work Order. The lodging of an appeal does not, except to the extent that the Court otherwise directs, operate to stay the Stop Work Order. That is, even if you appeal, you must continue complying with the Stop Work Order, unless the Court directs otherwise.

ATTACHMENT A

