



Section 11.3 of the *Biodiversity Conservation Act 2016*

# Stop Work Order

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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](mailto:compliance@fcnsw.com.au); [REDACTED]

File Number        DOC23/999343-1  
Date                17 November 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 Compartment 34A of the Flat Rock 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 14 November 2023 at 2pm by [REDACTED], Acting Director 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)*, as required under section 11.2 of the BC 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 Environment Protection Authority (**EPA**), pursuant to section 14.7A of the BC 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.
- D. Section 11.3(2) of the BC Act provides that, for the purposes of section 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 Flat Rock State Forest are authorised under the Coastal Integrated Forestry Operations Approval (**Coastal IFOA**), granted under Part 5B of the Forestry Act.
- F. The EPA understands that forestry operations, including active harvesting operations are being carried out in Compartment 34A in Flat Rock State Forest (**the Compartment**).
- G. On 13 November 2023, the EPA received a community notification from members of the public that they had located the den tree of a Southern Greater Glider, observed an adult Masked Owl, heard a juvenile Masked Owl and heard a Yellow-bellied Glider, in the Compartment.
- H. The EPA was advised that the den tree was identified during nocturnal surveys and was located within 50 m of active logging operations.
- I. On 13 November 2023, EPA officers inspected the Compartment in response to the notification received by the EPA. During the inspection:
- o EPA officers identified the location of the den tree of a Southern Greater Glider (*Petauroides volans*), identified by citizen scientists.
  - o EPA officers measured the location of the den tree and determined that it was within 30 metres from harvesting operations in the Compartment.
- J. The EPA understands that Southern Greater Gliders and Yellow-bellied Gliders (*Petaurus australis*) shelter in den trees during the day. A den is defined in Protocol 39 of the Coastal IFOA, specifically in relation to the Southern Greater Glider and Yellow-bellied Glider, as 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.*
- K. The EPA understands that Southern Greater Gliders and Yellow-bellied 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.
- L. The EPA understands that in around March 2023, FCNSW surveyed the Compartment (**the FCNSW Survey**) and that this survey identified three records of Southern Greater Glider.
- M. The EPA understands that the FCNSW Survey identified and recorded 137 glider sap feed trees in the Compartment for Yellow-bellied Gliders.

- N. The EPA understands from the FCNSW Harvest and Haul Plan 20000372 for the Compartment that FCNSW did not identify any den trees in its broad area habitat searches.
- O. The EPA considers that the presence of Southern Greater Gliders in the Compartment suggests that den trees are likely to exist in the vicinity of the records of that species.
- P. The EPA considers that the presence of 137 glider sap feed trees in the Compartment suggests that a family of Yellow-bellied Gliders are active in the vicinity and would require a number of den trees.
- Q. 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.
- R. 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 listed in Table 2 of Condition 57. Den trees are listed in Table 2 of Condition 57 by reference to those listed in Table 4 of Chapter 4 of the Coastal IFOA. Table 4 of Chapter 4, which is included under Condition 76, lists den trees of the Southern Greater Glider and Yellow-bellied Glider.
- S. Southern Greater Gliders and Yellow-bellied Gliders are 'subject species' for the purposes of 'Evidence of any other subject species', also listed in Table 2 of Condition 57 of the Coastal IFOA, being species listed in Protocol 31 Part 2 of the Coastal IFOA.
- T. Condition 76.1 of the Coastal IFOA requires that a 50m radius exclusion zone be retained around each den specified in Table 4 of that condition, which includes den trees of the Southern Greater Glider and Yellow-bellied Glider.
- 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. 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.
- X. Under section 1.6 of the BC Act:
- i. 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.
  - ii. 'habitat' includes:

- (a) an area periodically or occasionally occupied by a species or ecological community, and
- (b) the biotic and abiotic components of an area; and

iii. 'damage' to habitat includes damage caused by:

- (a) removing or relocating any part of the habitat, and
- (b) activities that prevent the continued use of the habitat by animals.

Y. Southern Greater Gliders are listed as an endangered species in Schedule 1 Part 2 Division 1 of the BC Act.

Z. Yellow-bellied Gliders are listed as a vulnerable species in Schedule 1 Part 3 Division 1 of the BC Act.

AA. 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**

BB. The EPA has reasonable cause to suspect that:

- a. 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.
- b. FCNSW have not conducted detailed and thorough searches necessary to competently look for, identify and record habitat features for the Southern Greater Glider and Yellow-bellied Glider, in contravention of condition 57.2 of the Coastal IFOA.
- c. Forestry operations have been carried out within the 50m radius exclusion zone of a glider den tree, in contravention of condition 76.1 of the Coastal IFOA.
- d. Forestry operations in the Compartment are likely to result in damage to the habitat of the Southern Greater Glider and the Yellow-bellied Glider, in contravention of section 2.4 of the BC Act.

## **STOP WORK ORDER**

Under section 11.3 of the BC Act and as a delegate acting in a Senior Executive Band 1 role, I, [REDACTED] Acting Director Operations, am of the opinion that actions are being, or are about to be, carried out in Flat Rock State Forest Compartment 34A that are likely to result in contraventions of section 69SA of the Forestry Act and section 2.4 of the BC Act. I am also of the opinion that actions that should be carried out in Compartment 34A 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 14 November 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 Flat Rock State Forest in Compartment 34A including all harvesting, haulage operations and roading and track construction, use or maintenance as defined by the IFOA Conditions and Protocols.

## **Application of Stop Work Order**

2. 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**

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

## **When this Stop Work Order ends**

4. This Stop Work Order remains in force for 40 days from 14 November 2023.
5. 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**

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



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

**Date: 17 November 2023**

Contact officer:  A/Director Operations, 

## **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.