

Draft Submission to the Private Native Forestry Review

February 2019

Table of contents

Opening	3
Purpose	3
Background	3
Response	4
The PNF Codes of Practice	4
The rules and regulations that govern PNF	4
The process of authorisation	5
PNF training and advice services	8
Conclusion	8
Summary of recommendations	9

Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to contribute early feedback to the upcoming review of Private Native Forestry (PNF) and the objectives outlined in the PNF Terms of Reference. While we appreciate this early consultation, we look forward to more direct consultation with affected councils and regions through the drafting of the new Codes and anticipate working closely with the Department over the coming months to engage directly with these councils.

We acknowledge and thank the Department for extending the submission deadline by an additional two weeks to enable more councils to adequately consider the materials on public exhibition.

Please note that to meet the consultation deadline, this submission is provided in draft form, in anticipation of LGNSW Board endorsement at their April meeting. LGNSW will advise of any amendments to the submission at that time.

Purpose

This submission is in response to the NSW Government seeking early feedback and comments on how the PNF Review, proposed for 2019, can meet the objectives and scope established in the PNF Terms of Reference (ToR). The NSW Government is seeking views on what is currently working well in the management of PNF and what can be improved, including:

- the PNF Codes of Practice
- the rules and regulations that govern PNF
- the process of authorisation
- PNF training and advice services

LGNSW understands there will also be further opportunities to provide comment and suggestions when the draft PNF Codes of Practice are publicly exhibited in 2019.

Background

In November 2018 the *Forestry Legislation Amendment Act 2018* commenced, inserting a new Part 5B in the *Local Land Services Act 2013* (LLS Act) establishing a legal framework for the regulation of PNF. These changes also see a shift in ministerial responsibility from the Environment Minister to the Minister for Land and Forestry in regulating PNF.

These changes require landholders to develop and seek approval for a PNF plan, and once a plan is established meet all requirements of the PNF Code of Practice. Local Land Services are responsible for the approval of PNF plans while the Environment Protection Authority maintains compliance and enforcement responsibilities for the PNF Codes of Practice.

Response

The PNF Codes of Practice

LGNSW supports public consultation in the redrafting of the PNF Codes of Practice, and consultation directly with the local government sector and specifically with councils in regions with PNF activities. LGNSW is seeking face to face meetings in key regions and is willing to assist the NSW Government to design and deliver this consultation process.

Given the wider community impact of PNF, there should be a clear and transparent process in drafting the codes which involves the wider community and local government. LGNSW supports a community consultation phase on the draft codes for a period of three months to ensure adequate time for review. The inclusion of an independent expert review mechanism is also supported.

The Codes must be consistent with the objectives of Part 5B of the LLS Act and the principles of ecologically sustainable forest management. The Act currently requires the Minister to have 'regard to' the objects of Part 5B when making the codes, however this should be strengthened to ensure these objectives are 'considerations' in the drafting of the Code to provide more weight to the objectives of the Act.

Recommendation 1: That the Department includes face to face consultation with councils in regions with PNF activities to provide local government with an opportunity to share experiences and provide input to the PNF review.

Recommendation 2: That a three month public exhibition period be provided for reviewing the draft Codes.

Codes are not considered an appropriate mechanism for large scale clearing without further review. In these circumstances relevant ecological studies and external review is necessary.

The rules and regulations that govern PNF

- Invest in compliance and enforcement

The EPA should establish a rigorous and scientific approach to compliance on properties that are carrying out PNF activities. Adequate resourcing is needed to ensure compliance systems are developed and operate effectively. This includes compliance during PNF activities to ensure sediment control activities and protection of waterways occurs and operations are carried out in accordance with an approved plan.

Monitoring of the rehabilitation requirements after a forestry operation is also needed. The EPA must be adequately resourced to undertake this monitoring role to ensure that the necessary regeneration occurs after PNF activities and to ensure that the intended impact and requirements of the Forestry Operation Plan (FOP) are undertaken by the landholder.

Effective compliance must be well resourced to ensure staff can be responsive to concerns raised in relation to PNF operations. The success of the Code is dependent on effective compliance to ensure PNF objectives continue to be met.

Recommendation 3: That adequate resources are allocated to resourcing of compliance and monitoring impacts of PNF to ensure deliver of PNF objectives.

- Exclusion of PNF from sensitive land

PNF activities should be excluded from all environmentally sensitive land including threatened ecological communities, Category 2 – Sensitive and Vulnerable Land, and wetlands and littoral rainforest mapped under the Coastal SEPP.

Recommendation 4: PNF activities should be excluded from all environmentally sensitive lands.

The process of authorisation

PNF operations commonly occur in areas of high local or regional ecological value, however concerns exist that the current system lacks consideration and or review of existing strategies or policies relevant to that land, as well as the cumulative impact of PNF activities across a landscape.

The NSW Government is requiring councils to undertake strategic planning in a new way, through local strategic planning statements, and the current lack of consultation with councils over PNF approvals and operations inhibits holistic planning and risks undermining the purpose of the strategic plans.

The Review ToR includes “considering options to improve the PNF authorisation processes and systems”, however LGNSW believes the ToR must be strengthened to ensure that local government’s concerns about the potential impacts of PNF proposals on land use planning, infrastructure, amenity and services (ie, beyond the PNF land parcel) are adequately considered. Further detail on these specific concerns is provided below.

Recommendation 5: The Terms of Reference be broadened to include consideration of how the overall PNF framework can be improved to ensure councils are consulted on and notified of PNF proposals and harvesting operations.

- Greater transparency – advance notice for councils

The current PNF approval process lacks the consideration of community interests, impacts on infrastructure, particularly roads and bridges, local amenity, water quality, fauna, and local vegetation communities. More transparency is sought in relation to the existence of PNF agreements and the commencement of Forest Operation Plans. Local government is often the first point of contact for the community when PNF activities commence without any prior warning, triggering community distress and impacting on local infrastructure and local amenity.

Councils would benefit from being notified in advance of PNF operations in their LGA to help councils address the impact of these activities. The industry would also benefit from this better informed planning.

Recommendation 6: PNF plans should be provided to local government and notification of the commencement of a Forest Operation Plan made prior to activities commencing.

- Forest Operation Plans – more detail and council consultation

Forest Operation Plans (FOP) must include detail on; proposed haulage routes and identification of existing local road networks, detail of the land use zoning in accordance with the LEP to ensure no further approvals are required, detail proposed management actions to avoid impact on environmental values and assets including waterways, amenity etc, and the

proposed management actions post operation which may include regeneration, maintenance and weed management actions.

We note that the NSW Government's Road Safety Plan 2021 states that the road fatality rate is around four times the rate than in metropolitan NSW. Road safety is a priority for councils and therefore having advance knowledge of vehicle types, users and usage patterns is necessary to plan for and implement risk reduction measures of those vehicles on local roads.

Land owners and forestry contractors should be required to consult with councils on the potential impacts on the local road network and contribute to the costs of any road upgrades required as the result of planned forestry activity and the costs of repairs to roads damaged by forestry activity. This should be a core provision in Forestry Operation Plans.

Compliance activities must be undertaken to ensure the FOP requirements are met. Local councils should be notified of forestry operations commencing so that they have adequate detail to respond to community enquiries. Providing local government with access to the Plan prior to the commencement of operations could be an appropriate mechanism. This proposed approach could be further tested through the upcoming consultation period to ensure greater transparency and monitor impacts.

Recommendation 7: That a Forest Operation Plan include all likely impacts and mitigation measures, consider local planning instruments, identify haulage routes and detail regeneration requirements. Further that local government is consulted regarding potential off-site impacts, and provided with access to detail in the Plan prior to the commencement of operations.

- Dual consent issues in local government – refer to local government

A number of councils have sought the exclusion of PNF from all environmentally sensitive land. This is reflected in some councils' zoning. For example, Mid-Coast Council which is an amalgamation of the former Great Lakes, Greater Taree and Gloucester Shire councils have a statutory inconsistency in relation to how private forestry land use is dealt with through their Local Environmental Plans.

In this example, the Great Lakes LEP permits forestry with consent in RU2 zones, however the Greater Taree LEP and Gloucester LEP allows forestry without consent. Forestry is prohibited in some of the Environmental zones, however once again this is inconsistent across the LGA. Greater Taree LEP prohibits forestry in E2 and E4 zones and permits it in E3 zones with consent. This complexity highlights the need for a formalised referral process of PNF agreements to council for approval under the LEP. In this example, council is aware of existing PNF agreements on E3 land which have not been referred to council for approval. There is currently a dual consent system operating in some LGAs, however the onus is on the landholder to seek these further approvals which does not always occur. This process needs formalising through an integrated referral or dual consent process in zones where forestry is prohibited.

PNF agreements have no approval mechanism to local government. A signed PNF Plan agreement by both landowner and the LLS requires no referral mechanism to local government or public exhibition. This lack of transparency is challenging for other land managers in the region. An example of the complexity is in the Coffs Harbour Council LGA where 23% of the 19,370 hectares of land identified as koala habitat is under a PNF agreement. Council does not have access to detailed maps on the vegetated area under the PNF approval, however regardless of this lack of detail the impact on koala habitat is still likely to be significant if the PNF agreements are enacted and forestry operations take place.

Recommendation 8: A formalised referral process of proposed PNF agreements to councils is needed, to ensure consistency with the LEP and other planning instruments.

Recommendation 9: It should be a requirement that maps of PNF approved areas are provided to councils along with the notifications to list the PNF approval on s10.7 planning certificates.

- Monitoring of PNF operations – cumulative impact

A clearer and transparent mechanism to monitor the cumulative impact of PNF operations is sought and should inform future PNF agreements.

The 2016 Regional State of the Environment Report for the North Coast Region of NSW noted that councils had identified private native forestry to be the biggest threat to biodiversity in their region. Of the 2,916 PNF agreements approved in NSW between 2007-2015, 69.4% were in the north coast region, covering 49.7% of total area under PNF agreements in NSW (EPA Public Register 2016). The cumulative impact of these agreements on koala habitat and biodiversity management is significant. Monitoring cumulative impact is necessary and needs to be incorporated into decision making processes for the determination of future agreements.

Recommendation 10: Cumulative impact of PNF plan approvals must be monitored and results considered in future decision making on approvals.

- Threatened species – ecological assessments

The standards for threatened species identification are inadequate and not consistent with requirements for other land use and development proposals. The requirement relies on threatened species previously recorded on the site. The use of Bionet as the only source of information on threatened species is not supported given more accurate or detailed information may be available in local plans. There is also a low likelihood of threatened species data on rural properties, as most have never been subject to a DA which would require an ecological assessment. As such existing threatened species data is a poor indicator of the presence of likely absence of threatened species. Prior to granting approvals, additional ecological surveys particularly fauna surveys may need to be undertaken to ensure best available information is used in determining approvals.

The potential impact of PNF, combined with the significant financial gain to landholders does justify an investment in the assessment of threatened species. No other approval with this much potential to impact on threatened species would be approved without the necessary evidence and relevant studies.

Recommendation 11: That ecological assessments to determine species on the site, including threatened species should be mandatory prior to PNF approvals being granted.

- Cultural heritage

PNF plans should consider cultural heritage impacts, and activities should be excluded if impacts occur.

Recommendation 12: To include cultural heritage as a consideration in the development of PNF plans and ensure appropriate cultural plans and relevant sources of information are referred to in the planning and approval process.

PNF training and advice services

As identified in the draft TOR training and accreditation of PNF haulage and harvest contractors is supported, however a similar accreditation approach should also apply to landholders preparing PNF plans. Landholders require an appropriate level of expertise to consider all the requirements of the impact of their PNF activity on the local area and should be subject to an appropriate level of training. The proposed system relies on a self-assessment model and as such landholders should demonstrate the necessary skills to undertake these plans. This is particularly necessary for the assessment of impact of threatened species. Training could be provided in the form of a webinar with online test, or via other readily accessible formats.

Recommendation 13: Training and accreditation schemes should be extended to include landholders developing a PNF plan.

This can be included in the scope of the TOR through an addition to 2 (b).

Another specific suggestion of additional requirement for the PNF Review Terms of Reference is: 2 (d) Engagement with other land managers, including local government.

Conclusion

LGNSW supports the intention of the private native forestry review to improve environmental outcomes while balancing regional social and economic development objectives and welcomes this early consultation. Local government is a key stakeholder in PNF as local land managers and through the provision of local infrastructure and seeks an active role in the NSW Government's further consultation on the PNF Review and development of draft Codes planned for 2019.

LGNSW welcomes the opportunity to work with the NSW Government to design appropriate consultation mechanisms to ensure councils with experience in PNF activities and operations have an opportunity to share these directly through the review process. These councils are well placed to contribute to the discussion on improving the planning and implementation of private forestry operations.

For further information on this submission please contact Kirsty McIntyre, Senior Policy Officer – Environment on 9242 4055 or kirsty.mcintyre@lgnsw.org.au.

Summary of recommendations

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