



Submission on the Draft NSW Forest Monitoring and Improvement Program Strategy

prepared by

EDO NSW
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About EDO NSW

EDO NSW is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 25 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO NSW 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.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

EDO NSW is part of a national network of centres that help to protect the environment through law in their states.

Submitted to:

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Executive Summary

The Draft Forest Monitoring and Improvement Program Strategy must be viewed against a background which acknowledges that:

- NSW forests are managed across a range tenures some of which are managed for conservation and ecological services, and others for extractive forestry;
- there is a history of poor compliance, lack of enforcement and inadequate monitoring of environmental outcomes in tenures managed for extractive forestry; and
- this history provides a poor baseline for setting and monitoring environmental outcomes in forest management, particularly extractive forestry, moving forward.

Our key concern with the Forest Monitoring and Improvement Program (**FMIP**) is that it proposes to inappropriately apply the principles of Ecologically Sustainable Forest Management (**ESFM**) (which is designed for extractive forestry) to tenures which are, and should be, managed for conservation and similar purposes. The scope of the FMIP should instead be limited to tenures managed in accordance with ESFM, but complement a broader program of monitoring of the ecosystem services provided by the full range of forested tenures in this state.

Priority information needs, performance measures and evaluation questions should be developed having regard to the NSW Environment Protection Agency's *Ecologically Sustainable Forest Management Criteria and Indicators for the NSW Forest Agreement regions*, which provides a useful starting point for achieving the principles of ESFM.

We also recommend that the Forest Monitoring and Improvement Program establish a clear baseline from which to monitor ongoing forestry operations; biodiversity values be defined broadly and encompass not only flora and fauna, but also water quality, soil quality and carbon storage; any economic assessment of the value of forests put an economic value on the environmental services of landscapes and consider the economics of alternative uses; there should be a focus on ecological integrity and functionality (however it would be appropriate to monitor some key species that are sensitive to forest management, and landscape scale assessment should not replace assessment of local impacts at the time of logging); different landscapes may require different monitoring; performance benchmarks focus on whether ESFM is being effectively delivered and assessed through independent reviews; and the impacts of and responses to climate change should be a key consideration in the program design.

Aspects of the FMIP relating to community and industry expertise, governance, transparency, adaptability, accountability, funding, and perverse outcomes could also be strengthened.

Introduction

EDO NSW is an independent community legal centre specialising in public interest environmental law. We have a long history of providing legal advice on forestry issues with a focus on ensuring NSW has sound laws to protect the environment, and that the community has the right to properly participate in environmental decision-making, oversight and enforcement.

EDO NSW welcomes the opportunity to provide feedback to the Natural Resources Commission (NRC) on the Draft NSW Forest Monitoring and Improvement Program Strategy (**Draft Strategy**)¹.

It is our hope that the Forest Monitoring and Improvement Program (**FMIP**) will lead to improved monitoring of forest health, a better understanding of the impacts of forestry operations, and achievement of Ecologically Sustainable Forest Management (**ESFM**).

In response to the Draft Strategy, our submission addresses the following key issues:

1. Overarching comments on forests and forest management in NSW
2. Scope of the Forest Monitoring and Improvement Program
3. Priority information, performance measures and evaluation questions
4. Specific comments on other aspects of the Draft Strategy

Key Issues

1. Overarching comments on forests and forest management in NSW

a) NSW Forests

Broadly speaking, forested areas of NSW extend across a range of different land tenures, including national parks, other conservation reserves, State forests, Crown land and private land. The *New South Wales Forest Management Framework (FMF)*² outlines the various land tenures, legislation, and agencies responsible for forest management in NSW.

However, there is a distinction between forested areas that are ‘Crown-timber land’³ and private land subject to a private native forestry plan⁴ (areas where forestry operations⁵ can be

¹ Natural Resources Commission, *Draft NSW Forest Monitoring and Improvement Program Strategy*, available at www.nrc.nsw.gov.au/forest-monitoring

² NSW Government, *Overview of the New South Wales Forest Management Framework*, November 2018, available at www.dpi.nsw.gov.au/_data/assets/pdf_file/0005/833792/Overview-of-the-NSW-Forest-Management-Framework.pdf

³ The *Forestry Act 2012* (NSW) defines ‘Crown-timber land’ as:

- a) land within a State forest or flora reserve,
- b) Crown land (whether or not held under a lease or licence from the Crown and whether or not included in a timber reserve),
- c) land affected by a profit à prendre, but does not include:
- d) any Crown land the subject of a prescribed Crown tenure if the subject land has an area of 2 hectares or less, or
- e) any Crown land the subject of a tenure from the Crown that is not a prescribed Crown tenure

⁴ See Part 5B of the *Local Land Services Act 2013* (NSW)

⁵ The *Forestry Act 2012* (NSW) defines ‘forestry operations’ as:

- a) logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or
- b) the harvesting of forest products, or
- c) ongoing forest management operations, namely, activities relating to the management of land for timber production such as thinning, burning and other silvicultural activities and bush fire hazard reduction, or

undertaken in accordance with the principles of ESFM); and forested areas managed primarily for conservation, such as national parks or private conservation areas. **Appendix 1** provides a summary of the various land tenures, relevant legislation and management principles for forested areas in NSW.

Forests across all tenures are at risk from various threats and pressures including clearing, urban expansion, invasive species, erosion, drought and climate change. Cross-tenure understanding of forest health in order to achieve improved environmental outcomes is therefore desirable; however differing management goals across different land tenures mean there may be different monitoring requirements across tenures creating a challenge for holistic forestry management and making entirely consistent monitoring and improvement difficult.

b) NSW forestry operations

EDO NSW has a long history of providing legal advice on forestry operations on public and private lands. In our experience there are significant concerns amongst the community and environment groups that the management of forestry operations in NSW is poorly done and inconsistent with ESFM.

Forestry operations can have significant, detrimental impacts on the environment and biodiversity, including threatened plants and animals, water and soil quality, and carbon emissions. In our experience, poor compliance and enforcement of forestry operations in NSW has exacerbated those impacts.

In 2011, EDO NSW, together with the Nature Conservation Council of NSW, published a joint report, *If a tree falls: Compliance failures in the public forests of New South Wales*.⁶

That report found that:

“(i)t is clear that breaches of forestry regulations are systemic and occurring across the state to such a degree that flora and fauna species are being impacted as a result of those breaches. It is clear that native forests are not being managed in a way that complies with the principles of ESFM and the conservation of biodiversity”.

The report also found that:

“More thorough research of the flora and fauna in RFA [Regional Forest Agreement] areas is clearly needed, as well as more research and monitoring of the impacts of logging practices on biodiversity and threatened species”.

More recently, EDO NSW engaged in the review and remake of the NSW Coastal Integrated Forestry Operation Approval (**IFOA**) and NSW Regional Forest Agreements (**RFAs**). During those processes we raised a number of concerns with forestry operations in NSW, including that:

- There is a lack of monitoring and data on environmental outcomes and trends from past forestry practices under 20 years of the existing IFOAs; and

d) ancillary activities to enable or assist in the above operations such as the provision of roads, snig tracks, waterway crossings and temporary timber storage facilities.

The same definition is used when referring to private native forestry under the *Local Land Services Act 2013* (NSW) (see s 60ZQ(1))

⁶ Hammond-Deakin, N. and Higginson, S. (2011) *If a tree falls: Compliance failures in the public forests of New South Wales*, Environmental Defender's Office (NSW) Ltd, Sydney, Australia.

- Given this lack of evidence, the draft IFOA settings fail to adopt a sufficiently precautionary approach to serious or irreversible risks of continued decline or extinction of threatened species and forest ecosystem function.⁷

We did however welcome the proposed increased focus on monitoring, evaluation, reporting, continuous improvement and adaptive management (subject to future monitoring plans and programs) and made a number of recommendations for a comprehensive monitoring, evaluation, reporting and improvement framework.⁸

Our past forestry submissions and reports are available on our website.⁹

2. Scope of the Forest Monitoring and Improvement Program (FMIP)

The FMIP is a next step in the process and is intended to meet commitments made under the NSW RFAs and Coastal IFOA. While we are pleased to see the FMIP in development we have concerns with the proposed scope and design of the FMIP.

The Draft Strategy suggests that the FMIP will operate across tenures, including not only state forests and private native forests, but also national parks, private conservation forests and Crown forested land.¹⁰

The suggestion that the FMIP will extend to the adaptive management of national parks and private conservation forests raises a number of red flags, in that:

- a) As outlined above, there is a distinction between the environmental outcomes being sought, and therefore the appropriate adaptive management framework, for tenures that are managed according to the principles of ESFM and on which forestry operations take place; and those that are not (e.g. national parks, private conservation land).¹¹
- b) The FMIP has been commissioned following the recent remaking of the NSW RFAs and the Coastal IFOA. The FMIP is to be designed to meet commitments made under both those agreements. For example, the Conditions of the Coastal IFOA require the Forestry Corporation of NSW (**FCNSW**) to implement and comply with a monitoring program developed by the monitoring steering committee chaired by the Natural Resources Commission and approved by the Chief Environment Regulator of the EPA and the Deputy Director General of DPI.¹² Similarly the NSW RFAs include provisions that NSW develop and maintain a coordinated Monitoring, Evaluation and Reporting Plan, including the identification of research priorities, within the broader FMF across relevant forest management tenures and to support RFA outcomes reporting for ESFM.¹³

⁷ EDO NSW, *Submission on the Draft Coastal Integrated Forestry Operations Approval*, July 2018, available at www.edonsw.org.au/draft_coastal_ifoa

⁸ Ibid, pages 40-41

⁹ See www.edonsw.org.au/forestry_clearing_vegetation_trees_policy

¹⁰ Above no. 1, pp 1, 3, 5, 10, 13

¹¹ Whether intentional or not, this distinction appears to have been adopted in the *Overview of the New South Wales Forest Management Framework (FMF)*, which when outlining how the FMF will deliver ESFM across all public and private land tenures, specifically identifies conservation reserves, State forests, private native forests and plantations, not national parks and private conservation areas.¹¹

¹² See Chapter 8, *Coastal Integrated Operations Approval - Conditions*, available at www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/forestagreements/18p1177-coastal-ifo-a-conditions.pdf

¹³ See clause 8A of each of the three NSW Regional Forestry Agreements for Eden, North East and Southern areas, available at www.dpi.nsw.gov.au/forestry/regional-framework

- c) Both the NSW RFAs and Coastal IFOA have general objectives that forestry operations are carried out in accordance with the principles of ESFM.¹⁴ Therefore the FMIP must be designed to monitor, evaluate and improve forest management in line with the principles of ESFM.
- d) ESFM is an internationally recognised set of principles that aim to maintain and monitor the broad range of social, economic and environmental values of forests.¹⁵ The principles of ESFM are derived from the Montreal Criteria.¹⁶ ESFM adopts a triple bottom line approach to maintaining a broad range of social, economic and environmental values of forests. It specifically includes a principle on “*the productive capacity and sustainability of forest ecosystems*” which includes the use of native forests for wood supply.
- e) The triple bottom line approach of ESFM is not an appropriate framework for managing national parks and conservation areas, where the primary purpose is nature conservation. For example, the purpose of reserving land as a national park is to identify, protect and conserve areas containing outstanding or representative ecosystems, natural or cultural features or landscapes or phenomena.¹⁷ Private land conservation agreements are created for the purpose of conserving or studying the biodiversity of the land¹⁸ generally consistent with the purpose of the *Biodiversity Conservation Act 2016*.¹⁹

¹⁴ See clause 14 of the *Coastal Integrated Operations Approval – Conditions*, above no 12; see also the purpose of each of the three NSW RFAs for Eden, North East and Southern areas, above no 13.

¹⁵ Section 69L(2) of the *Forestry Act 2012* (NSW) provides the following principles of ecologically sustainable forest management:

- a) maintaining forest values for future and present generations, including:
 - i) forest biological diversity, and
 - ii) the productive capacity and sustainability of forest ecosystems, and
 - iii) the health and vitality of native forest ecosystems, and
 - iv) soil and water quality, and
 - v) the contribution of native forests to global geochemical cycles, and
 - vi) the long term social and economic benefits of native forests, and
 - vii) natural heritage values,
- b) ensuring public participation, provision of information, accountability and transparency in relation to the carrying out of forestry operations,
- c) providing incentives for voluntary compliance, capacity building and adoption of best-practice standards,
- d) applying best-available knowledge and adaptive management processes to deliver best-practice forest management,
- e) applying the precautionary principle (as referred to in section 6 (2) (a) of the *Protection of the Environment Administration Act 1991*) in preventing environmental harm.

The same meaning is adopted by section 60ZQ of the *Local Land Services Act 2013* (NSW)

¹⁶ The Montréal Process, Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests, Fifth Edition, September 2015 outlines seven criterion for the sustainable management of forests, namely

- Criterion 1: Conservation of biological diversity
 - Criterion 2: Maintenance of productive capacity of forest ecosystems
 - Criterion 3: Maintenance of forest ecosystem health and vitality
 - Criterion 4: Conservation and maintenance of soil and water resources
 - Criterion 5: Maintenance of forest contribution to global carbon cycles
 - Criterion 6: Maintenance and enhancement of long-term multiple socio-economic benefits to meet the needs of societies
 - Criterion 7: Legal, institutional and economic framework for forest conservation and sustainable management
- www.montrealprocess.org/The_Montreal_Process/Criteria_and_Indicators/index.shtml

¹⁷ See section 30E of the *National Parks and Wildlife Act 1974* (NSW)

¹⁸ See section 5.20(1) of the *Biodiversity Conservation Act 2016* (NSW)

¹⁹ See section 1.3 of the *Biodiversity Conservation Act 2016* (NSW)

- f) Other than a few passing references in the Draft Strategy, there is very little information on how the FMIP will operate with respect to national parks, private conservation land and Crown lands.

Given the specific purpose of the FMIP to meet commitments under the RFAs and IFOAs, it should be focused specifically on monitoring and improvement of forestry operations and achieving ESFM.

However, we understand the potential benefits of an overarching program that could provide state-wide monitoring and reporting of biodiversity and conservation values across all tenures and management regimes. While the NSW State of the Environment report²⁰ provides some monitoring and reporting, it is done only every three years, criteria and indicators are limited and there is no specific chapter on forests (although we note there is a Commonwealth State of the Forests report²¹).

We have previously called for NSW to invest in a broader, multi-disciplinary understanding of the diverse environmental, social and economic values of forests. Crucially, this includes their long-term capacity to deliver 'ecosystem services' such as water filtration, oxygen turnover, pollination, carbon storage, recreation and cultural connections.²²

This is something that the NSW government should pursue, separate to, but concurrent with, the current FMIP. Data from the FMIP should be linked into this broader framework of environmental accounting.

3. Priority information, performance measures and evaluation questions

The NRC seeks feedback on the specific design of the FMIP including priority information needs, performance measures and evaluation questions. At this stage we provide some general feedback, but suggest that the NRC include relevant experts and environmental stakeholders on the technical committees to further inform the design of the FMIP.

Given the FMIP is intended to meet monitoring commitments under the NSW RFAs and Coastal IFOA, it should be designed to assess whether the objectives of the NSW RFAs and Coastal IFOA are being achieved, including whether ESFM is being delivered and whether outcomes statements in the Coastal IFOA are being achieved.

As outlined in our submission on the Coastal IFOA, the NSW Environment Protection Agency's (EPA) *Ecologically Sustainable Forest Management Criteria and Indicators for the NSW Forest Agreement regions*²³ provides a useful starting point for achieving the principles of ESFM. We suggest that this can be used to guide the development of criteria and indicators for the FMIP.

For example, for the purpose of Criterion 1 – Conservation of Biological Diversity, the EPA identifies the following indicators:

²⁰ See NSW State of the Environment reports, available at www.epa.nsw.gov.au/about-us/publications-and-reports/state-of-the-environment

²¹ See <http://www.agriculture.gov.au/abares/forestsaustralia/Pages/SOFR2018/sofr-2018.aspx>

²² See EDO NSW, *Submission on the Draft Coastal Integrated Forestry Operations Approval*, July 2018 above no. 7, p 18

²³ NSW Environment Protection Agency, *Ecologically Sustainable Forest Management Criteria and Indicators for the NSW Forest Agreement regions*, 2016, available at <https://www.epa.nsw.gov.au/~media/EPA/Corporate%20Site/resources/forestagreements/revised-ecologically-sustainable-forestry-management-criteria-indicators-160178.ashx>

- Area of forest by forest type and tenure;
- Area of forest by growth stage;
- Area of forest in protected area categories;
- Fragmentation of forest cover;
- Forest-dwelling species for which ecological information is available;
- The status of forest-dwelling species at risk of not maintaining viable breeding populations, as determined by legislation or scientific assessment;
- Representative species from a range of habitats monitored at scales relevant to regional forest management; and
- Native forest and plantations of indigenous timber species that have genetic resource conservation mechanisms in place.

We have also suggested that additional indicators be developed to reflect principles (b) to (e) of the ESFM²⁴. In brief this could include assessing:

- whether public participation, provision of information, accountability and transparency is ensured;
- incentives for voluntary compliance, capacity-building and best-practice standards;
- whether best-available knowledge and adaptive management processes have been applied; and
- the extent to which this has delivered best-practice forest management; and whether and how the precautionary principle has been applied in the IFOA to prevent environmental harm.

It would also be useful to review the outcomes statements in the Coastal IFOA and consider what information is required to determine if those outcomes statements are being achieved.

For example, outcome statement for Division 3 of Chapter 4 of the Coastal IFOA²⁵ provides that “*important trees are retained and protected for shelter and food resources for native species, and to support their persistence*”. In order to determine whether this statement is being achieved the FMIP should be required to identify important trees and monitor whether they are being retained and protected over time.

We also make the following observations and suggestions with respect to prioritising information needs and setting performance measures:

- The FMIP must establish a clear baseline from which to monitor ongoing forestry operations, and some level of retrospective analysis may be required to take into account previous degradation of forests when establishing an appropriate baseline.
- Biodiversity values should be defined broadly and encompass not only flora and fauna, but also water quality, soil quality and carbon storage. Monitoring should therefore encompass this broad range of values.
- Any economic assessment of the value of forests must put an economic value on the environmental services of landscapes and consider the economics of alternative uses.
- There should be a focus on ecological integrity and functionality.
- Habitat and landscape data is preferred (rather than individual species data), however it would be appropriate to monitor some key species that are sensitive to forest

²⁴ Above no. 15

²⁵ Above no. 7, page 28

management and could be indicative of broader forest health (e.g. koala, large forest owls, spotted tailed quolls). But any such landscape scale assessment should not replace assessment of local impacts at the time of logging.

- Different landscapes may require different monitoring techniques – for example, water dependent ecosystems like the river red gums may need indicators that are not relevant to other ecosystem types.
- Performance benchmarks need to focus on whether ESFM is being effectively delivered, rather than benchmarking against other jurisdictions or natural resources management systems (p10), and in addition to good practice principles, subject to our comments on these principles (p14).
- Similarly, assessment of improvements in forest management (p15) should not be determined by forest managers but through independent reviews of whether forest management is achieving ESFM.

Other specific questions that the FMIP might seek to answer could include:

- What forestry management techniques are driving declines in species and/or ecosystem health?
- Is there sufficient habitat to support viable populations of native wildlife, especially threatened species?
- How much forest needs to be protected to prevent future extinctions and allow adaptation to climate change?
- How effective is forest management in protecting biodiversity values and ecosystem health?
- What is the best use of state forests when accounting for alternative uses, ecosystem services and biodiversity protection obligations?
- What is the quality of connectivity across the landscape?

4. Specific comments on other aspects of the Draft Strategy

We provide the following feedback on other specific components of the Draft Strategy:

a) Program principles

The Draft Strategy sets out a series of program principles aimed to link monitoring, evaluation, research and enforcement to decision-making for policy and on-ground management of NSW forests (see pages 9 and 10).

We provide the following comments on the draft principles:

- As outlined above, we are of the view that the scope of the FMIP should be limited and this should be reflected in the program principles (for example, references to national parks should only be in regard to complementary monitoring, rather than as part of the FMIP itself).
- We generally agree that the program should meet both decision-making and reporting requirements (despite earlier sections of our submission focusing on reporting requirements).

- Information gathered from the FMIP program should be able to be incorporated into other environmental accounting processes including for example, State of the Environment reporting, and the NSW SEED portal.²⁶
- We agree that information should be accessible to the public, and this should include being presented in a format that is easy for the public to understand.
- The FMIP should provide further information about how it will adapt to new information (see further comments on adaptability below).

b) *Governance structure*

We make the following general comments in relation to the governance structure for developing and implementing the FMIP:

- The NRC has established a cross-agency steering committee to oversee the design, implementation, review and continuous improvement of the FMIP. We generally welcome the appointment of four independent experts to the Steering Committee; however note that their exact functions and responsibilities are unclear. It is also unclear whether any advice provided by the independent experts will be made publicly available (see our further comments below on transparency).
- We recommend that community representation be better included in the governance structure of the FMIP. For example, consideration should be given to including community representation on the steering committee, or alternatively within the technical working groups. This is particularly important given the significant amount of community concern and distrust of current forestry management practices.
- We recommend that the NRC actively engage community stakeholders in regional areas, many of whom have substantial knowledge of local forests.
- Page 8 of the Draft Strategy suggests that the “*Commission and Steering Committee are independent from the ongoing implementation, administration and adaptive management of the forest estate, forest policies and forest agreements*”. It is unclear what is meant by this statement given that the steering committee includes representatives from a number of government agencies that are responsible for overseeing forestry management.

c) *Leveraging research and expertise across the community and industry*

The Draft Strategy indicates that the FMIP will work with a wide range of stakeholders and partners outside of government, including community groups, Indigenous groups and university to draw in relevant skills and experience from across the State.

While there is definitely benefit to drawing on the skill and expertise of various stakeholders and incorporating their input into the FMIP, this must complement, rather than replace, the basic requirement of government or FCNSW to undertake appropriate monitoring.

The program design and performance should not rely on or be limited by what these stakeholders can provide. That is, the FMIP should not be a patchwork program made up of the various expertise and programs already in existence. Rather the FMIP must properly consider the task at hand, and design benchmarks, information requirements and outputs according to what is needed.

²⁶ SEED (Sharing and Enabling Environmental Data) is a whole of government data repository for all NSW environment data, see www.environment.nsw.gov.au/research-and-publications/seed-data-portal

As with all citizen science processes, mechanisms will need to be put in place to ensure that stakeholder input is reliable and relevant.

d) *Opportunity costs of information*

The Draft Strategy proposes to adopt a 'value of information approach' in order to prioritise forest monitoring, evaluation and research efforts in NSW. While we recognise that the FMIP needs to set priorities due to fixed resources, we do not support reductions in protections that weaken environmental outcomes (for example, using fixed logging prescriptions to justify reduced on-site monitoring before logging operations occur).

e) *Adaptability*

One of the aims of the FMIP is to "*be adaptable to changes to both research priorities and forest monitoring methods*". While we recognise that the program needs some level of flexibility in order to meet any changes to the information needs of decision makers, particularly in relation to meeting their legal obligations, to be effective the FMIP needs to deliver consistent, long-term forest monitoring. To be most useful, the biodiversity and conservation values of forests need to be measured in the long-term, and therefore significant changes to the FMIP during its implementation could undermine its effectiveness. Where technological change allows monitoring to be undertaken in a more efficient and cost effective way it must be clear that data collected with new techniques will permit direct and ongoing comparison with historical data collection.

f) *Accountability*

The Draft Strategy suggests that the FMIP will improve accountability, and specifically that the NRC will hold NSW forest management agencies accountable against performance criteria. However on the face of the Draft Strategy, it is unclear how this will occur and what powers or mechanisms are available to the NRC do this. It is also unclear how enforcement agencies may seek to enforce the program. Further information on this should be provided as part of the final Program Strategy.

g) *Transparency*

The Draft Strategy provides that:

"The Program is committed to transparency and the principle of open government. The Program will publish reporting on the Program results and progress, including any recommendations of the Commission and the NSW Forest Monitoring Steering Committee for any suggested changes to the RFAs or IFOAs, or the NSW Forest Management Framework".

We welcome the intention of the FMIP to be transparent, and indications that "*forest monitoring data, research and evaluations are made available to the public, where feasible*". The FMIP should provide more detailed information about what information will be made publicly available, when and how, in order to manage public expectations and provide some accountability to this aspect of the program.

Additionally, scientific advice of the independent experts on the steering committee should be made publicly available during both the design and implementation phases of the FMIP, so that

the public is able to see what independent, scientific advice has been provided and whether it has been followed by the committee.

h) *Funding*

The Draft Strategy provides that:

“The Program will be supported by a funding commitment of \$9.2 million over four years, for forest monitoring and mapping, announced by the Department of Industry as part of the NSW Budget 2018-19. This investment will support the design and establishment of monitoring and evaluation program. Further funding of at least \$2 million, over five years from 2019-20, is targeting the design and establishment of the Coastal IFOA monitoring program, and is being provided by the Environment Protection Authority through the Waste and Environment Levy and contributions from Forestry Corporation of NSW”.

In our view, FCNSW should be required to contribute to funding the FMIP, particularly as it relates to meeting requirements of the Coastal IFOA and RFAs. This is consistent with the polluter-pays principle, and is not dissimilar to mining companies being required to implement noise and air quality monitoring programs as part of their conditions of consent.

i) *Avoiding perverse impacts*

The FMIP should identify risks of perverse outcomes from improved monitoring and address options for managing these risks. For example, there is a risk of misrepresenting research and monitoring findings which could undermine conservation initiatives (e.g. data indicating increases in abundance relative to factors such as increased survey effort), or failing to set an appropriate baseline and inferring that small recent improvements or no recent change in quality are leading to improved outcomes without acknowledging that overall condition is quite degraded due to historical activity.

Thank you for considering our submission and recommendations. Please do not hesitate to contact Cerin Loane, Senior Policy and Law Reform Solicitor, on (02) 9262 6989 should you require any further information.

Appendix 1

Summary of the various land tenures, relevant legislation and management principles for forested areas management in NSW

Note: Information on Tenure, Primary legislation, Primary Purpose and Land Manager has been directly sourced from Table 3.1 of the *Overview of the NSW Forest Management Framework*²⁷. For the purpose of this analysis we have included relevant management objects and principles for each tenure.

Tenure	Primary legislation	Primary Purpose	Land manager	Objects and Principles
PUBLIC LAND				
Crown-timber land , including State forest, flora reserves, timber reserves or land affected by a profit à prendre	<i>Forestry Act 2012</i> (NSW)	Land set aside for the utilisation and management of wood production and other forest products; and in the case of flora reserves for the preservation of native flora. Multiple use public native forests in NSW also provide for recreational uses and for the conservation of environment and heritage values. As well as flora reserves, special management zones can be declared to protect special conservation values and prohibit forestry operations.	<ul style="list-style-type: none"> - Forestry Corporation of NSW - National Parks and Wildlife Service manages some flora reserves 	<p>Forestry operations and forest agreements must promote and be carried out in accordance with the principle of ecologically sustainable forest management.²⁸</p> <p>Where its activities affect the environment, Forest Corporation must conduct its operations in compliance with the principles of ecologically sustainable development.²⁹</p> <p>Forestry corporation is to carry out or authorise the carrying out of forestry operations in accordance with good forestry practice³⁰ and functions of the land manager of a forestry area are to be exercised in accordance with good forestry practice³¹</p>
Conservation reserves , including national parks, historic sites, state conservation areas, regional parks, karst	<i>National Parks and Wildlife Act 1974</i> (NSW)	Land set aside for the conservation of environment and heritage values, and public appreciation and	- National Parks and Wildlife Service	Part 4, Division 2 of the <i>National Parks and Wildlife Act 1974</i> sets out management principles for different categories of reserves. ³²

²⁷ Above no. 2, pages 16-18

²⁸ See section 69C and 69L(1)(a) *Forestry Act 2012* (NSW)

²⁹ See section 10(1)(c) of the *Forestry Act 2012*

³⁰ See section 11(1)(a) of the *Forestry Act 2012*

³¹ See section 50(2)(a)(ii) a of the *Forestry Act 2012*

³² For example, under section 30E of the *National Parks and Wildlife Act 1974* a national park is to be managed in accordance with the following principles:

conservation reserves, nature reserves , Aboriginal areas.		enjoyment of those lands		Additionally, the objects of the <i>National Parks and Wildlife Act 1974</i> are to be achieved by applying the principles of ecologically sustainable development. ³³
Crown reserves including (but not limited to) nature reserves , coastal lands, travelling stock routes, state heritage sites, waterway corridors, commons	<i>Crown Land Management Act 2016</i> (NSW)	Land set aside for public purposes including environmental and heritage protection, recreation and sport, open space, community halls, special events and government services.	- Department of Industry – Crown Land	One of the objects of the <i>Crown Land Management Act 2016</i> is to provide for the management of Crown land having regard to the principles of Crown land management. ³⁴
Leasehold including Western Lands Leases	<i>Crown Land Management Act 2016</i> (NSW)	Land leased from the Crown for grazing, agriculture, forestry, residences and businesses	- Department of Industry – Crown Land and the Lessee Forestry	The principles of Crown land management apply to leases on Crown land. ³⁵

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- a) the conservation of biodiversity, the maintenance of ecosystem function, the protection of geological and geomorphological features and natural phenomena and the maintenance of natural landscapes,
 - b) the conservation of places, objects, features and landscapes of cultural value,
 - c) the protection of the ecological integrity of one or more ecosystems for present and future generations,
 - d) the promotion of public appreciation and understanding of the national park's natural and cultural values,
 - e) provision for sustainable visitor or tourist use and enjoyment that is compatible with the conservation of the national park's natural and cultural values,
 - f) provision for the sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the national park's natural and cultural values,
 - fa) provision for the carrying out of development in any part of a special area (within the meaning of the *Hunter Water Act 1991*) in the national park that is permitted under section 185A having regard to the conservation of the national park's natural and cultural values,
 - g) provision for appropriate research and monitoring.

³³ See section 2A(2) of the *National Parks and Wildlife Act 1974*

³⁴ See section 1.3 of the *Crown Land Management Act 2016* (NSW).

Under section 1.4 the *principles of Crown land management* are:

- a) that environmental protection principles be observed in relation to the management and administration of Crown land, and
- b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible, and
- c) that public use and enjoyment of appropriate Crown land be encouraged, and
- d) that, where appropriate, multiple use of Crown land be encouraged, and
- e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and
- f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

³⁵ Ibid.

			Corporation of NSW (for the duration of forestry operations)	Additional provisions for Western Lands leases are set out in Schedule 3 Part 3 of the <i>Crown Land Management Act 2016</i> .
FREEHOLD				
Private land	<i>Local Lands Services Act 2013</i> (NSW) (LLS Act)	Private use at landowner's discretion, including sustainable forestry, land management, and conservation (subject to legislative constraints)	- Landowner	<p>Private native forestry (Part 5B of the LLS Act) must be carried out in accordance with the principle ecologically sustainable forest management³⁶</p> <p>Clearing of vegetation under the LLS Act must be consistent with, and decision makers must have regard to/take into consideration the principles of ecologically sustainable development³⁷</p> <p>Private land conservation is managed under Part 5 of the <i>Biodiversity Conservation Act 2016</i> for the general purpose of biodiversity conservation.</p>

³⁶ See section 60ZR of the *Local Land Services Act 2013*

³⁷ See section 3(e), section 60Z(3) section 60ZF(5) of the *Local Land Services Act 2013*