

## TERMS OF REFERENCE

### NATURAL RESOURCES COMMISSION

#### FINAL PRIVATE NATIVE FORESTRY CODES OF PRACTICE

The Deputy Premier and the Minister for Planning and Public Spaces request that the Natural Resource Commission (the Commission) convene a group of experts to provide independent advice and assist in finalising the new Private Native Forestry Codes of Practice (PNF Codes). In providing this advice, the Commission will build upon government legislative requirements, relevant policy objectives and previous work by independent experts, including reviews undertaken by the Office of the Chief Scientist and Engineer (OCSE). This request is consistent with the Commission's legislative functions as outlined in Part 3 of the *Natural Resource Commission Act 2003* (NRC Act), in particular Part 3 (section 13 (1) (d1)) which stipulates that the NRC undertake audits and reviews relating to forestry as required by the Minister.

#### BACKGROUND

Private Native Forestry (PNF) is the sustainable management of native forests on private property in line with the objects of the *Local Land Services Act 2013* (LLS Act). Private native forests represent the largest single component of NSW's native forest estate, accounting for 37.2 percent of the ~ 20 million hectares of native forests in NSW<sup>1</sup>. PNF is a key resource for the NSW Forestry Industry and an important land management option for landholders.

In December 2014, the NSW Government commissioned an independent review of biodiversity legislation in NSW. The NSW Government committed to implementing all the review's recommendations, including Recommendation 7, which called for a review of 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 change
- 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<sup>2</sup> (Attachment A).

In August 2016, the NSW Government released the NSW Forestry Industry Roadmap (the Roadmap)<sup>3</sup> (Attachment B). The Roadmap adopts a triple bottom line approach to achieving social, ecological, and economic sustainability for the NSW Forestry Industry through four priority pillars:

1. Regulatory modernisation and environmental sustainability
2. Balancing supply and demand
3. Community understanding and confidence

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<sup>1</sup> P55. Commonwealth of Australia. 2017. Australia's forests at a glance 2017: with data to 2015-16. Department of Agriculture and Water Resources ABARES.

<sup>2</sup> P30. Byron, N., Craik, W., Keniry, J., and Possingham, H. 2014. A review of biodiversity legislation in NSW. State of NSW and the Office of Environment and Heritage, Sydney NSW.

<sup>3</sup> NSW Government 2016. NSW Forestry Industry Roadmap. NSW Government, Sydney NSW.

#### 4. Industry innovation and new markets.

The Roadmap committed to reviewing the regulatory arrangements for PNF by developing a modern and simple regulatory framework consistent with the Independent Biodiversity Review Panel Recommendations.

#### **CABINET AGREEMENT ON PNF CODES**

In December 2019, the NSW Government endorsed the release of draft PNF Codes for an 8-week consultation period with finalisation of PNF Codes from June 2020. The forest management settings for the draft PNF Codes were independently reviewed by the Fenner School of Environment and Society at the Australian National University (ANU) (Attachment C).

Consistent with the NSW Government's recommendation, during the consultation period the OCSE also reviewed the evidence relied upon by LLS in amending the PNF Codes. This report was delivered to the Minister for Agriculture and Western NSW on 28 May 2020 (Attachment D)

In October 2020, the NSW Government endorsed an approach in the final PNF Codes that balances the protection of koalas and the ecologically sustainable development of private forests by:

- a. adopting an approach informed by contemporary science on the relative impact of timber harvesting on koala occupancy and based on the approach taken in the Coastal Integrated Forestry Operations Agreement (CIFOA), and
- b. improving the administration of PNF regulatory framework by removing dual consent requirements in respect of Local Government for PNF Plans, in line with recommendation seven of the Independent Biodiversity Legislation Panel Review
- c. that the Koala Tree Species will be used by LLS as part of the tree retention process with regards to PNF according to the listings provided for by the *State Environmental Planning Policy (Koala Habitat Protection)*.

In March 2021, the (former) Deputy Premier and Minister for Planning and Public Spaces advised the Premier of an agreement regarding how the LLS Act and the Environmental Planning and Assessment Act 1979 can work together to protect koalas including delivering PNF Codes which ensure robust protections for koalas in areas of high value koala habitat and certainty and consistency for primary producers.

As part of this process, the Secretary of the Department of Regional NSW (DRNSW) sought advice from OCSE as to whether changes to the proposed PNF Codes can provide robust protections for koalas in areas of high value koala habitat and certainty and consistency for primary producers.

In September 2021, the Secretary of DRNSW wrote to the Secretary of the Department of Planning, Industry and Environment (DPIE) to inform that DRNSW have agreed-in-full or agreed-in-principle to all of OCSE's recommendations (Attachment E).

## **PURPOSE**

The draft PNF Codes have previously been through extensive review, stakeholder consultation and deliberation. The NSW Government is committed to finalising the Codes by building upon this prior work to help implement the recommendations of the Independent Biodiversity Panel Review and deliver Government commitments made in the Roadmap.

The Commission will:

- a. provide advice on the draft final PNF Codes to ensure they are consistent with Objects of Part 5B of the LLS Act, including the principles of Ecological Sustainable Forest Management (ESFM), reflect government policy objectives and help implement the recommendations of OCSE's 2021 report.
- b. build upon the Commission's existing responsibility to implement a Forest Monitoring and Improvement Program (FMIP) to help inform evidence-based decision making and promote active and adaptive forest management in NSW.

## **SCOPE**

1. The Commission will assess whether the final draft PNF Codes fulfils:
  - a. the Objects of Part 5B of the LLS Act, including the principles of ESFM
  - b. the Government's dual objectives of '...providing robust protections for koalas in areas of high value koala habitat and certainty and consistency for primary producers'
  - c. relevant Cabinet decisions on the PNF Codes, and
  - d. recommendations 2-10 of OCSE's 2021 advice

The Commission can make recommendations to amend the final draft PNF Codes to assist in fulfilling the above.

The Commission will convene an expert group to inform this advice. This expert group will include a representative of the OCSE, a forest scientist and a forest ecologist with expertise in koala management on private land.

In providing advice, the Commission will consult with LLS, OCSE, DPIE-EES and other relevant agencies as required.

2. As independent chair of the NSW FMIP the Commission will, in collaboration with the NSW Forest Monitoring Steering Committee develop:
  - a. a shared understanding and agreement on fundamental information on facts and metrics over time (including aligned methods in measuring, modelling, mapping, reporting and data collection and handling), and
  - b. a Monitoring Evaluation and Reporting framework for NSW's private forest estate.

The existing NSW Forest Monitoring Steering Committee includes NSW agencies responsible for natural resource and environmental policy, regulation, science and forest land management and independent experts in forest science, forest ecology, soil science, catchment hydrology, social science, natural resource economics and Aboriginal land governance and management.

In carrying out this task, the Commission may have regard to the following:

- a. the Independent Biodiversity Legislation Review Panel's Final Report: A Review of Biodiversity Legislation in NSW,
- b. the NSW Forestry Industry Roadmap,
- c. the Private Native Forestry Review Terms of Reference: Submissions Review Final Report,
- d. Australian National University Native Forest Harvesting and Thinning on Private Managed Land in New South Wales for Multiple Purposes,
- e. OCSE 2020 Review of Private Native Forestry Codes,
- f. OCSE 2021 Review of Private Native Forestry Codes, and
- g. any additional information provided by LLS or requested from LLS by the Commission.

#### **FINAL ADVICE**

The Commission will provide the CEO of LLS with an initial report by **19 January 2022** and commence the process outlined in section 2 of the scope of works. The final report to be submitted to the Deputy Premier, Minister for Planning and Public Spaces, Minister for Agriculture and Western NSW and the Minister for Environment by **4 February 2022**.

The initial report will outline the review's recommendations on initial drafts of the final PNF Codes. The final report will outline the review's recommendations on the final PNF Codes.

#### **CONFIDENTIALITY**

All information presented by the Commission, as well as its recommendations, should be treated as Cabinet in Confidence. The Minister for Planning and Public Spaces may direct the Commission to produce a public report of its final advice with the concurrence of the Deputy Premier.

#### **ATTACHMENTS**

A – Final Report: A Review of Biodiversity Legislation in NSW

B – NSW Forestry Industry Roadmap

C - Native Forest Harvesting and Thinning on Private Managed Land in NSW for Multiple Purposes

D – Office of Chief Scientist and Engineer – 2020 Review of draft Private Native Forestry Codes

E – Office of Chief Scientist and Engineer – 2021 Review of draft Private Native Forestry Codes

F – Objects of Part 5B of the *Local Land Services Act 2013*