



Department of Environment, Land, Water and Planning

Lachlan Wilson
Manager Forest Compliance
VicForests

Ref: 2019-0087

Dear Mr. Wilson,

INVESTIGATION OUTCOME

VICFORESTS TIMBER HARVESTING OPERATION AT COUPE 320-501-0024 (TO WONG FOO COUPE)

On 20 November 2019, the Timber Harvesting Compliance Unit (**the THCU**) of the Office of the Conservation Regulator (**the Conservation Regulator**) received information alleging non-compliance with the *Code of Practice for Timber Production 2014* (**the Code**) and the incorporated *Management Standards and Procedures for timber harvesting operations in Victoria's State forests 2014* (**the MSPs**) at Coupe 320-501-0024 (**To Wong Foo coupe**). Please find below the matters investigated and the THCU's findings.

Allegation 1: That VicForests contravened the requirement of MSP clause 3.5.1.1 and harvested on slopes over 30 degrees at To Wong Foo coupe, within a water supply protection area.

The relevant prescription is MSP clause 3.5.1.1. Appendix 3 Table 11, which states water supply protection areas within the Central Forest Management Area (**FMA**), Upper Goulburn Catchment has a slope limit of 30 degrees (Attachment 1).

The investigation found an area of To Wong Foo coupe harvested in 2018/19, measuring 1.1 hectares, that exceeded the 30 degree slope limit (Attachment 2 – Map). The area was surveyed across twenty-three (23) transects measuring approximately thirty (30) meters apart, with an average transect run of approximately thirty-eight (38) meters.

The average slope of the area was 31.8 degrees. The area of exceedance equates to approximately 3.8% of the actual harvest area. Eleven (11) of the transects were recorded as less than 30 degrees or were single transect, non-continuous exceedances and have been excluded from the area or average slope calculations.

The investigation identified that an inherent level of inaccuracy exists in the ability to consistently measure slope in-field to less than 1-degree variation due to factors including, but not limited to, human error in sighting to small targets over rough terrain, obtaining measurements taken from and to natural ground, and pre/post-harvest changes to landform by coupe infrastructure and general soil disturbance. In consideration of this finding, the confidence in the area in exceedance of slope limit is recalculated to approximately 0.56ha or 1.4% of the actual harvest area.

In areas where slope breaches were identified, the THCU assessed the harvest area and adjacent waterway buffers for any evidence of erosion or mass soil movement. No evidence of erosion or the movement of large volumes of soil was observed.

Finding: Breach detected.

VicForests did not comply with legal requirements, being MSP clause 3.5.1.1.

The harvesting of slopes greater than 30 degrees in water supply protection areas results in an increased risk to waterway health and is not acceptable to the Conservation Regulator.

Response

The Conservation Regulator exercises its regulatory powers in the public interest, aiming to serve the public at large and act for the public good to maximise regulatory outcomes and apply the law in a way which is procedurally fair. In considering the appropriate response to this non-compliance, I have carefully considered the Conservation Regulator's Compliance and Enforcement Policy, and had regard to the following:

- VicForests' planning and management actions undertaken at To Wong Foo coupe to manage the risk of exceeding slope restrictions.
- The location of the breach within the landscape and its spatial relationship to known risk factors and protected values (e.g. high erosion soil hazard, waterways).
- The area of harvesting that has exceeded prescription.

While no enforcement action will be taken on this matter, it has been recorded as a breach of MSP Clause 3.5.1.1. The THCU expects VicForests will comply with the prescription as clarified in the letter sent to James Gunn (former Manager Forest Policy and Compliance – VicForests) by Wayne Robins, Director Regulatory Strategy and Permissions, titled '*Clarification of Regulations – Slope Restrictions for Timber Harvesting*' dated 4 September 2020 (Encl.).

VicForests have the option to apply for an exemption or variation from the MSPs under clause 3.5.1.3, where approval can be sought from the Minister or delegate in accordance with section 1.4 for any timber harvesting operations that are not conducted in accordance with clauses 3.5.1.1 or 3.5.1.2.

Neither the Code or MSPs define the term 'slope', or the scale at which it is to be assessed, for the purpose of clause 3.5.1.1. The MSPs does specify in the notes to clause 3.3 Waterway Protection that "*slope is the average slope of the coupe area in the vicinity of the water body.*" For consistency, the THCU has adopted the intent of this prescription and in relation to assessment of compliance regarding slope prescriptions in water supply protection areas, defines slope as:

"the average slope of the topographic feature of interest that is subject to assessment."

The THCU has and will continue to assess slope by taking multiple slope measurements across the subject topographic feature of interest, accounting for minor variances in the landscape.

Proactive assessment of compliance with slope limits in water supply protection areas will continue as a priority under the Coupe Inspection Program (CIP), which targets coupes prior to, during and after harvesting to prevent or minimize environmental harm.

Yours sincerely,

Matthew ZANINI

Manager, Timber Harvesting Compliance Unit
Office of the Conservation Regulator

Date: 08 / 10 / 2020

Attachment 1

3.4 Slope

3.4.1 General slope restrictions

- 3.4.1.1 Exclude **timber harvesting operations** from slopes over 30 degrees.
- 3.4.1.2 Up to 10% of the net harvest area of any coupe can contain areas greater than 30 degrees, where the risk of mass soil movement has been managed accordingly.
- 3.4.1.3 Exclude **timber harvesting operations** from slopes over 25 degrees in the East Gippsland FMA in areas with granite-based soils.

3.5 Water supply protection areas

- 3.5.1.1 Apply the slope limits, seasonal closures, buffer and filter strip widths and other relevant management actions specified in Appendix 3 Table 11 (Water supply protection areas) for timber harvesting operations and associated roading and regeneration in **water supply protection areas**.
- 3.5.1.2 Refer to table 2 in Appendix 5 the Planning Standards for management actions that apply to water supply protection area SMZs in the Benalla-Mansfield FMA, the East Gippsland FMA and Midlands FMA.

Appendix 3 In field prescriptions for values

Table 11 Water supply protection areas.

Catchment	Status	Slope Limit	Seasonal Closure	Stream Buffers	Filter Strips	Comments
Benalla – Mansfield FMA						
Lake Eildon	SWSC		1 June - 31 Oct			
Upper Goulburn (Upper Delatite)	SWSC & SAP		Refer to section 3.2 table 2 in Appendix 5 the Planning Standards for prescriptions applicable to water supply protection area SMZs.			
Lake Nillahcootie	SWSC		Refer to section 3.2 table 2 in Appendix 5 the Planning Standards for prescriptions applicable to water supply protection area SMZs.			
Ryans Creek	SWSC & SAP; DC		Refer to section 3.2 table 2 in Appendix 5 the Planning Standards for prescriptions applicable to water supply protection area SMZs.			
Central FMA						
Sunday Creek	SWSC	30°		20 m	10 m	
Kilmore	SWSC & SAP	30°		20, 40, 60 m	10 m	Buffers in accordance with <i>Notice of Determination of Land Use, Plan No. 1633</i> .
Upper Goulburn	SWSC	30°		20 m	10 m	

[illegible]

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