

## ENGO Briefing Paper– Impacts of *Forestry (Rebuilding the Forest Industry) Bill 2014* on Forestry Tasmania FSC certification

1<sup>st</sup> August 2014

### 1. Background

As part of the requirements for achieving FSC certification, Forestry Tasmania must assess high conservation values and create a forest management plan to demonstrate how it meets FSC requirements. FT must consult with stakeholders on these documents, and this work is then assessed by an independent Certifying Body – in this case SCS Global Services.

The Wilderness Society, the Australian Conservation Foundation and Environment Tasmania have provided a formal submission to Forestry Tasmania on its Draft High Conservation Values Assessment and Management Plan.

At this stage, it is the view of environment groups that Forestry Tasmania cannot meet the rigorous requirements of FSC due to the risks and uncertainties posed by the *Forestry (Rebuilding the Forest Industry) Bill 2014*. A summary of reasons is provided below.

It is our view that the Tasmanian Government is significantly underestimating the difficulties in obtaining FSC, and consequently is relying on a highly speculative and ill-considered legislative approach that threatens Forestry Tasmania's prospects of securing certification. This is despite clear statements recognising the importance of FSC to the industry, and the Government's intent in support FSC certification.

Further, the Government is ignoring the fact that the currently legislated forest protection outcomes, including the planned protection of 392,000 hectares of forest currently classified as future reserve land, provides the best available conditions under which FT could seek to meet the high standards of FSC. In a risk-laden environment, it appears a flawed approach to add any level of unnecessary risk.

Stakeholder support is important in the FSC system. Currently legislated forest protection provides an unprecedented opportunity to secure environment group support for FSC in Tasmania, but the government is consciously seeking to erode that support by failing to deliver legislated and forest protection.

ENGOS and other Tasmanian Forest Agreement signatories have been consistently clear that the outcomes of the TFA are 'mutually dependent'. Preventing the key, legislated forest reservation outcomes clearly compromises ENGO's ability to continue to support other mutually dependent outcomes, such as FSC certification for production forests.

ENGOs have also identified a number of issues with Forestry Tasmania's HCV assessment separate to the impacts of proposed legislation, however it is our view that these issues can be addressed through further analysis and management planning.

## 2. Summary Risks to FSC from the *Forestry (Rebuilding the Forest Industry) Bill 2014*

While the Tasmanian Government has explicitly designed the Bill in an attempt to navigate the requirements of FSC certification<sup>1</sup>, it is clear that the Bill – in the absence of amendments to deliver the TFA forest reserve outcomes - specifically threatens the opportunity to obtain FSC certification. In particular:

- Satisfying a number of requirements of FSC Australia's HCV Evaluation Framework requires secure protection of forest areas to ensure maintenance and enhancement of high conservation values.

Forestry Tasmania has stated a reliance on future reserve land protection to demonstrate protection of some key high conservation values (such as meeting old growth and forest community targets, landscape forest protection, connectivity, roadless areas protection, and minimally-disturbed forests).

The potential of these areas being opened for logging means that FT cannot be reliably assessed as being able to meet environmental targets and performance standards under FSC.

- The Bill proposes to alter the *Nature Conservation Act* so that special species timber harvesting will be allowed in Conservation Areas and Regional Reserves. Currently, these areas consist of 337 conservation reserves (covering 587,818 hectares) and 25 regional reserves (covering 253,650 hectares) that are now available for logging.

Allowing logging to occur in IUCN category IV reserves raises two significant problems for FSC certification:

- 1) Conservation Areas and Regional reserves are explicitly included in FT's assessment in meeting required FSC protection targets.
  - 2) There appears to be no precedent for considering the consequences of legal logging of protected areas under FSC International's rules.
- The Bill creates high levels of uncertainty in regards to the Policy for Association and meeting of HCV reservation targets. The Policy for Association ensures particularly egregious transgressions of FSC values and objectives are not undertaken by companies with FSC in non-certified areas of forest under their control.

The proposed legislated capacity for the Tasmanian Government to approve logging in future reserve lands or conservation areas that a) provides no assurance that HCV will not be permanently destroyed and b) have hitherto been used by Forestry Tasmania to demonstrate

compliance with HCV requirements adds an unacceptable level of risk to FSC and its association with Forestry Tasmania and the Tasmanian Government.

### **3. Detailed Analysis - Interaction of Tasmanian Legislation, proposed Legislation, and FSC requirements**

#### **a. Tenure, Reservation, and Logging**

Currently, under the *Tasmanian Forest Agreement Act 2013* ('the Act'), 392,000 hectares of forest are protected within 'Future Reserve Land'. Timber harvesting cannot legally be conducted on this land.

This area is planned for formal reservation under the *Nature Conservation Act*, in two tranches - September 2014, and March 2015, pending the satisfaction of a number of conditions, including:

- The achievement of World Heritage listing for a subset area;
- The achievement of FSC certification for the specified and separate area of Permanent Timber Production Zone (PTPZ); and
- The production of 'durability reports' by the 'Special Council' of stakeholders established under the Act.

Should gazettal of national parks and reserves not commence by March 2015, the future reserve land will then be repealed, and revert to PTPZ land.

The Tasmanian Government has recently passed the *Forestry (Rebuilding the Forestry Industry) Bill 2014* ('The Bill') through the Lower House of the Tasmanian Parliament. It is as yet uncertain as to whether or subject to what amendments the Bill will pass the Tasmanian Legislative Council.

The key feature of the Bill is that it seeks to change the tenure of future reserve land to 'Future Potential Production Forest zone land'. This means that the 392,000 hectares of forest intended for protection will no longer be protected, should the Bill pass into legislation.

The Bill also creates additional powers of 'exchange' and 'conversion' which further complicate tenure issues. The Crown Land Minister, on the request of the Minister responsible for forestry, can exchange any potential production land for production land. The order formalising the exchange must be approved by both Houses of Parliament.

It remains to be seen as to whether amendments to the new Bill will be passed that deliver the reserve outcomes agreed in the TFA and legislated in the *TFA Act 2013*. In the absence of such amendments, the risks to FSC certification are substantial.

#### **b. Potential Logging of Lands Currently legislated for protection**

In regards to FSC, the Forestry Minister, Paul Harriss, has stated the intent of the Bill as being, in part, to:

*The six-year moratorium on commercial harvesting in the new FPPF zone will protect our immediate markets and FSC certification, while giving existing operators and investors in our timber industry confidence there will be additional timber resource available in the future<sup>1</sup>*

However, other sections of the Bill make clear that timber harvesting is not prohibited in the FPPF zone during the 'six year moratorium'. Harvesting may occur under two mechanisms – 'special species timber harvesting', and 'exchange', or tenure swap, of land.

In regards to the former, any person can apply to the Crown Lands Minister for a permit for special species timber harvesting, defined as 'the harvesting of listed species by partial harvesting'. 'Partial harvesting' is defined as 'harvesting of single or groups of trees whilst retaining other trees including advanced growth trees, seed trees and shelter wood trees<sup>2</sup>'.

Such a definition of 'partial harvesting' includes any harvesting technique with the exception of clearfelling; for example, aggregated retention, which uses clearfell techniques over 70% of a designated coupe area and is used in eucalypt forest with rainforest attributes.

Indeed, given the high costs, and difficult workplace safety conditions associated with selective and partial harvesting techniques, at least in tall eucalypt forests<sup>3</sup>, any harvesting is likely to be intensive with clearfell-type logging and burning

In addition, the 'exchange' provisions of the Bill mean that any area of land in the potential production zone could be exchanged for production zone land. This could foreseeably result in non-harvestable or non-timber producing areas in the production zone being substituted for areas with timber values in the potential production zone. This could occur at any time prior to the FPPF land becoming available for conversion to production zone in 2020.

The Bill also proposes to alter the *Nature Conservation Act* so that special species timber harvesting will be allowed in Conservation Areas and Regional Reserves. Currently, these areas consist of 337 conservation reserves (covering 587,818 hectares) and 25 regional reserves (covering 253,650 hectares) that are now available for logging. Allowing logging to occur in IUCN category IV (formal protected areas reserves raises significant questions regarding the security of conservation protections.

#### **i. Implications for FSC certification**

The HCV Assessment undertaken by Forestry Tasmania relies heavily on the protection of HCVs in the future reserve land. This is explicit for HCV2.1 (native forests with only minimal or natural disturbance), HCV 2.2 (regionally significant forests), 2.3 (connectivity) and 2.4 (roadless areas), and reservation targets under HCV 3.

Without the secure protection of future reserve areas, these areas should not be counted towards the achievement of maintaining and enhancing HCVs.

The Bill proposes changes to allow logging in over 800,000 ha of forests in existing secure reserves. These reserves have been relied on as secure to demonstrate maintenance and enhancement of HCVs.

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<sup>1</sup> Harriss, P. (2014) *Liberal Government to deliver on mandate and rip-up forest deal*, Media Release, 8<sup>th</sup> April 2014.

<sup>2</sup> [http://www.parliament.tas.gov.au/bills/pdf/6\\_of\\_2014.pdf](http://www.parliament.tas.gov.au/bills/pdf/6_of_2014.pdf)

<sup>3</sup> Neyland, Hickey & Read (2012) *A synthesis of outcomes from the Warra Silvicultural Systems Trial, Tasmania: safety, timber production, economics, biodiversity, silviculture and social acceptability* *Australian Forestry*.

The prospect of logging within the currently legislated future reserve land, either through 'partial' harvesting, or the 'exchange' of areas from production zone to potential production zone, gives no guarantee that HCVs will not be damaged. As previously outlined, partial harvesting can and indeed would most likely require significant scale volume production. This would be unlikely to be a one-person-and-an-axe operation.

The decision-making process and justification for Ministerial approval of logging in these areas, as proposed in the Bill, is opaque. Although the Minister is required to have reference to 'conservation values' and 'the implications for Forestry Tasmania's forest management certification', there is no indication as to what data would be required; how conservation values would be assessed; or how impacts to Forestry Tasmania's certification would be quantified or managed.

To provide a theoretical example – the Crown Lands Minister accepts an application for logging of blackwood in the King bioregion. This is approved based on the fact that Forestry Tasmania had met this particular vegetation reservation target as an accepted condition of their certification. Logging occurs in an area of '*Acacia melanoxylon* on rises', resulting in this area no longer being counted towards the reservation target for that community. This means Forestry Tasmania no longer meet their reservation target, and would potentially be subject to a major non-conformance if they continued to log that forest community.

While this theoretical example may or may not be picked up in approval process by the Minister, it illustrates the complications of multi-agency (Forestry Tasmania, Crown Lands, DPIPWE, DIER) decision-making and trying to second guess the response of an independent certifying body, with the potential need for major re-assessment and consultation, resource consequences, and the ever-present reality of non-conformances, complaints processes, and certificate loss based on unintended consequences.

It is impossible for stakeholders to be meaningfully consulted in such an unstable environment. This is particularly pronounced where the proposed legislative and policy changes add such a large degree of uncertainty to the process and to the chances of a positive certification outcome. The current *TFA Act 2013* provides a clearer policy environment much more conducive to achieving certification than the proposed legislative changes.

## ii. Contravening FSC International's Policy for Association

The Policy for Association proscribes a number of activities by entities associated with a certificate holder, including the 'permanent destruction of high conservation values'. Should there be any impacts on proscribed PforA activities by logging operations conducted or authorised by the Tasmanian Government in the future reserve land areas outside Forestry Tasmania's FMU, Forestry Tasmania's association with FSC would be under threat.

## iii.

The *Forestry (Rebuilding the Forestry Industry) Bill 2014* is clearly designed in an attempt to allow Forestry Tasmania one five-year Forest Management certificate, prior to the conversion of future potential production forest to production forest in 2020.

The creation of the FPPF land is an attempt to quarantine any logging that may take place – notionally for 'special species timber' - from any impacts on Forestry Tasmania's FSC certification attempts. In our view, however, this is a substantial gamble.

This constitutes a clear threat to Forestry Tasmania's efforts to secure and maintain FSC. FT, as a Government Business Enterprise owned by the Tasmanian Government, would be subject to the Policy for Association (PforA), and therefore logging in areas outside of Forestry Tasmania's control undertaken by the Tasmanian Government would be subject to the Policy:

***Indirect involvement: Situations in which the associated organization or individual, with a minimum ownership or voting power of 51%, is involved as a parent or sister company, subsidiary, shareholder or Board of Directors to an organization directly involved in unacceptable activities. Indirect involvement also includes activities performed by subcontractors when acting on behalf of the associated organization or individual<sup>4</sup>.***

Given the extensive conservation values analysis conducted for the Tasmanian Forest Agreement process, it is likely that permanent destruction of HCVs could be proven should the future reserve lands to be logged.

Disassociation with FSC involves the stripping of certificates, membership, and any other association with FSC, with associated economic consequences. Such an assessment would be conducted by FSC International.

Given the unprecedented nature in the FSC system of the proposals being undertaken by the Tasmanian Government, it is our understanding that FSC International is conducting an investigation.

It appears remarkable that the Tasmanian Government would take actions to jeopardize Forestry Tasmania's certification assessment. There appears no value for the industry in fundamentally altering the key reservation component of the *TFA Act*, when the current legislation has enabled and provides the best platform Forestry Tasmania will ever get to pursue the certification that the Government recognises is fundamental to the future of the industry.

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<sup>i</sup> Harris (2014) *Liberal Government to deliver on mandate and rip-up forest deal*, Media Releaser, 8<sup>th</sup> April 2014.

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<sup>4</sup> *Forest Stewardship Council. (2011) Policy for the Association of Organizations with FSC, FSC-POL-01-004 V2-0 EN.*