

Part 1: Stakeholder engagement shortcomings

We have examined the result of our extensive engagement with VicForests since SCS Global's audit in 2017 and consider that VicForests has much more to do before it can claim to have adequately addressed SCS Global's 2017 Corrective Action Request in relation to stakeholder engagement.

We consider that VicForests falls short in 3 of the 5 items SCS Global nominated as improvement needed:

- the means by which stakeholders are contacted such as public notice of impending timber harvesting,
- amount, timeliness, clarity and accuracy of content/information being provided to stakeholders, and
- responses to stakeholders regarding their input.

As a result, two key requirements of System Requirement 1.3 in the FSC Controlled Wood Standard (FSC-STD-30-010 V2-0) have not been met to the degree that you would have expected when SCS Global issued its Corrective Action Request in 2017. The two unmet elements of Requirement 1.3 are:

- d) all identified parties shall be provided with access to sufficient information, and
- f) the FME shall be responsive to stakeholder questions or concerns.

In relation to these unmet elements, we acknowledge that VicForests has provided us with information, by email and at meetings, much of which we have found very useful. Also, it has agreed to make a few changes to some of its initial plans at our instigation. Yet much of the information has been of a kind that it is either obliged to provide by the 2014 *Code of Practice for Timber Production*, or else of a kind that a reasonable person would expect to be readily publicly available in any event. Moreover, certain key pieces of information have either not been provided, or not provided in sufficient time to be of use. In relation to changes it has agreed to make to its plans, these have been of a kind that it has undertaken to make as part of its recently adopted Harvesting and Regeneration Systems document and had been progressively bringing into operation.

Examples of VicForests' failure to fully comply with the CARs listed by SCS Global in its 2017 audit are:

- #1 Its refusal to provide us with its 'precautionary principle' operating instruction needed for the purpose of our analysis of the scale and extent of its operations in the Rubicon State Forest (Att 1-1)
- #2 Its failure to provide us with coupe plans and operations maps and ahead of logging (e.g. K2 and Everest)
- #3 Its expectation that coupe plans and maps be sought via email requests when the Code requires they be made publicly available. As we have frequently argued 'publicly available' should mean that they are be downloadable from the web, either directly or via an automated data request system,
- #4 Its failure to disclose expected coupe commencement dates on its website, or else via a regular weekly email alert to interested stakeholders, despite our longstanding request for such a system
- #5 Its failure to inform or consult the local community in its planning for a very high conservation value (HCV6.1) coupe, Rampart, on the edge of the Yarra Ranges National Park (refer Part 2, Att 2-2)
- #6 Its non-acceptance of our request that our principal researcher, Dr Nick Legge, sit alongside one of its forest planners at Woori Yallock (with a suggested time requirement of no more than an hour) so as to efficiently answer our queries about age class distribution in the Rubicon State Forest (Att 1-2),
- #7 Its refusal to defer logging of coupes while alleged Code breach reports arising from the coupe plans are under active investigation by the regulator,
- #8 Its failure to follow-up its offer for RFPG principal ecologist Ann Jelinek to accompany its survey team in the coupe Snifter, which we understand is set to be logged very soon (Att 1-3),
- #9 Its premature declaration of Timber Harvesting Safety Zones (THSZs)¹ so making it risky for us to survey prospective coupes (e.g. Mongoose (287-515-0010) listed as THSZ 14/09/2019, but still unlogged),
- #10 Its failure to abide by its undertaking to put a buffer in coupe Snobs 14 at least 40m wide along Snobs Creek Road (Att 1-4) and failure to even respond to a key email concerning this coupe. This is now an unresolved Code breach report (2019-0060).

¹ Under the Sustainable Forests (Timber) Act VicForests is required to declare coupes and the surrounding area to be THSZs as a way of stopping protesters from obstructing operations, however VicForests may declare areas to be THSZs well in advance of logging commencing, which also means listing is no guide to when logging may start.

From: [REDACTED]
Sent: Monday, June 24, 2019 3:07 PM
To: [Rubicon Forest Protection Group](#)
Cc: [REDACTED] (VF)
Subject: RE: Fire Areas Alexandra District

Hi Nick

Sorry for the delay in follow up , after my initial acknowledgement of your email .

Murray will be sending through information as per your query .

Regarding your request of a copy of VicForests Instruction , this is an internal operational document and as such , I am unable to forward

Thanks

Liz

From: Rubicon Forest Protection Group <info@rubiconforest.org>
Sent: Thursday, 6 June 2019 6:57 PM
To: [REDACTED] au>
Subject: Re: Fire Areas Alexandra District

Thanks Liz, and just one more thing to clear up if possible. . . . the data I downloaded from DELWP's forest explorer website identifies 669 ha in block 285 that was clearfelled in the decade 1970-79. While some of this area may actually actually have been thinnings, i checked the thinnings figures in two FCV Annual reports (1979-80 and 1978-79) and there was very little ash thinnings statewide in those years, so the DELWP figures would seem to be correct.

That then raises the question as to why the pre-fire age class data Murray provided in tables 2a-c in the first version had only 31 ha in block 285 in the decade 1979-80 when on my reckoning that figure should be ~670ha.

This is important to RFPG's arguments, since if VicForests has classed the logged area on the decade 1970-79 as 1939 regrowth then even the bare 283 ha of 39 regrowth that is left in block 285 (table 2b, version 2) is likely to be overstated.

Also, would it be possible to provide me with a copy of VicForests instruction regarding the interpretation of Precautionary Principle that was cited in evidence at the FoLbp v VF court case this week?

kind regards

Nick Legge
Rubicon Forest Protection Group



From: [Rubicon Forest Protection Group](#)

Sent: Thursday, June 27, 2019 1:31 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: Re: Rubicon fire areas

Thanks again Liz and Murray, but I remain baffled!!

Your figures, Murray, indicate that across the Alexandra district, salvage logging of 2009 fire-killed ash (ie fire severity 1 &2) amounted to 450 ha (=377+73).

However the forest explorer data to 2017-18 (see table below) indicate that salvage logging of ash amounted to 863 ha. While your figure, Murray, of 377 ha of salvage logging in 2010-2019 almost tallies with the 323 ha in forest explorer, your figure for salvage logging for the decade 2000-2009 of 73 ha is far short of the figure of 540 ha in forest explorer.

<Table deleted>

Could it be that ash salvage logging occurred in areas where the forest was not fire-killed?

Turning now to the data in Table 2a provided to me earlier this month (ie v2), it shows 8,979 ha of ash in Alexandra District originating in the 6 decades 1960-69 to 2010-19.

Yet the forest explorer data, to which I add the 3,711 ha of 2009 fire-killed ash not salvage logged (see table below), indicates that there is 9,732 originating in these 6 decades. On this analysis, the only decade in which there is much correspondence between the figures is 2000-09, with big discrepancies for the decades 1970-79 and 2010-19

<Table deleted>

The reason I am so keen to be able to reconcile the various figures is because we believe that there is less '39 regrowth in the RSF than VicForests may have been relying upon it its various calculations (incl the Resource Outlook and the scheduling of coupes within the TRP), which is contributing to the unsustainable overlogging of the RSF and the Central Highlands more broadly. To this end we are developing a further submission to the VF Board, following our 2016 submission *Unsustainable!*, and we would like to get our facts straight before submitting this.

To this end, I ask again whether it would be possible for me to sit down with Murray for an hour or so, so we can more easily sort out what is happening.

regards

nick legge

Rubicon Forest Protection Group



From: "Tim McBride (VF)" [REDACTED]
Subject: RE: survey of Snifter coupe
Date: 3 June 2019 at 11:50:34 am AEST
To: Ann Jelinek [REDACTED]
Cc: "Alex Messina (VF)" [REDACTED]

Hi Ann,

I am working on a survey schedule.

Be aware, that according to survey protocol (DSE 2011 document), weather conditions may impact survey scheduling. As such, whilst we may plan a survey to be conducted on a certain day, we may cancel the survey at anytime due to inappropriate weather conditions.

I will advise of a schedule by next week.

Regards,
Tim

Timothy McBride | Manager, Biodiversity Conservation and Research

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-----Original Message-----

From: Ann Jelinek [REDACTED]
Sent: Monday, 3 June 2019 11:38 AM
To: Tim McBride (VF) [REDACTED]
Subject: survey of Snifter coupe

Hello Tim, as discussed at the recent VF/RFPG meeting, you mentioned you would invite RFPG on the survey of Snifter coupe. Checking where you are with the proposed survey? Many thanks

Ann

From: [Rubicon Forest Protection Group](#)
Sent: Saturday, March 02, 2019 9:49 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: follow-up from Friday's meeting

Hi Dave

At the risk of jeopardising the goodwill you showed at our meeting on Friday by agreeing to put in a buffer along the road adjacent to Snobs 14 on the basis that we approach DELWP to get it to expedite the degazetting of the small SPZ mistakenly placed in the middle of the coupe, I feel it is necessary to reiterate the point I made to you at the end of our meeting about the 30 degree slope at the top of Snobs 13 and what it means.

As you know the MSPs contains the following provision:

3.4.1. 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.

On my reckoning from the Ops map the proposed net harvest area of Snobs 13 area is ~4 ha. According to my analysis of the contour lines the slope along the northern boundary of the net harvest area is over 30 degrees. This area – which I estimate is ~1.6 ha - corresponds with the grey shaded area on the ops map which denotes Code exclusions.

1.6 ha is ~40% of the net harvest area in Snobs 13.

As well as putting in the buffer along the road - - which we would prefer was wider than 40m to reduce the propensity for blackberry proliferation - - we would ask that specific steps be taken to prevent blackberry proliferation post harvest, which is very common in the Rubicon. This could involve hand spraying of blackberry growth within 50-60m of Snobs Creek Road at yearly intervals post harvest until canopy closure.

Indeed we think that Code Clause 2.2.2.14 (**Implement appropriate control actions where timber harvesting operations have introduced or exacerbated a pathogen or weed**) should make this standard practice throughout the Rubicon State Forest, especially for coupes where the harvested area abuts permanent roads. We also note that MSP clause 4.5.2.3 requires **pre-harvest assessment to determine the type and extent of weeds on the coupe** (as well as post-harvest assessment of weeds in Clause 4.5.2.4), but that none of the Coupe Plans we have seen indicate this occurs.

We have not raised this issue previously and would like to know whether the required weed assessments have, in fact, been carried out.

Also, given the importance of this area as a tourist destination now and into the future we believe that the landing should be fully rehabilitated in the sense that the original landform should be restored. Simply removing bark and cording and replacing stockpiled topsoil does not meet the Code definition of 'rehabilitation' which states (p.16) that **'rehabilitation' means the restoration of a site of disturbance usually associated with landings and other within-coupe infrastructure.**

Finally, we would like to be advised of the authority under which K2 and Everest will be accessed. Obviously Barnewall Plains Rd is a permanent road, but the proposed access to Everest that leads from the switchback on Barnewall Plains Rd 1km north of the Torbreck Summit Track along an old access track used to log coupe 289-005-0001 in 2004-05 is certainly not a road, nor an official track and is not on the TRP.

We note that the TRP does include a driveway for this coupe located within part of former coupe 289-005-0001, but it is only 250m long and does not extend to Barnewall Plains Road.

We realise that the intended access to these coupes may have originally been via Dry Cleaner and Dry Creek Hill Rd, and that this is not possible with the court injunction in place, however we cannot readily see how the proposed access that you indicated at Friday's meeting complies with the Code, specifically Clause 2.5.1.4 which states that **Timber harvesting operations must only be undertaken within established coupe boundaries as indicated on the Forest Coupe Plan and where required marked in the field, unless the timber harvesting operation is specifically sanctioned or exempted in accordance with this Code.**

If an exemption has been granted by the Minister or delegate under MSP Clause 1.4, we would appreciate being provided with the relevant exemption request made by VicForests. Assuming it has been properly exempted we also eagerly await the results of the viewshed analysis from the vantage points of Skyline Road, the Goulburn valley Highway and the summit of Mt Torbreck as well as the coupe plans and maps for all the scheduled coupes we discussed.

regards

Nick Legge
Rubicon Forest Protection Group
rubiconforest.org



Part 2: Illegal Logging

Since its formation in 2015 the Rubicon Forest Protection Group has argued that the scale and intensity of logging in the Rubicon State Forest, coming on top of the devastation caused by the 2009 wildfire, has compromised, and will continue to compromise the biodiversity of the entire area in contravention of several of the principles of the 2014 *Code of Practice for Timber Production* (the Code). The Code is the principal legislative instrument governing planning and conduct of timber harvesting operations.

The six Code principles are that:

- 1. Biological diversity and the ecological characteristics of native flora and fauna within forests are maintained.*
- 2. The ecologically sustainable long-term timber harvesting capacity of forests managed for timber harvesting is maintained or enhanced.*
- 3. Forest ecosystem health and vitality is monitored and managed to reduce pest and weed impacts.*
- 4. Soil and water assets within forests are conserved. River health is maintained or improved.*
- 5. Cultural heritage values within forests are protected and respected.*
- 6. Planning is conducted in a way that meets all legal obligations and operational requirements.*

One of the difficulties we have faced in pursuing this line of argument is that the principles of the Code are not adequately reflected in its provisions or those of its incorporated rules, the *Management Standards and Procedures* (MSPs). The THCU refuses to refer to the principles of the Code in circumstances where ambiguity may exist, or where provisions needed to meet the relevant principles are absent.

Despite the weakness of the Code, we continue to document and submit to the regulator, the Timber Harvesting Compliance Unit (THCU) in DELWP, the many instances where the Code has been breached.

We have examined the result of the various reports to THCU alleging breaches of the since SCS Global's audit in 2017. Despite THCU's findings in a number of cases that VicForests has complied with the regulations, we consider that this apparent compliance was due to a combination of errors and omissions in the Code and a preference on the part of THCU – in the face of ambiguity - to take no action.

In support of this claim we point to several relevant findings by [the Independent Review of Timber Harvesting Regulation](#) commissioned by DELWP in 2018. The Review panel found that¹:

- there are fundamental issues with the regulatory instruments (such as action statements) and whether they can be implemented,*

and that there is a

- failure to use the full range of existing powers is partly because of a lack of guidance for Authorised Officers, a lack of regulatory imagination and a tendency to look for reasons not to act.*

Following the Review Panel report DELWP announced a review of the Code which amongst other things aims to rectify such shortcomings. The review was initially intended to proceed in two stages: Stage 1 would have corrected 'errors and ambiguities' and Stage 2 was to be a comprehensive review to all the provisions of the Code to be updated in the light of current understandings.

However in attempting to implement Stage 1, DELWP completely bungled it obliging the Minister to withdraw the proposals and combine Stages 1 & 2 in a single process. This is set to commence later this year (see <https://www2.delwp.vic.gov.au/futureforests/about/latest-news>).

We firstly point to the various cases that THCU has investigated (arising from VicForests' actions since SCS Global submitted its report on its 2017 investigations) but then closed without finding a breach. We explain how the findings rely either on 'interpretive licence' or errors/omissions in the Code and how if the Code Principles had been taken into account – as one would expect in such circumstances - VicForests would have been found to have been in breach of the regulations.

¹ Refer p.38 of Review Panel Report

Importantly, we imagine that FSC accreditation requires that entities should not rely on regulatory ‘loopholes’ or enforcement weaknesses to demonstrate that actions are entirely compliant with the law.

We note that for logging to be deemed ‘legal’ under FSC-STD-30-010 V2-0, it must comply with all the elements of Table 1 in section 3.1. We argue that despite various THCU findings, VicForests cannot claim that it is compliant with Table 1, in particular requirement b), but possibly also requirements c) and d), depending on how the audit team may interpret these.

Requirement b) stipulates that the FME must comply with ‘*applicable management planning requirements*’, which we take to mean compliance with the entire regulatory regime, including all legislation and attendant instruments including the *Allocation Order*, the *Timber Release Plan* and the Code.

The following table identifies some of the reported breaches which we regard as indisputable, but which have not been found so by THCU. As a small community group with limited resources we have not formally disputed all of these instances of rejection, but have done so in most cases.

Some alleged breaches arising since 2017 and closed by THCU for insubstantial reasons

Report date	Case	Closure date	Nature of alleged breach	Att
11/9/2018	2018-0080	15/3/2019	Coupe aggregate > 120 ha in breach of MSP clause 2.4.1.2	2.1
18/4/2019	2019-0030	29/5/2019	Landscape sensitivity area logged in breach of MSP clause 5.3.1.6	2.2
19/8/2019	2019-0051	10/10/2019	TRP breaches the Code (various clauses)	2.3
20/8/2019	2019-0052	2/10/2019	Landscape sensitivity area currently being logged in breach of Code clause 2.1.1.1.vi	2.4

Source: RFPG files and Forest Reports (THCU) [website](#).

In all the above cases (except case 2019-0051) RFPG responded to the case closure advice by refuting the reasons advanced by THCU (where reasons were given) for rejecting our allegations, but in most cases no response was provided addressing our reasoning and as far as we know the cases remain closed. Our initial arguments, THCU’s rejection reasons and our response to these reasons are set out in attachments to this submission under each breach report heading.

As well as the alleged breaches listed above, we have submitted a number of reports relating to actions occurring since 2017 that are still being investigated. Given that THCU has dealt expeditiously with most cases in the past year (our challenges to its findings aside), this suggests the likelihood of our claims being upheld:

Breaches alleged in Rubicon State Forest occurring after 2017 still being investigated by THCU^{Note 1}

Report date	Case Number	Nature of alleged breach	Att
14/6/2018	2018-0036	Regeneration burn escape on Royston Range in coupes Super Ted and Bananaman breaching Code Clause 2.6.1.8	-
23/8/2019	2019-0055	Proposed logging of Mongoose to breach biodiversity protections in Code Clauses 2.2.2.2, 2.2.2.8 and 2.2.2.9	3.1
29/8/2019	2019-0058	Proposed logging of a range of specified coupes to breach water quality and quantity protections in Code Clause 2.1.1.1.v	3.2
28/8/2019	2019-0060	Past (Snobs 14) and proposed logging in breach of landscape sensitivity protections in Code Clause 2.1.1.1.vi	1.4

Source: RFPG files and THCU/DELWP [website](#).

Note 1: as at 17/9/2019

In concluding this section we would also refer the audit team to the voluminous documentation submitted by the plaintiffs in two court cases involving alleged illegal logging by VicForests that are currently awaiting judgement. Particularly relevant is the VicForests v Friends of Leadbeaters Possum² which deals with threats posed by past and projected logging to the listed threatened species, the greater glider and leadbeaters possum, including the lack of a sound scientific basis for VicForests’ ‘safeguards’ for greater glider habitat.

² Refer <https://www.leadbeaters.org.au/friends-leadbeaters-possum-inc-v-vicforests/> for the range of relevant court documents

From: [Rubicon Forest Protection Group](#)
Sent: Saturday, March 16, 2019 6:16 PM
To: Forest.Reports@delwp.vic.gov.au
Cc: [REDACTED]
Subject: Re: FOREST REPORT 2018-0080, Case Closure, Forest Report applicable to multiple VicForests' coupes in the Rubicon State Forest

Dear Ms Andreatta

I'm truly astonished by your response. As if your response of 10 January was not evidence enough of the sorry state of your unit's law enforcement obligations, your reply of yesterday takes the cake.

In closing this case you refer to only the first argument presented in our report of 14 January alleging the 120 ha rule breach on the Royston Range. Staggeringly, your letter appears to ignore the other argument by which we allege the breach arose, namely through the death of retained vegetation that would have otherwise separated several of the coupes. You neglect to mention our rejection of your patently erroneous assumption "*that 'retained' means retained during timber harvesting. If vegetation or trees are retained but subsequently impacted by regeneration burning, they are still deemed to have been retained.*"

As we pointed out, this assumption is wholly contradicted by section 1.2.4 the *Code of Practice for Timber Harvesting 2014* which states:

"Timber harvesting operations are defined in the *Sustainable Forests (Timber) Act 2004* as any felling, cutting, removing and haulage activities carried out for the purposes of sale or processing and sale of **timber**. [. . .]. Any roading, **tending**, **regeneration** or **rehabilitation** activities conducted in association with a timber harvesting operation are by definition, also a timber harvesting operation."

The definition in the *Sustainable Forests (Timber) Act 2004* specifically includes regeneration burning as part of a timber harvesting operation. Why does your letter not respond to this?

Perhaps your reference to the issue of MSP Clause 2.4.7.1 and the lack of definition of 'retained vegetation' in the Code was intended to be a way of sidestepping acknowledgement of your error and/or indirectly bolstering your case by citing this putative loophole.

If the former, it would be a disappointing for a public servant in such a responsible position not to own up to making a mistake. If the latter - - ie a roundabout way of saying that despite distinct areas of 'retained vegetation' being killed, the lack of a definition of 'retained vegetation' meant that these fire-killed areas of forest could still be regarded as being 'retained vegetation' - - then I suggest someone has lost the plot.

To put the breach completely beyond doubt – as if that were necessary – we point to the requirements adopted by VicForests itself in its own policy document "*Regrowth Retention Harvesting Instruction V2.0*" dated 1 Feb 2016. It states (p.11) "If the regeneration burn has [significantly] impacted the retained area reducing its effectiveness, the unburnt retained area must be recalculated to determine the new percentage of influence." So VicForests itself considers that if surrounding vegetation is killed, then it cannot be regarded as being 'retained'.

As we sought in my reply to you of 14 January, we do not ask for VicForests to be prosecuted for this breach, simply that you require VicForests to publicly acknowledge its wrong-doing in the local press (e.g. Alexandra Standard). We would expect such a *mea culpa* to be prominently displayed.

I also attach a revised map to replace the one I submitted with the breach report for this group of coupes sent to THCU on 17 December 2018, and which we assume led to this case being opened. As a result of a mistake I made, for which I apologise, the area outlined in red in the original map was only 173 ha, less 3 ha of retained islands, making it 170 ha in total. However I failed to also include the coupe Aquaman (289-510-0006) which was harvested in 2013-14, which the attached version does, taking the 5 year aggregate to 2017-18 to 194 ha – a truly shocking breach. The map includes the harvested areas determined by VicForests as overlays thereby also showing the location of the fire-killed areas.

We realise your unit is still pondering whether the escaped regeneration burn is itself a breach, which in our view it obviously is, but perhaps your investigators are considering treating it as an unfortunate accident which should be overlooked. However, in relation to the consequential breach of the 120 ha rule, such a view is clearly unsustainable since it ignores two additional key facts, namely that that VicForests deliberately chose to log

- an excessive number of adjacent coupes within a 5 year period, and
- coupes that were located on steep slopes giving rise to the huge and well-understood risk of a regeneration burn escaping.

These actions, while individually consistent with the provisions of the Code, taken as a whole, with hindsight and with foresight, were at odds with Code Principle #1 (namely that “biological diversity and ecological characteristics of native flora and fauna within forests is maintained”) and a range of mandatory actions that follow from that, including Clause 3.2.2.1 (protect unlogged areas from fire), 2.2.2.1 (the precautionary principle) and 2.1.1.1 (long-term forest planning requirements).

Please note that we also reject the reasoning you have provided in closing this case. Taken to its logical extent the lack of a maximum permissible width for a road could mean that any access road between coupes could be cited as a reason for finding that adjoining coupes are not contiguous. Such a preposterous position would clearly fly in the face of everything the Code is intended to protect. For example there is also a road running between Rocketman and Super Ted located in a gap in the ‘retained vegetation’ that is 60m wide.

Based on the above information, we expect you to re-open this case forthwith and given the extensive investigations that have already occurred, we look forward to being advised in the near future that DELWP considers that VicForests has breached the law in relation to coupe aggregates not exceeding 120 ha.

Should you require further information please contact the undersigned by email or on 0403 035 224.

Nick Legge

Rubicon Forest Protection Group

rubiconforest.org



Earlier this year VicForests logged the coupe Rampart on Dom Dom Saddle (309-501-0003). Dom Dom saddle borders the Yarra Ranges National Park and is an area listed in the MSPs which VicForests is therefore obliged to protect pursuant to MSP Clause 5.3.1.6. This Clause requires that *'timber harvesting operations are to be managed in a way that ensures landscape alterations [between 0.5 and 6.5km away] are only subtly apparent within five years of the operation, and the shape, position and timing of such operations minimise their visual impact'*. The coupe lies within a special management zone (SMZ) reinforcing the need for viewshed protection.

This much is not in dispute.

In advising us of the closure of this case THCU referred to the extensive analysis VicForests had done on the visual impact of logging this coupe, however none of this analysis examined the view from the Maroondah Highway close to the coupe. Approximately 150m north of the Dom Dom picnic ground the logging scar is readily visible from the Maroondah Highway. While most drivers may be concentrating on the road and may not notice this scar, it is readily visible to passengers.

But what is most astonishing is that the coupe plan provided to us (date/time stamped 05 Dec 2018, 04:08:37pm) envisaged only 6.3 ha being logged and indicated that the plan had been submitted to DELWP to confirm compliance with the relevant SMZ plan 309/07, virtually all of which would have made the logging barely visible from the highway. However, someone decided to modify the original plan and an extra area was logged that ensured the scar was fully visible from the highway. This is evident from the official operations map for the coupe (see next page) provided to us by VicForests.

In this regard we note the following comment on p.19 in the coupe plan under the heading 'Other landscape issues':

Supervising FO to regularly drive along the Maroondah during harvesting to check for visual impacts and if present adjust operations accordingly.

We can only presume that it was the supervising FO who decided that it was OK to extend the coupe up the slope, despite the original plan providing otherwise and the above management requirement only contemplating a reduction, not an extension, of the proposed harvest area.

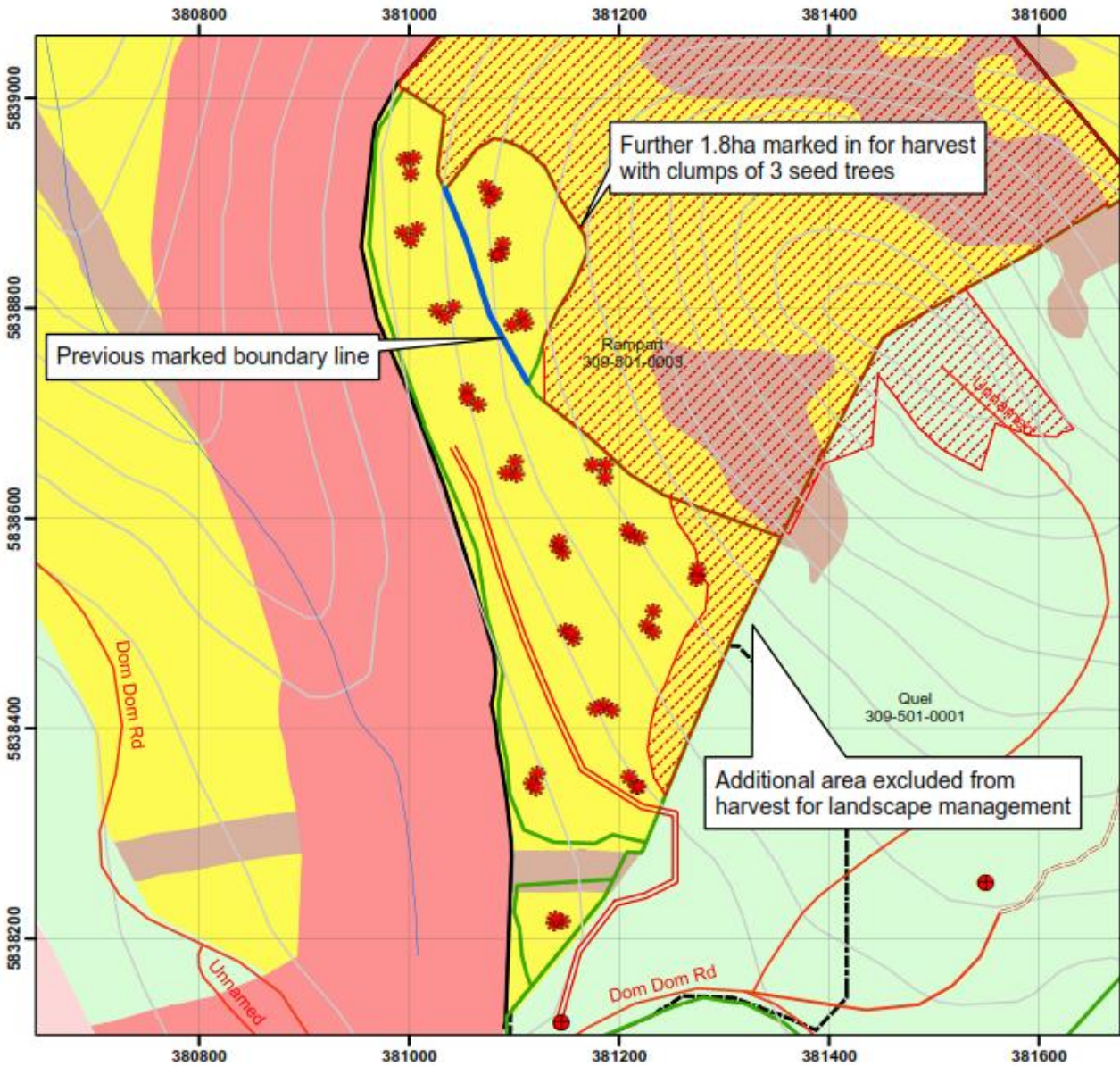
In our view the crucial importance of this coupe as the gateway to the Yarra Rags National Park to the south, or conversely the gateway to the Shire of Murrindindi to the north, also means that at the very least the community of Narbethong should have been given a say in the planning for this coupe.

Accordingly, while THCU may have exonerated VicForests, it is our strong view that the logging of this coupe remains in contravention of the Code.



Operations Map

FMA:	CT	District:	Marysville	Gross Area ha:	36.37
Coupe Address:	309-501-0003	Easting/Northing (MGA55):	381134 5838607	Est Nett. Area:	13.0 ha
Coupe Name:	Rampart	Lat/Long:	37d 35m 31s S 145d 39m 13s E	Silvic System:	STR



LEGEND Forest Management Zones General Management Zone Special Management Zone Special Protection Zone Code of Forest Practice Other Public Land Conservation Parks and Reserves Other Parks and Reserves OPR - Limited Timber Harvesting Plantations Commonwealth Land		Coupe Boundaries Approved TRP Coupe Approved TRP Driveway Harvest Unit/Roadwork Unit Marked Nest Area (if different to Harv/RW Unit)		Actual Features Stream Crossing Actual Landing Location Actual Exclusion Area (includes retained habitat) Hazards Layer TRACKS Actual Coupe Access Snig Tracks Existing Side-Cut Boundary Trail Other MARKING Buffer Filter General		Additional Features Water Point Helipad Emergency Evacuation Point Other Planned Features Proposed Landing Site Proposed Exclusion Area	
		Traffic Management Signage Stop/Go Control Point Barrier/Gate Other		Map Scale 1:5,437 0 55 110 220 Meters		Map Projection: MGA55 	
				Map Date: 1/02/2019		Map Template: 02-02 - 15-01-2014 Produced By: Jacob Brereton	

Disclaimer: This map is generated from VicForests and Victorian Government data and may be of assistance to you. However, VicForests does not guarantee that the publication is without flaw of any kind and therefore disclaims all liability for error, loss or damage which may arise from reliance upon it.

Since 2016 RFPG has been arguing to VicForests, to Government Ministers and to the Department of Environment Land Water and Planning – based on publicly available Government data and reports – that the scale and intensity of logging in the Rubicon State Forest since the fires of Black Saturday 2009 represents an existential threat to the entire forest ecosystem of this area.

On 19 August this year we lodged a report with the THCU alleging that the Timber Release Plan (TRP) gazetted on 24 April 2019 breaches a number of the mandatory provisions of the Code, as well as its first two principles, namely that:

- 1. Biological diversity and the ecological characteristics of native flora and fauna within forests are maintained.*
- 2. The ecologically sustainable long-term timber harvesting capacity of forests managed for timber harvesting is maintained or enhanced.*

Our report to the THCU (TRP breach report from RFPG 190819 –*Fire and logging as a biodiversity threat with serious and potentially irreversible ecological consequences for the Rubicon State Forest*) is to be found in separate attachment 2-3a.

THCU declined to investigate this report despite assessment of the TRP being an explicit responsibility of the Office of the Conservation Regulator (OCR) and our report referencing the various elements of the Code that we allege the TRP contravenes. THCU's closure letter dated 10/10/2019 stated (email to RFPG of 11/10/2019):

Your report has been assessed and it has been determined that the allegations you have raised are matters not currently regulated by the Code of Practice for Timber Production 2014 (the Code) but are relevant to forest policy.

Considerations regarding whether landscape scale biodiversity issues relating to timber harvesting are being managed as intended is a matter for the forest policy unit within DELWP as these are long term forest management planning issues. The Office of the Conservation Regulator and THCU may provide suggestions to the policy unit, however THCU's responsibility is to regulate timber harvesting operations and monitor and enforce the Code prescriptions as they apply to those operations.

It went on to claim that the OCR's role was simply to ensure that coupes on the TRP were within the area specified in the Allocation Order despite OCR documentation³ referring to 'compliance with the Allocation Order' as an explicit element of its remit. Note that for the [Allocation Order](#) to be valid it must comply with all relevant legislation and regulatory instruments. This includes the principles of ecologically sustainable development enshrined in the Sustainable Forests (Timber) Act 2004, the relevant parts of which are set out on the following page.

RFPG remains convinced that the matters we raised in breach report 2019-0051 are regulated by the Code and that the TRP as it applies to the Rubicon State Forest is indeed a Code breach.

THCU referred this report to the Forest Policy Unit in DELWP but we are still awaiting a response, despite chasing the matter upon several occasions.

³ Ibid.

Sustainable Forests (Timber) Act 2004
No. 48 of 2004
Part 2—Sustainable Forest Management

s. 5

PART 2—SUSTAINABLE FOREST MANAGEMENT

5 Principles of ecologically sustainable development

- (1) In undertaking sustainable forest management in accordance with this Act, regard is to be had to the principles of ecologically sustainable development set out in this section.
- (2) Ecologically sustainable development is development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.
- (3) The objectives of ecologically sustainable development are—
 - (a) to enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations;
 - (b) to provide for equity within and between generations;
 - (c) to protect biological diversity and maintain essential ecological processes and life-support systems.
- (4) The following are to be considered as guiding principles of ecologically sustainable development—
 - (a) that decision making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
 - (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;

Sent: Monday, August 19, 2019 6:03 PM

To: Forest.Reports@delwp.vic.gov.au

Cc: [REDACTED]

Subject: logging of Everest (289-505-0003) and K2 (289-504-0001) will breach two Code Clauses

Good afternoon Forest Reports

We have discussed the coupe Everest with VicForests at two of our recent meetings, and have been provided with both the coupe plan and ops map as well as a number of viewshed analyses that we sought.

However the one viewshed that we didn't seek – but should have – is the view onto Everest (also K2) from the summit of Mt Torbreck. You will see from the attached Google Earth image that visitors to the summit of Mt Torbreck – and the LCC's Final Melbourne Area 2 Report noted its popularity with bushwalkers – will stare right down onto this coupe.

As we have long argued to you – arguments to which we have yet to receive a response – the Code does not presume that all areas of 'landscape sensitivity' are listed in Table 9 of Appendix 5 the Planning Standards.

We remind you (yet again) that the Code defines 'landscape sensitivity area' as:
areas identified as having a high scenic quality and visual sensitivity. They are usually areas that are readily visible from high-usage recreational facilities such as look-outs, walking tracks, tourist roads, or campsites.

and that Code Clause 2.1.1.1.vi requires that long term (strategic) forest management planning must *minimise adverse visual impact in landscape sensitivity areas.*

And we likewise also remind you (again) that the Code does not presume that long-term (strategic) forest management planning is restricted to forest zoning. Rather forest zoning is simply one long term forest management planning tool. Obviously the TRP is another. You may care to note that the term 'such as' appear three times in the following paragraph in the 2.1.1. preamble which endeavours to capture what 'long term (strategic) forest management planning' amounts to:

Long-term (strategic) forest management planning is undertaken in accordance with legislation and processes such as regional forest agreements and includes outputs such as policies relating to specific forest values such as threatened species and forest management plans.

Mt Torbreck – the highest mountain in the Shire and the tallest mountain between Melbourne and Mt Buller – is unquestionably a landscape sensitivity area, both the views of it and views from the summit lookout. Indeed you would be aware that its official designation is **Mt Torbreck Scenic and Natural Features Reserve**. Yet remarkably the coupe plan prepared by VicForests for Everest in the category 'Landscape issues' states that there are no landscape issues in this coupe, and 'other landscape issues' are identified as 'not present'. Viewed from the Maroondah Highway at the Acheron Cutting lookout and from Goulburn Valley Highway between the walnuts reserve and Snobs Creek Rd turnoff it will appear as a jagged gap in the ridge top treeline since the net harvest area straddles the ridgeline. As you would know both the Goulburn Valley and Maroondah Highway are designated tourist routes in Table 9 of Appendix 5. While both these views are more than 6.5km from the coupe, and so these views do not contravene MSPs Clause 5.3.1.6, views to such a significant site as Mt Torbreck, which may well also have aboriginal cultural significance, are clearly a special case.

How is the Murrindindi Shire supposed to develop a forest-based tourism and eco-tourism strategy to take over from logging when it ends, if key vistas like this are to be ruined? For this reason we are copying this email to Cr Sandice McAulay, Mayor of Murrindindi, and will be separately forwarding our concerns to the Hon Jaclyn Symes, Minister for Regional Development and our local member.

The second Code clause that the logging of these two coupe will contravene is Clause 2.2.2.2 the precautionary principle. This breach arises because of the past overlogging of the ash forests of the Rubicon State Forest and the 2009 fire (see report lodged earlier today) and the critical need to preserve remaining areas of intact forest in the northern part of the forest, especially given the massive habitat loss that has occurred only 2km away on the Royston Range.

The latest logging schedule we have been given indicates that logging of this coupe will commence in September so we ask that you advise us as soon as possible regarding your expected timelines for investigating this case.

nick legge



Rubicon Forest Protection Group





Department of Environment,
Land, Water and Planning

71 Hotham Street
Traralgon, Victoria 3844
DX 219284
delwp.vic.gov.au

Nick Legge
Rubicon Forest Protection Group

Forest Report:
2019-0051

Dear Mr. Legge,

**ASSESSMENT OF FOREST REPORT 2019-0051 REGARDING 2019 TIMBER RELEASE PLAN
AND ALLOCATION ORDER FOR RUBICON STATE FOREST.**

Thank you for your Forest Report received by the Timber Harvesting Compliance Unit (THCU) of the Department of Environment, Land, Water and Planning (DELWP) on 19 August 2019 in relation to the 2019 timber release plan and allocation order for the Rubicon State Forest. The Forest Report reference number is **2019-0051**.

Your report has been assessed and it has been determined that the allegations you have raised are matters not currently regulated by the Code of Practice for Timber Production 2014 (**the Code**) but are relevant to forest policy.

Considerations regarding whether landscape scale biodiversity issues relating to timber harvesting are being managed as intended is a matter for the forest policy unit within DELWP as these are long term forest management planning issues. The Office of the Conservation Regulator (OCR) and THCU may provide suggestions to the policy unit, however THCU's responsibility is to regulate timber harvesting operations and monitor and enforce the Code prescriptions as they apply to those operations.

THCU must assess compliance against the Planning Standards, the Code and Management Standards and Procedures as they are written. The THCU is unable to speculate or infer a standard or requirement that is not specified by the prescription being assessed. Adverse findings against any person or entity cannot be made if the standard that the accused is being held to can only be proven by inference or speculation of the intent of the rule. For these reasons, the THCU must assess timber harvesting operations on face value and against the prescription as it is stated.

I also advise that in relation to the Statement of Regulatory Intent, the OCR commitment to assess a Timber Release Plan (TRP) for compliance with the Allocation Order is an action to check that coupes on the TRP are contained within the Allocation Area, as defined by the Allocation Order 2013 as amended on 24 April 2019 by the Allocation (Amendment) Order 2019 (available at <http://www.gazette.vic.gov.au/gazette/Gazettes2019/GG2019S153.pdf#page=5>).

Any personal information about you or a third party in your correspondence will be protected under the provisions of the *Privacy and Data Protection Act 2014*. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorized by law. Enquiries about access to information about you held by the Department should be directed to foi.unit@delwp.vic.gov.au or FOI Unit, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002.



The issues raised by Forest report 2019-0051 have been included in a referral to Forest.Regulation@delwp.vic.gov.au for further consideration by the policy unit.

Yours sincerely



STEPH ANDREATA
Manager Timber Harvesting Compliance

Date: 10/10/2019

From: [Rubicon Forest Protection Group](#)
Sent: Thursday, October 03, 2019 4:55 PM
To: [Forest Reports \(DELWP\)](#)
Cc: [REDACTED]
Subject: Re: FOREST REPORT 2019-0052, Case Closure, Forest Report applicable to VicForests' coupes 289-504-0001 (K2) and (Everest) 289-505-0003

Good afternoon Steph.

I request that you immediately re-open this case.

Our report demonstrated conclusively that the coupes K2 and Everest lie within an area of incredible scenic importance, both regionally and locally within the Shire of Murrindindi. As far back as 1977 the Land Conservation Council recommended that 'the scenic features and environs of Mt Torbreck be maintained' (Rec E10). As we have repeatedly told you, the fact that an area has no specific protection identified in the MSPs (Table 9 of the Planning Standards) does not mean that it is not a landscape sensitivity area, rather VicForests is obliged to consider all aspects of the coupe pursuant to Clause 2.1.1.1,vi of the Code prior to including it on the TRP. The fact that you appear not to have even sought advice from Murrindindi Shire Council or any landscape experts about the landscape values of the Torbreck Range north of Mt Torbreck, nor asked VicForests for the consideration it gave to landscape matters when initially listing these coupes in 2017 and again in 2019, is, in my view, a serious error and at odds with DELWP's law enforcement responsibilities.

For this area to be logged just as Council is about to adopt its Tourism and Major Events Strategy, which it is expected will rely on landscape protection as a key ingredient, is bad enough, but for THCU to be so cavalier in its assessment, citing the usual furphy about the absence of the Torbreck Range from Table 9 in the Planning Standards is shameful.

Once again I request that you re-open this case and initiate discussions with Murrindindi Shire Council on the landscape value of these two coupes.

Your sincerely

Nick Legge

[REDACTED]
Rubicon Forest Protection Group



Part 3: HCVs threatened

We have studied the FSC Controlled Wood Standard FSC-STD-30-010 v2.0 and the accompanying evaluation framework for HCV assessment FSC-NRA-AU- v1. We believe that that continued logging of the Rubicon State Forest to the extent planned by VicForests threatens the following HCVs:

- HCV 1.1 Areas that contain significant concentrations* of rare and threatened species* or that contain habitat* critical* to the survival and long-term viability of these species.
- HCV 1.5 Areas of high species/community diversity
- HCV 3.4 Remnant vegetation in heavily cleared landscapes and mature forest in degraded landscapes
- HCV 6 Cultural values, in particular HCV 6.1, HCV 6.4 and H 6.5

The ash forests of the Rubicon State Forest (Figure 1) encompass an area of approximately 30,000 ha on the Cerberean Ranges approximately 100km north east of Melbourne. There are three reserves within it (Rubicon Valley Historic Area, Mt Torbreck Natural and Scenic Features Reserve and Mt Bullfight Nature Conservation Reserve) and three dedicated Parks adjoining it (Yarra Ranges National Park, Lake Eildon National Park and Cathedral Ranges State Park). The Yarra Ranges National Park to the south is mainly ash forest, as is the Rubicon Valley Historic Area. However most of the Lake Mountain extension Yarra Ranges National Park, which is surrounded by the Rubicon and Marysville State Forests, and the Mt Torbreck and Mt Bullfight Reserves are covered by snow gum woodland, while most of the Lake Eildon National Park and the Cathedral Ranges State Park are covered by mixed species (ie not ash) forest.

The ash forests within the Rubicon State Forest are habitat for a large number of threatened species. The table below shows species sighted since the 2009 fire and identifies those with significant populations.

Listed Endangered Species in FFG Act (Note 1)	Last recorded in RSF (Note 2)	Block	>10 records
Smoky mouse	2011	290	
Broad-toothed rat	2011	288	
Greater glider	2019	various	yes
Barred galaxias	2016	286	yes
Sooty owl	2019	286, 288	yes
Powerful owl	2012	289	
Leadbeaters possum	2019	various	yes
Threatened Advisory, but not listed under FFG Act (Note 3)			
Tree Geebung (<i>Persoonia arborea</i>)	2018	286	
Baw Baw Berry (<i>Wittsteinia vacciniacea</i>)	2019	288	yes
Eastern Pygmy possum	2018	287, 290	yes

Notes:

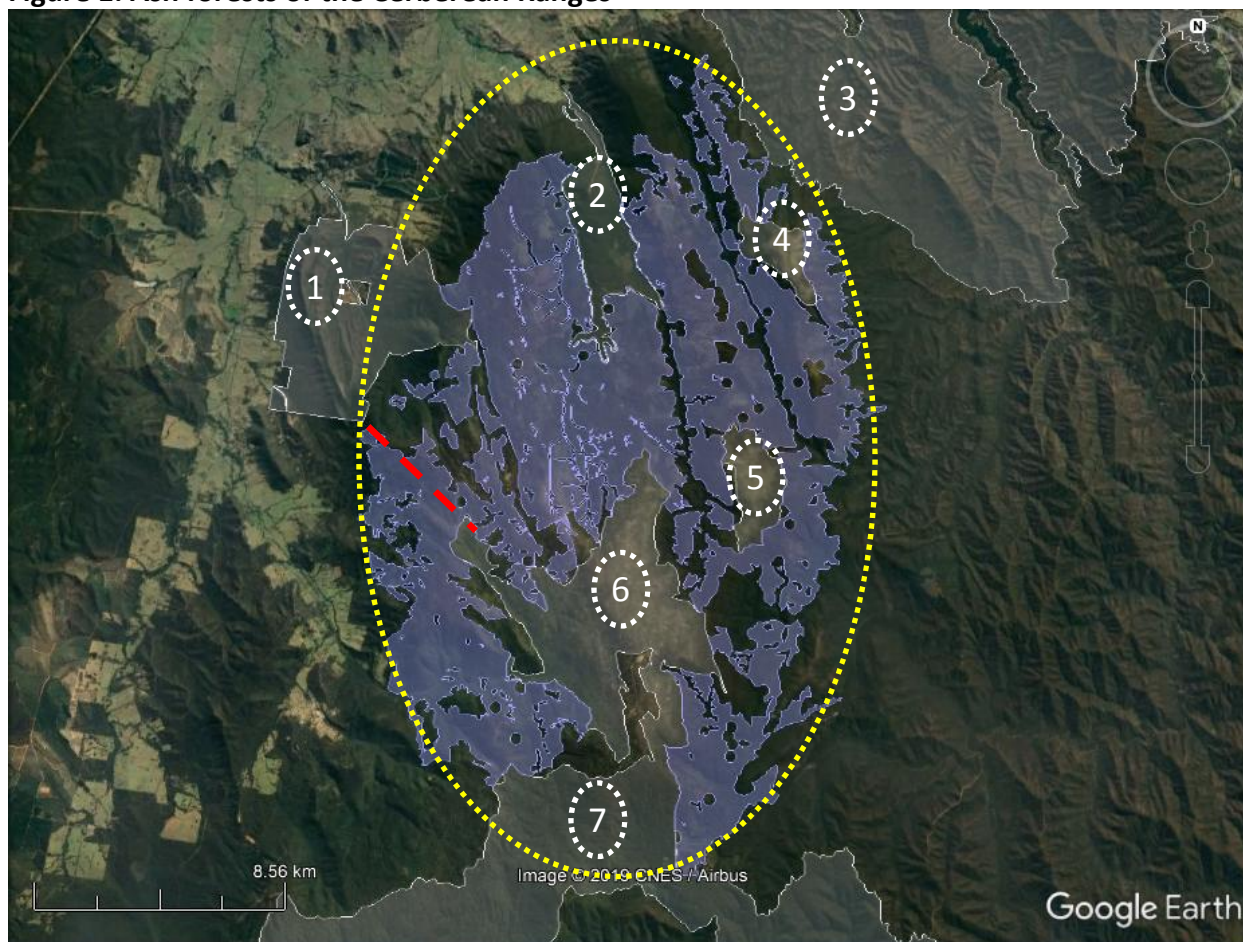
1 See list at <https://www.environment.vic.gov.au/conserving-threatened-species/flora-and-fauna-guarantee-act-1988>

2 From [Victorian Biodiversity Atlas](#) (older recordings) or [Forest Protection Survey Program](#) (2018 & 2019 recordings)

3 See lists at <https://www.environment.vic.gov.au/conserving-threatened-species/threatened-species-advisory-lists>

Of course it is possible that some of those species without recent reported detections are locally extinct. For example in the case of the spot-tailed quoll (last sighted in 2001) VicForests searched for this rare and elusive creature in a coupe near where it had been last recorded but without detecting it. Terrestrial species such as the quoll, the smoky mouse and the broad-toothed rat will likely have been impacted by past logging but also by increased predation from feral cats which are relatively common in the area as DELWP's forest protection surveys have revealed. However the threat posed by logging and loss of hollow-bearing trees on birds and arboreal mammals is well established and likewise the impact of logging on understory species such as tree geebung and Baw Baw berry.

Figure 1: Ash forests of the Cerberean Ranges



Ash forest area (blue) available for logging within and adjoining Rubicon State Forest, showing Parks and reserves (1=Cathedral Range State Park; 2=Rubicon Valley Historic Area; 3= Lake Eildon NP; 4=Mt Torbreck Reserve; 5= Mt Bullfight Reserve; 6=Lake Mountain extension of Yarra Ranges NP; 7=Yarra Ranges NP). Yellow oval shape marks the Cerberean Ranges. South of red dash line is Marysville State Forest with Rubicon State Forest in the rest of the inscribed area. Gaps within inscribed area are mainly Special Protection Zones, with some small areas of mixed species forest. Source: Google Earth and shapefiles downloaded mid-2019 from DELWP 'Forest Explorer' application

HCV 1.1 Areas that contain significant concentrations* of rare and threatened species* or that contain habitat* critical* to the survival and long-term viability of these species.

The sizes of the populations of the rare and threatened species identified above in the Rubicon State Forest is unknown, but there is no doubt that preserving what is left of the mature ash forest – which is otherwise largely destined for logging – is critical to the long-term viability of these species given the scarcity of old-growth forest in and adjoining this area and the high risk of further megafires.

As discussed in our forest report 2019-0051 (refer separate attachment 2-3a), much of the remaining 1939 regrowth ash is in fragments associated with adjoining logging coupes with only a relatively small proportion that can be considered to form part of 'intact' forest areas, ie areas >100-200 ha that have been unlogged since the devastating 1939 fire, or earlier.

While the 'variable retention harvesting systems' that VicForests is adopting will lead to the retention of more islands and peninsulas of retained mature forest than at present, these also add to the fragmentation of the forest and if the same volume of timber is to be supplied from 2020 onwards as projected in VicForests' 2014 Resource Outlook the net harvest area will not reduce at all. So the threat that the planned logging presents for these species is undiminished by the introduction of these 'new' systems which, in the form of regrowth

retention harvesting, have been underway for several years. For most of the identified species, broadly ‘intact’ mature forest is far more likely to favour their survival and long-term viability than the equivalent mature forest area made up of multiple small patches. For example the current case in the Federal Court (*VicForests v. Friends of Leadbeaters Possum*) has established the importance of contiguous areas of mature forest for the greater glider, and by inference for its main predators, the sooty owl and the powerful owl.

In the case of the two plant species, tree geebung and baw baw berry, multiple forest openings are unlikely to be advantageous since these require sheltered sites, such as near rainforest margins. One advisory-listed rare plant species in the Rubicon State Forest is the spinning gum (*Eucalyptus perriniana*) however its main area of recorded occurrence was in the Rubicon River headwaters which was severely impacted by the 2009 fire and has not been recorded since. However it is a lignotuberous species and will probably have survived.

However in all the instances cited above, the ability of these species to ‘*survive, flourish and retain their potential for evolutionary development in the wild*’¹ in the face of the near certainty of more megafires plus the widespread ongoing logging as the VicForests *Resource Outlook* envisages, whether as variable retention harvesting or as clearfelling, is extremely doubtful. The fact that VicForests has recently been found to have cleared a large number of tree geebungs at a site near Mt Baw Baw² does not inspire confidence.

While the Allocation Order does impose a ceiling on the gross coupe area that may be harvested over a 5 year period (13,700 ha from 2020 onwards), and is therefore a potential constraint on the net harvest area if less of each coupe can be logged, as the following calculations make clear this constraint is unlikely to apply.

Log production and harvest area data provided by VicForests to RFPG reveal that in the 6 year period from 2012-13 to 2017-18 the yield of D+ ash sawlogs across the Eastern FMU has averaged 163 m³/ha. So maintaining production of 130,000 m³ pa requires a net harvest area of close to 800ha. VicForests Harvesting and Regeneration Systems document (v2) indicates that by 2020 clearfelling should amount to no more than 25% of the annual harvest area (assumed to refer to net harvest area), and if the remaining 75% is indicatively split equally between the two variable retention systems, the following (indicative) results are obtained:

Harvesting system	Assumed system proportions post 2020 ^{Note 1}	Annual net harvest area	Assumed proportion of retained forest under each system	Gross area of logged coupes
CFE	25%	200	30%	286
VRH 1	35%	280	50%	560
VRH 2	40%	320	70%	1,067
Total area		800		1,912

Note:

1 The figure of 25% for clearfelling is based on the VicForests policy document

As can be seen, over a 5 year period the gross area of coupes harvested is just over 9,500 ha - - well below the statutory ceiling of 13,700 ha. So, even if some of the assumptions above prove wrong, they would need to be way off the mark for the conclusion that there will be no reduction in area harvested to be wrong.

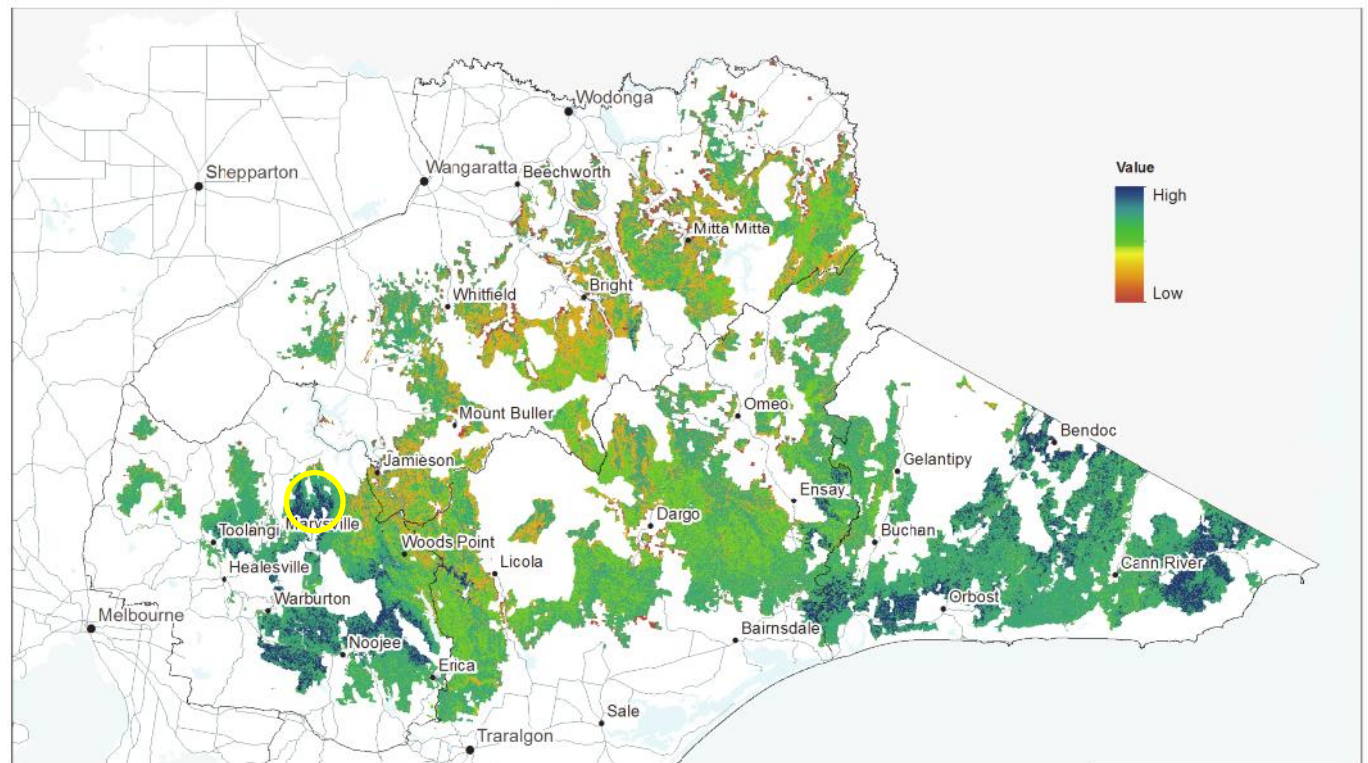
In terms of species diversity, the ash forests of the Rubicon State Forest have been ranked at the highest level in a recent Victorian Government report³. The relevant figure (2.12) is reproduced below with the Rubicon State Forest circled.

¹ Prime objective of Victoria’s *Flora and Fauna Guarantee Act*

² Refer Ballantynes Saddle investigation report at <https://faunaandfloraresearchcollective.wordpress.com/>

³ Victorian Environment Assessment Council. 2017. Conservation values of State Forests. Pp.25-28 <http://www.veac.vic.gov.au/investigation/forest-assessments>

Figure 2.12 Results for focused forest species analysis – state forest



This assessment indicates that logging of most of the Snobs Creek Valley, an area with a high concentration of leadbeaters possum sightings⁴, to the extent foreshadowed in the TRP, as well as the few remaining intact areas of unlogged 1939 regrowth in the Rubicon and Royston Valleys, on the Blue and Torbreck Ranges, and in areas to the east of Lake Mountain is a clear risk to this particular HCV.

It may be argued that VicForests new HCV protection policy will ameliorate the risks to these species in the Rubicon State Forest, but it really only deals with issues arising at an individual coupe level and does not explain how risks faced at a landscape level, will be addressed.

A critical threat that VicForests HCV policy also fails to address is the interaction of ongoing logging and past fires with the likelihood of future landscape level fires. This threat is particularly high for the Rubicon State Forest and the Central FMA generally give the ash forest areas killed in the 2009 fires and the excessive logging over the past 20 years. Vicforests' log supply projections in the Resource Outlook – which forms the unspoken backdrop to its HCV protection policy - is predicated on no future fires.

Government funded research by University of Melbourne academics endeavours to quantify the risk to the ash forests in the Central Highlands from future fires⁵. The research found that the risk of a 20 per cent loss of ash forests in landscape level fires in the Central Highlands over the next 20 years was around 20 per cent, but that it could be as high as 50 per cent. The Central FMA – in which the Rubicon State Forest is located – was at highest risk. The report found that the mean proportion of the Central FMA ash forest that can be expected to burn is 30 per cent (figure 16 in report), and within the Central FMA the Rubicon State Forest is identified (yellow circle in figure 17 reproduced below) as the main risk area. But the 30 per cent figure is just the mean proportion: bigger losses remain a high possibility since the analysis looks only at historical fire data and makes no allowance for severe fire conditions becoming more common due to climate change.

⁴ Refer leadbeaters possum interactive map at <https://www.wildlife.vic.gov.au/our-wildlife/leadbeaters-possum>

⁵ Baker et al. 2017. Consultants Report to VEAC fibre and wood supply assessment. <http://www.veac.vic.gov.au/investigation/forest-assessments>

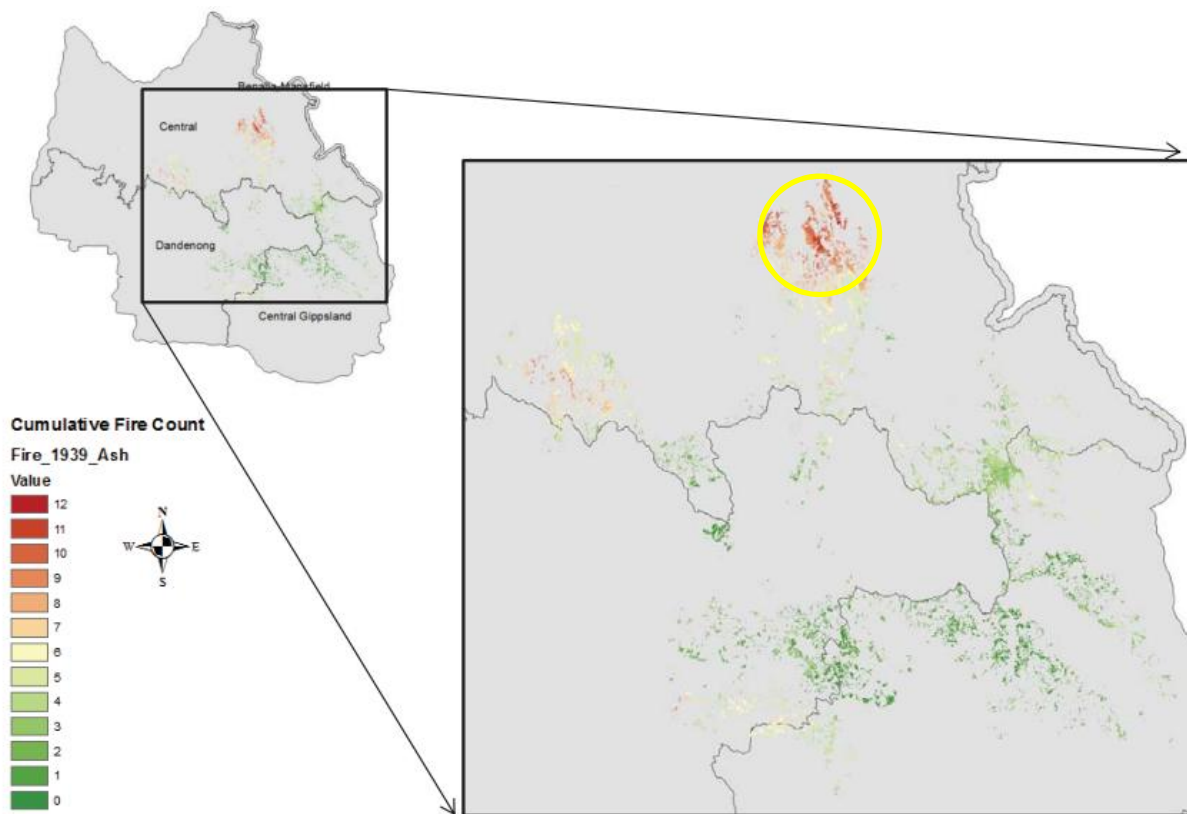


Figure 17: Spatial patterning of fire risk from 20 simulations of 20 years each. The highest bushfire risk to the 1939 regrowth is in the Central FMA, which experiences warmer and drier climatic conditions.

HCV 1.5 Areas of high species/community diversity

As well as the current outlook for the Rubicon State Forest putting many rare and threatened species at risk, the outlook for the existing community and species diversity is bleak.

As an area with many extended altitudinal gradients, topographic diversity, high rainfall and deep fertile volcanic soils its diversity is enormous. Attachment 2-3a illustrates many of its qualities in this regard, as does the VEAC report quoted above.

The forest communities within the forest include mountain ash community (red-listed by IUCN as referenced in Attachment 2-3a), the alpine ash community, the snow gum woodland community, the cool temperate rainforest community, the high-elevation mixed species community, low-elevation mixed species community, montane riparian thicket. This relatively small area contains around one third of the 33 ecological vegetation classes that characterise the Victorian Alps bioregion.

It is now well established in the literature that plant species composition can be profoundly affected by logging⁶ and more so with ecologically unsustainable short-rotation logging which research has shown can lead to increased fire severity⁷. In an ash forest area such as the Rubicon State Forest now with little old-growth remaining compared with the pre-colonisation era, maximising intact areas of mature forest – given the known megafire risk – able to grow on to become old-growth is of critical importance.

⁶ White and Vesk 2019. Fire and legacy effects of logging on understorey assemblages in wet-sclerophyll forests. *Australian Journal of Botany* **67**: 341-357; Bowd et al 2018. Logging and fire regimes alter plant communities. *Ecological Applications* **28**:826-841; Blair et al 2016. Disturbance gradient shows logging affects plant functional groups more than fire. *Ecological Applications* **26**:2280-2301.

⁷ Taylor et al 2014. Nonlinear effects of stand age on fire severity. *Conservation Letters*. **7**:355-370

A proxy sign of its rich biodiversity – the size and form of the trees within it – is its extremely high ash sawlog productivity as the following table illustrates. It is based on harvest area and log production data provided to RFPG by VicForests.

		Forest District						
D+ sawlog production (m ³)	Season	Alexandra	Noojee	Marysville	Toolangi	Powelltown	All other	Total
	2012/2013	49,336	51,987	27,303	22,582	14,037	43,373	208,618
	2013/2014	44,867	55,036	29,479	13,684	14,749	51,624	209,439
	2014/2015	51,949	31,932	43,963	16,594	12,717	48,289	205,444
	2015/2016	62,159	40,921	58,042	18,557	10,619	53,651	243,949
	2016/2017	55,021	47,869	42,068	5,988	8,057	44,050	203,054
	2017/2018	33,236	30,746	30,713	13,969	14,095	32,831	155,590
	Total	296,568	258,491	231,568	91,375	74,275	273,818	1,226,094
Net harvest area (ha)	Season	Alexandra	Noojee	Marysville	Toolangi	Powelltown	All other	Total
	2012/2013	183	272	189	143	117	356	1,261
	2013/2014	171	392	212	87	96	356	1,314
	2014/2015	250	185	321	187	45	379	1,368
	2015/2016	277	243	387	114	25	412	1,457
	2016/2017	196	224	261	69	24	391	1,165
	2017/2018	141	143	170	93	46	346	939
	Total	1,219	1,459	1,540	693	352	2,240	7,504
D+ ash sawlog yield (m ³ /ha)	Season	Alexandra	Noojee	Marysville	Toolangi	Powelltown	All other	State average
	2012/2013	269	191	144	158	120	122	165
	2013/2014	263	140	139	157	153	145	159
	2014/2015	207	172	137	89	283	127	150
	2015/2016	225	168	150	162	433	130	167
	2016/2017	280	214	161	87	333	113	174
	2017/2018	235	215	181	150	309	95	166
	6y average	243	177	150	132	211	122	163

The Rubicon State Forest is within the Alexandra district with the Rubicon Forest containing virtually all of the ash forest logged in the district since 2012/2013. In terms of productivity, only the Powelltown district comes close but it supplies only a fraction of the ash sawlog production.

HCV 3.4 Remnant vegetation in heavily cleared landscapes and mature forest in degraded landscapes

It is the second limb of HCV 3.4 – mature forest in degraded landscapes – that we consider to be threatened. The reasons for this have been demonstrated in our discussion above relating to HCVs 1.1 and 1.5, and in Attachment 2-3a, so will not be repeated here.

There are still many other examples we could cite. For example, the fragmentation and degradation of mature forest requires significantly improved connectivity based on effective design. Linear corridors have minimal effectiveness for survival/movement of wildlife due to edge effects compared with large patches and this argument forms the basis for one of our Code breach reports still under investigation applying to the coupe Mongoose (Att 3-1).

Given that so much of the forest has been impacted by recent logging and fire RFPG considers that the preservation of the HCVs of what remains, and the precautionary principle in the Code, requires a moratorium on logging the ash and high elevation mixed species stands of the Rubicon State Forest. We have called on the Government to do so since 2016. However, since the Government refuses to introduce such a moratorium it becomes even more critical that VicForests must apply the most stringent safeguards in logging what remains, including going well beyond the minimum mandatory provisions of the Code. As the various examples provided in this submission demonstrate, it has certainly not done so.

HCV 6 Cultural Values

This HCV is defined as encompassing *sites, resources, habitats* and landscapes* of global or national cultural, archaeological or historical significance, and/or of critical* cultural, ecological, economic or religious/sacred importance for the traditional cultures of local communities* or indigenous peoples*, identified through engagement* with these local communities* or indigenous peoples**.

We argue here that the Rubicon State Forest meets the second limb of this HCV being *of critical* cultural, ecological, economic or religious/sacred importance for the traditional cultures of local communities* or indigenous peoples*. Despite the asterisk, the word critical is not defined, so we take it to meaning *having a decisive or crucial importance in the success, failure, or existence of something*, being the most relevant of the various Oxford definitions.

We also wish to stress that VicForests' lack of engagement with the local community or indigenous peoples to properly identify these values, relying instead on a few planning documents that are now over 20 years old, should not be taken as evidence that they are lacking. Rather we will endeavour to demonstrate their presence in other ways.

The three component values which we consider to be gravely threatened are HCV 6.1 (Aesthetic values), HCV 6.4 (Social/economic values) and HCV 6.5 (Spiritual/cultural values). Given the considerable intersection between these elements we discuss HCV 6 as a whole, but identifying as we proceed how these different elements come into play. It makes the most sense to structure the analysis around particular parts of the forest, and we will point out the features described here, and expand on their values, during your proposed field visit. We have also invited a representative of the *Taungurung Land and Waters Council* on this trip to help explain some of the indigenous cultural aspects of the area.

A key point to emphasize at the outset is that HCV 6, and the identified component elements are all threatened by VicForests current logging plans, with some having already been degraded by recent logging.

The majestic natural features of the Cerberean Ranges on which the Rubicon State Forest sits are a thing of extraordinary value for the Murrindindi Community and for the entire Victorian community as RFPG has long been claiming. Its remarkable volcanic origins are documented on the RFPG website⁸.

As this submission is being composed, one of the most magnificent views from the north looking towards Mt Torbreck, the highest mountain in the Shire and for a great distance in every direction, is being ruined by the logging of the two coupes on the ridge 1 km north of its summit. While the summit and immediate slopes of Mt Torbreck are protected from logging in a 500ha reserve, the surrounding area is not and the critical significance of these views is the subject of another of our Code breach reports (refer Part 2 att 2-4).

As well as the magnificent views both to and from it, its critical significance for the community stems from several other factors, including:

- its role for the Taungurung peoples as a place of spiritual significance, where in the past many would gather in the summer to feast on bogong moths⁹,
- its location as the site of a WWII RAAF plane crash that cost the lives of 4 airmen and where a memorial close to the crash site has been established¹⁰, and
- its popularity for summer bushwalking, snow hiking in winter and in rare seasons winter skiing, where the views of the Rubicon Forest, of Lake Eildon and surrounding countryside can be appreciated.

There is no doubt that all these values are threatened by the current and planned future logging.

⁸ Refer Rubicon's explosive past at http://www.rubiconforest.org/sites/default/files/MurrindindiGuideWinter17_Caldera_160605.pdf

⁹ Refer Taungurung Country Plan https://www.gbcma.vic.gov.au/downloads/Traditional_Owners/Taungurung_CountryPlan_WEB.pdf

¹⁰ Refer https://en.wikipedia.org/wiki/Mount_Torbreck

Another critical social/economic/cultural value relates to the protection of the waters of Snobs Creek which supplies cool clear water for the Snobs Creek Fish hatchery¹¹. VicForests' proposed logging along the length of Snobs Creek and elsewhere in the catchment puts the future of the hatchery at risk. Not only is it a major local employer whose closure would have devastating local consequences but it has been a core cultural part of the Eildon-Thornton community, indeed the whole Victorian community, since it opened in 1947.

Currently it represents a cornerstone of the Government's *Target One Million* policy which aims to get million Victorians fishing each year, which indicates its critical economic and cultural significance statewide. An appreciation of how it will be affected by the proposed logging is to be found in one of our recent Code breach reports, which remains under investigation (att 3-2).

Another area of critical local indigenous cultural significance that VicForests continues to pay no heed to is the cultural/educational value of the Royston Range for Taungurung people using Camp Jungai. For several years until he passed away, a local Taungurung elder, Uncle Roy Paterson was a key member of our group as well as an educator for young aboriginal people at Camp Jungai on the Royston range foothills. He would conduct his young charges through the Royston Range forest showing them all the local plants and how they could be eaten or used to manufacture things.

That forest is now gone, and despite our protests one of the last remaining unlogged areas, the coupe Ralf, was logged this year.

Another area of critical cultural significance is the Rubicon Valley Historic Area, opposite the Royston Range, which supports the first mainland hydroelectric power scheme. This is a site of national significance having been listed on the Register of the National Estate under the former Australian Heritage Commission Act.

Now privately run, the survival of this historic renewal energy generator may be threatened by declining rainfall due conversion of its catchment to thirsty juvenile ash forest due to the 2009 fire, exacerbated by ongoing logging and global warming. Its possible loss is the subject of the breach report cited above (att 3-2) concerning the survival of the Snobs Creek Fish Hatchery.

If clarification on anything in
this submission is needed
please email us at
info@rubiconforest.org

¹¹ Refer *Snobs Creek Fish Hatchery: celebrating 70 years of success* <https://nla.gov.au/nla.obj-610362034>

From: [Rubicon Forest Protection Group](#)
Sent: Wednesday, August 21, 2019 1:15 PM
To: Forest.Reports@delwp.vic.gov.au
Cc: [REDACTED]
Subject: Breach of Code arising from inclusion on TRP of coupe Mongoose (287-515-0010) and its likely logging from November

Good afternoon Forest Reports

As you know RFPG considers that the logging of Rubicon State Forest west of Snobs Creek has been manifestly excessive and contrary to the principles and long-term planning provisions of the Code (refer our submission under Case 2019-0050), with the overlogging in the Royston Forest Block (287), along with the Rubicon Block, being particularly egregious.

The attached Google Earth image shows the boundary of the ash forest extent within the Royston Block, including in the Mt Bullfight and Rubicon Historic reserves and Lake Mountain part of Yarra Range NP.

The total area bounded in green is 4,600 ha of which approximately 800 ha is rainforest SPZ and approximately 200 ha is roads, leaving an ash forest extent of 3,600 ha.

Of this, 1,311 ha has been clearfelled between 1986-87 and 2017-18, with approximately a further 60 ha clearfelled in 2018-19. So, almost 1,400 ha is under 35 years old, with most of that under 20 years.

In addition, the contiguity of the coupes in this area means that around 900 ha can be considered as 'fragmented' and so of lesser ecological and biodiversity value than 'intact' forest. In other words, 2,300 is either <35 years, or impacted ecologically by its proximity to logged coupes, leaving around 1,300 ha of 'intact' ash forest. However what also needs to be considered is that in the early to mid-1960s the entire ash forest area south of and including Mongoose was selectively logged ('thinning from above') essentially removing all the older trees that may have survived the 1939 fire.

Of this 1,300 ha around 800 ha lies within the national park or the Mt Bullfight and Rubicon Historic Reserves, leaving only 400 ha of intact ash forest within the GMZ. The intact areas are at the north and south of the ash forest extent, so an area of around 20 sq km in the middle is seriously ecologically compromised.

Across the distance of 9km that this area spans, there are no wildlife corridors of sufficient width to be regarded as ecologically valuable and sufficiently to meet the biodiversity requirements of the Code. Were the coupe Mongoose to be left unlogged, the area it occupies could otherwise serve as a wildlife corridor that would go some way to meeting the requirements of Code Clause 2.2.2.8, noting that the expectation in the Central Highland FMP was that such corridors be around 200m wide (ref. p.28).

Given that Mongoose is surrounded by clearfelled areas under 25 years old, we consider that leaving it unlogged would also go some way to meeting the requirements of Code Clauses 2.2.2.2 and 2.2.2.9 which would otherwise be contravened due to the overlogging of the western face of the Royston Range in the past 10 years.

Yours faithfully

nick legge

[REDACTED]
Rubicon Forest Protection Group



From: [Rubicon Forest Protection Group](#)
Sent: Tuesday, August 27, 2019 8:41 PM
To: Forest.Reports@delwp.vic.gov.au
Cc: [REDACTED]
Subject: Alleged breach of Code Clause 2.1.1.1.v

Good morning Forest Reports

We allege a breach of Clause 2.1.1.1.v of the Code arising from the 2019 TRP. Clause 2.1.1.1.v is a mandatory provision requiring long-term (strategic) planning of timber harvesting to minimise impact on water quality and quantity within any particular catchment.

‘Minimise’ is the operative word here, but to the extent that the Code contemplates timber harvesting occurring at all, which inevitably affects both streamflow quality and volume, the question arises as to how the requirement ‘to minimise’ must be interpreted.

It is not possible, if compliance with the Code is to be enforced, to simply set the interpretative problem aside as insoluble. That is not what justice, whether for humans or for the environment, is about.

In our view, the most plausible interpretation is that, like an EPA State Environment Protection Policy, we need to turn to the idea of ‘beneficial uses’ being compromised.

Streamflows and water quality entering the Goulburn River for the purpose of overall environmental benefit is clearly one such beneficial use, but given the small impact that **logging sanctioned by this TRP** has in the overall quantity and quality of Goulburn River water, that impact has to be regarded as small, and in the first instance not relevant in this case. Likewise the prospect of the occasional future use of the north-south pipeline to supply water to Melbourne needs to be set aside.

Plus, we must take into account that one consequence of reducing native forest logging and combatting global warming must be to increase areas of tree plantations, which will also diminish streamflows compared with, for example, rainfed pasture. As far as the Code applies, distant downstream impacts need to be seen on this broader context.

So given the lack of explicit guidance in the Code, the beneficial uses that must be considered need to be far more proximate ones, if the intent of Code Clause 2.1.1.1.v is to be understood as being capable of being complied with.

Accordingly, we nominate the viability/profitability of the Snobs Creek Fish hatchery and the Rubicon Hydroelectric Scheme, and the impacts on downstream users in the Rubicon River, as being the three beneficial uses that are both proximate and affected, either by water quality (Snobs Creek hatchery) or water quantity (Rubicon Hydroelectric Scheme and downstream users).

In relation to the impact of water quality we point to (a) the reason that the Snobs Creek hatchery was originally sited where is (low water temperature, low turbidity, high oxygen content), (b) the evidence that logging and haulage is already having adverse effects on water quality (previously communicated to VicForests and to VFA) from the relatively small area of the catchment harvested in recent years, (c) the huge number of new coupes in the Snobs Creek catchment proposed for harvesting by 2022, and (d) the risk that the viability of the hatchery will be threatened by the harvesting of all the unlogged coupes in Block 288.

In relation to the Rubicon Hydroelectric Scheme we point to Recommendation D22(iii) from the LCC’s Melbourne Area 2 review, which was accepted by the Government and remains Government policy, which requires that management of the Rubicon catchment be such that the quality and quantity of water produced meets the requirement of Generation Victoria [AGL] and downstream users.

Unless and until downstream users are unable to extract licensed volumes, the impact on them is arguably minimal, but in order to confirm this it is necessary that advice from Goulburn-Murray Water is, or was, sought.

However, the impact on water flows that AGL is permitted to extract to generate clean, renewable energy is unlikely to be minimal.

The combination of declining rainfall due to global warming, and the impact of the 2009 fire and the excessive logging of the Rubicon and Royston catchments since then, will inevitably lead to a substantial reduction in water yield once the canopy of the regenerating forest reaches its highest leaf density, much of which is only a few years off. In this context it is imperative that the development of the TRP took full account of the future water yield reductions that will follow a decade or so after the logging of the coupes Snifter (286-504-0007), Goblet (286-504-0008), Onyx (286-505-0029), Low Flow (286-512-0022), Red Rag (287-515-0009), Mongoose (287-515-0010), Tijuana (287-516-0005), Santa Cruz (287-516-0006) and Bag of Bones (287-518-0007).

Unless the development of the TRP fully and properly considered (a) its impacts on the quality of the water in the Snobs Creek catchment, including advice from appropriate experts in native fish breeding at the hatchery (as distinct from VFA executives and managers), and (b) its impacts on the profitability of the Rubicon Hydroelectric Scheme based on advice from AGL, it must be found as being in breach of the Code. The RFPG does not believe these matters were fully and properly considered and expects the THCU to agree.

In keeping with the increased authority conferred by the creation of the Office of the Conservation Regulator, require VicForests to desist from logging any of the identified coupes pending the outcome of your findings.

Yours faithfully

Nick Legge


Rubicon Forest Protection Group

