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The Hon Lily D'Ambrosio
Minister for Energy, Environment and Climate Change

By email

Dear Minister,

DELWP and the Stage 1 Review of the Code

Thank you for your encouraging reply of 1 August to my letter of 31 May about promoting economic development opportunities for the Murrindindi community when the Government finally halts the ongoing damage done by VicForests' saturation logging enterprise in our area. We will continue to liaise with Murrindindi Shire Council on the measures we outlined and hope to report some progress in the near future.

You will by now have received a letter from a range of conservation groups, including RFPG, setting out our dismay at DELWP's proposed Stage 1 revision of the *2014 Code of Practice for Timber Production* released last month.

In your letter of 31 May to Dr Legge on the Review of the Code you stated that:

DELWP's response to the recommendations [ie the review of the Code] will provide a stronger regulatory and legislative framework to protect Victoria's natural environment,

that DELWP would be

engaging with stakeholders to develop a common understanding of the Code . . . and where there is any disagreement on interpretation engage expert and/or legal advice to develop guidance,

and that the Review would provide

greater regulatory certainty and improve environmental outcomes.

In fact the proposals you released last month:

- (a) have been developed based on no engagement with the conservation movement , despite our protests about the Code's weaknesses being a key driver for the review,
- (b) entail a significant weakening of the environmental protections of the Code,
- (c) appear to signal an irreconcilable conflict of interest in DELWP's enforcement , regulatory reform and environmental protection roles.

In September last year we met with Ms Clare and Ms Bertram from your Department and proposed a steering committee including conservation, forest industry, VicForests and DELWP representatives to guide the Code Review but our proposal was ignored. As a result we are confronted with a set of proposals that will significantly weaken key biodiversity, tourism and other forest values as I explain below.

We will be raising various issues of concern in our submission on the *Regulatory Impact Statement (RIS)*, but feel bound to draw your attention to two of the most egregious proposals plus the failure of the RIS to comply with the *Subordinate Legislation Act 1994*.

TRP is a long-term planning instrument – removing Section 2.1 subverts this

The proposed deletion of all the mandatory provisions in section 2.1 of the Code seem to rest on the notion that VicForests is not obliged to abide by any long-term (strategic) planning considerations. This would be laughable if it were not so serious. Eliminating the mandatory provisions in section 2.1 is so far from *'correcting administrative errors'* or *'clarifying roles and responsibilities'* - as you advised us that the Stage 1 review would entail - that DELWP's proposal amounts to a subversion of your instructions.

While the Code currently cites only one long-term (strategic) planning measure – the forest management zoning (FMZ) schema which is DELWP's responsibility – this is solely because of the way the Code was updated in 2014 under the previous Government. As well as the FMZ schema, the 2007 Code specifically identified forest management plans and the TRP as planning measures with mandatory (but differing) requirements.

The 2014 Code update combined all these different measures under the section 2.1 heading *'long-term (strategic) planning'* requirements, which listed precisely the same specifications as the 2007 Code indicated should apply to the TRP which is an exclusive VicForests responsibility. So if DELWP considered there was currently a clarity or role or responsibility issue with section 2.1, this should have been addressed by specifying the TRP as the locus of the mandatory actions required, not by relocating it to elsewhere in the Code minus its mandatory status.

Moreover, the current wording of the preamble in Section 2.1 makes it crystal clear that the FMZ schema is just one long-term (strategic) measure, with other measures cited including forest management plans and threatened species policies, with the TRP being the only such measure in the 2007 Code not carried over into the 2014 version.

Yet in the absence of these mandatory provisions - that were always intended to apply to the TRP under Section 2.1 of the Code - there is nothing to hold VicForests accountable in designing the TRP. The section 2.1 provisions are the only provisions of the Code brought into play by Section 37(3)(b) of the *Sustainable Forests (Timber) Act*. All the other Code provisions come into play only when coupe plans are being prepared.

Retained vegetation – why no correction?

The indefensible removal of section 2.1 stands in stark contrast with DELWP's failure to correct the lack of a Code definition of *'retained vegetation'*, a problem that we know has been brought to the attention of the regulation reform unit.

We believe this is no oversight, but a deliberate omission to allow the continued undermining of Code protections against gigantic coupes, being those larger than 120 ha. If not for this definitional oversight, at least several breaches of this Code provision would have been found on both the Royston Range and around Matlock. The fact that the Code allows buffer strips between coupes so narrow as to be of little biodiversity value and readily prone to windthrow is bad enough, but to regard buffer strips that are totally killed in a regeneration burn as still being *'retained'* beggars belief. That DELWP decided not to try and amend this obvious error in the Code as part of this review is staggering.

The removal of section 2.1 and the failure to correct the absence of a definition for *'retained vegetation'* seems to be specifically targeted at the Rubicon Forest Protection Group which has alleged a range of Code breaches pertaining to these provisions. An impartial observer could be forgiven for concluding that your Department aims to minimise constraints on VicForests under the guise of the parameters specified in Table 3 of the Regulatory Impact Statement and undercut core environmental protections.

Failure to comply with the Subordinate Legislation Act

I regret to say that DELWP's failings do not stop there. The failure to specify all the individual 'corrections' and their operational effect and merely list classes of changes with a few examples is contrary to Section 10(1)(b) of the *Subordinate Legislation Act 1994* which requires that the RIS must explain '*the effect [of the proposed changes] on the operation of the existing statutory rule*'.

The costs and benefits statement for the protection of large trees is even more lamentable. For the RIS to assess the protection of large trees, with and without a 20m buffer, on the basis of a 'no buffer' base case is unsupportable. Most large trees do not occur in isolation but within patches that have survived past fires and serve as crucial habitat. As such it is expected – especially given VicForests' efforts to gain FSC Controlled Wood certification and its proposed new approaches to harvesting and regeneration and protection of high conservation values – that existing biodiversity, habitat and threatened species protections would mostly require the protection of surrounding vegetation. Accordingly the purported cost of implementing the Government's large trees protection policy is far less than the claimed \$39m making the RIS seriously misleading.

We urge you to follow the advice of the various conservation groups in the letter to you last week to withdraw the current proposals and establish a proper multi-stakeholder Steering Committee to progress changes to the Code. Ideally the kind of changes proposed in the Stage 1 Review should be considered alongside further changes to be progressed as part of the wider review proposed for Stage 2.

Yours sincerely,



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