

Supplementary Audit of Gibberagee State Forest Compartment 104

Dailan Pugh, 25 February 2019.

This report is supplementary to NEFA's 'Preliminary Audit of Gibberagee SF Compartments 104, 105, and 106' which was provided to the Minister for the Environment and the Environment Protection Authority (EPA) on 12 February 2019, along with a request to stop the illegal logging continuing. The legal breaches are detailed in that report.

The preliminary report was handed to the Forestry Corporation on Wednesday 13 February during an action on site to halt the logging. That action was discontinued that afternoon when the Forestry Corporation Harvesting Manager Dale Mclean, during an open phone call with the Forestry Corporation's Senior Manager Production Mike Farrow, agreed to a site inspection within a week with NEFA, and the EPA if they agreed, to inspect the breaches we had identified.

It was also agreed that we could then show them a Koala high use tree (27 scats) we had identified so they could do the required Koala scat search, and that an unlogged 5.5ha area (Site 1) we had audited would not be logged until after the joint inspection.

NEFA then began negotiating with the Forestry Corporation and the EPA to hold joint or separate inspections. After saying they would participate in a joint inspection the EPA declined to meet with NEFA, stating "*we do not require a joint meeting to begin our investigation*".

On 19 February Dale Mclean told NEFA that "*FCNSW does not grant access to NEFA to the closed area at Gibberagee ... FCNSW is not prepared to meet whilst the EPA investigation is current*". This renegeing on an agreement is a new low in Forestry Corporation behaviour.

The EPA undertook an assessment without NEFA on 19 and 20 February 2019. Their investigation was hampered because many of the Grey Gums with obvious Koala scratches (and no evidence of searches) we had identified had since been logged, and because the Forestry Corporation had since remarked habitat trees in the unlogged area (Site 1) we had audited. They also claim not to have found 12 of the breaches we had identified. Without us to show them what we had found their investigation was botched and evidence was destroyed by the Forestry Corporation.

Despite the overwhelming evidence, the EPA still do not have an opinion as to whether adequate Koala scat searches are being undertaken. After the Forestry Corporation told us they do not accept the evidence that Compartment 104 is a Koala Intermediate Use Area, requiring the retention and marking of 10 Koala Feed trees per 2 hectares, we wrote to the EPA on 20 February detailing why we believed that it applied. While the logging continues they are still considering the issue.

As we had no faith in either body to do the right thing and stop the illegal logging, NEFA returned on Sunday 24 February 2019 to audit recent logging. This involved a detailed audit of approximately 6 ha logged since February 13 (Site 5), and random assessments of adjoining areas currently being logged.

Findings Summary

Our assessment on Sunday found that the Forestry Corporation are still refusing to comply with their legal obligation to search for Koala scats and Koala High Use Areas ahead of logging, with no evidence (disturbance to leaf litter) of searching around any Grey Gums despite most having Koala scratches on their trunks.

In our brief assessment of recent and current logging areas we found 3 trees with >20 Koala scats (111, 21 and 42 scats) around their bases which are meant to be the triggers for more intensive "star" searches to identify Koala High Use Areas to be excluded from logging. Regrettably these areas have all been logged. Another 2 trees were found with scats (4 and 7 scats).

It was apparent that the area had been remarked since our complaints with many hollow-bearing recruitment (R) trees remarked as hollow-bearing (H) trees and some unmarked H trees now marked, though while not of the same extent the same problems persist. The marked R trees are still mostly small and defective trees that are chosen because they are of no economic value, rather than the large healthy trees required to be retained as the hollow-bearing trees of the future. The quantum of damage to habitat trees has been reduced though is still significant.

What is most astounding is that this illegal logging has been allowed to continue while the EPA investigates, even when the EPA are present in the forest.

The conclusion is that while the EPA dithers the Forestry Corporation covers up evidence and continues to log in contravention of their Threatened Species Licence (TSL), and unless constrained will continue to do so. The EPA should not allow logging to continue while it investigates this illegal logging.

Action Sought

Section 11.3(1) of the Biodiversity Conservation Act 2016 (NSW) empowers the EPA to issue a 'stop work order' if the EPA: "*is of the opinion that any action is being, or is about to be, carried out ... in any land that is likely to result in a contravention of ... the native vegetation legislation*", which includes IFOAs.

In order to make a stop work order, the EPA must hold the opinion, or have a 'suspicion', based on 'reasonable cause', that an action being carried out, or about to be carried out, by the Forestry Corporation is 'likely' to be in breach a condition of the TSL (being a condition of an IFOA).

For Gibberagee State Forest NEFA considers it has established that the EPA has "reasonable cause" to issue a stop work order to stop ongoing contraventions of the Koala provisions of the TSL, most notably TSL 5.2.2 *Koala Mark-up Searches* and TSL 6.14 *Koala Phascolarctos cinereus*.

NEFA requests that the EPA take its responsibilities to protect Koalas seriously and immediately issue a stop work order on Gibberagee SF Compartments 104, 105, and 106 to allow time for the EPA to complete its investigations, hopefully with a view to prosecution.

1. Koalas

An area of approximately 6 ha logged since 13 February (Site 5) was assessed for evidence of Koala scat searches, with searches made by us for Koala scats within this area and randomly outside it.

Within Site 5 15 Grey Gums (2.5/ha) were observed, all but 1 Grey Gum had distinctive scratch marks made by Koalas, yet not one had any evidence of any attempt to search for Koala scats. 10 Grey Gums were marked for retention as H, R and Yellow-bellied Glider feed trees which means that the responsible forester visited those trees but failed to undertake Koala scat searches. 5 Grey Gums were not marked for retention. Koala scats were found under 3 trees, with 111 scats under one tree, 21 scats under another and 7 scats under the other.

An extended survey of current logging outside this area identified an additional high use tree with 42 scats and one with 4 scats,

Trees with >20 Koala scats are high use trees and "trigger" trees for intensive "star" searches to identify Koala High Use Areas to be excluded from logging. Given that the areas around the trigger trees we identified have already been logged it is too late to identify Koala High Use Areas for protection.

However our results, including the Koala trigger tree identified previously, verify that if Koala scat searches were undertaken ahead of logging that Koala High Use Areas are likely to be found, the surrounding forests identified as a Koala intermediate use area, and Koalas provided with the protection they are legally entitled to.

1.2. Koala Intermediate Use Area

The Forestry Corporation is required to retain and mark 10 Koala feed trees per 2 ha in compartments identified as a Koala Intermediate Use Area. Koala intermediate use area means, in part, "a single compartment where Koala scats have been detected under two of any ten consecutive trees searched within that single compartment".

In our preliminary audit NEFA pointed out that the Forestry Corporation's 2000 finding of a Koala trigger tree and additional scats on two of the radiating transects means that compartment 104 qualifies as a Koala Intermediate Use Area, thereby requiring the retention and marking of 5 Koala feed trees per hectare.

On the 13 February NEFA took the Forestry Corporation to the Koala High Use tree we had found, which they claim to have subsequently undertaken a "star" search around and found only one additional tree with 2 scats. Again making it likely they found two trees with scats under 10 consecutive trees searched, if they count the trigger tree. Though apparently they are of the opinion that they don't have to count the trigger tree, meaning they still don't accept it is an intermediate use area.

On the 20 February 2019 I wrote to the EPA:

Could you please urgently clarify for me whether my interpretation of the TSL that the detection of a Koala high use tree and the finding of further scats under one of the

next 9 consecutive trees searched on a transect means that the compartment qualifies as a "Koala intermediate use area".

Given that I believe that this is one of the breaches actively being committed in Gibberagee that I hoped to be able to discuss today, your urgent clarification is requested, and if my interpretation is correct I ask you to ensure that the TSL is complied with in Gibberagee,

On 22/02/2019 the EPA informed me "FCNSW have indicated they will apply an intermediate use area for Compartment 104". The EPA have so far refused my request to clarify whether a high use tree and the finding of further scats under the next 9 trees on a star search means a compartment qualifies as a Koala Intermediate Use Area

During our recent assessment we observed no Grey Gums with the required "K" markings to indicate they were retained as Koala feed trees. However it was noted that in recent logging the Forestry Corporation appear to be avoiding logging Grey Gums. By not legally identifying them as Koala feed trees they are avoiding their legal obligations to protect them from logging damage.

It is clear that the Forestry Corporation still do not accept that compartment 104 is an intermediate use area, and the avoidance of Grey Gums may be just temporary. The EPA are still considering whether it is or not, maybe once the logging is finished they will make up their mind.

1.3. Site 5 Koala Findings



Grey Gum marked as both an R tree and Yellow-bellied Glider (YBG) feed tree, with Koala scratches and no evidence of searching. Numerous Koala scats were obvious on the surface (proving that whoever marked the tree had not even undertaken a cursory look for Koala scats) and 111 Koala scats were found by searching. Note the presence of different sized scats indicating the presence of a mother and joey. 33cm. 6758233 505826



Grey Gum marked for retention as R and YBG feed tree with numerous Koala scratches and no evidence of searching. 21 Koala scats found. 6758124 505712



Grey Gum marked YBG1 with Koala scratches and no evidence of searching. Photo is after searching. 7 scats found. Note the sizes indicate a mother and joey. 6758198 505835



Grey Gum with Koala scratches and no evidence of searching. 6758094 505665



Grey Gum marked as H tree with Koala scratches and no evidence of searching 6758111 505750



Grey Gum marked as H tree and YBG feed tree, obvious Koala scratches, no evidence of searching 6758101 505827



Grey Gum without evident scratches and no evidence of searching. 6758219 505746



Grey Gum marked as R tree with lots of Koala scratches and no evidence of searching. 6758231 505772



Grey Gum marked as R tree with lots of Koala scratches and no evidence of searching
6758247 505812.



Grey Gum with Koala scratches, no evidence of searching and likely mortal damage.
6758251 505804



Grey Gum marked as R tree with Koala scratches and no evidence of searching 6758280 505831



Grey Gum with Koala scratches and no evidence of searching 6758278 505841



Grey Gum with Koala scratches and no evidence of searching 6758275 505836



Grey Gum marked as R tree and remarked as H tree with abundant Koala scratches and no evidence of searching. 6758259 505681

1.4. Additional Koala Findings



Grey Gum marked as R tree and YBG1 with Koala scratches and no evidence of searching.
4 scats found. 6758011 505914



Grey Gum marked as H tree with Koala scratches and no evidence of searching. 42 scats found. 6757882 505850

2. Habitat Trees

The Forestry Corporation are required to retain and mark up to 10 hollow-bearing (H) trees per 2 hectares (where they exist). For each H tree they are required to retain a recruitment (R) tree. This means that where there are 10 H trees they are required to retain 10 R trees, making a total of 20 trees.

Recruitment trees are meant to be the next largest trees available capable of persisting long enough to replace the hollow-bearing trees as they die out so as to provide a continuing supply of hollow-bearing trees for all those species that depend on hollows for denning, nesting and roosting. They are required to be healthy vigorously growing trees with good potential for hollow development and long term survival. Unfortunately these are the trees that the Forestry Corporation target for logging.

For years NEFA have been reporting the widespread practice of marking every second hollow bearing tree as a recruitment tree. Where there are limited numbers of H trees this has the effect of making every second H tree into a R tree, thereby halving the number of trees requiring retention - meaning that rather than retaining 20 trees per 2ha they only retain 10 and make the large healthy R trees available for logging. This is an intentional rort and blatantly illegal.

In NEFA's preliminary audit of Gibberagee we assessed a 5.5ha area (Site 1) marked up for logging where the legal requirement was to retain up to 28 hollow-bearing (H) trees and 28 recruitment trees, yet the Forestry Corporation had only marked for retention 16 hollow-bearing trees and 15 recruitment trees, 55% of those needed, despite adequate numbers being available to fully satisfy requirements. We found that 14 of the marked R trees had hollows and should have more correctly been marked as hollow-bearing trees.

By the time the EPA assessed Site 1 last Tuesday and Wednesday the Forestry Corporation had already done a cover-up, remarking trees erroneously marked as R trees as H trees, and marking additional trees as R trees. We had warned the EPA that this was likely and gave this as one of the reasons we should be allowed to accompany them to identify the changes.



Examples of trees on Site 5 originally marked as R trees but remarked as H trees by the Forestry Corporation after NEFA's complaint of 13 February. This proves NEFA's complaint that the Forestry Corporation had rorted their original tree marking, and had been illegally logging both unmarked hollow-bearing and recruitment trees since logging started on 15

November 2018 up until NEFA's intervention. The concern is that they are only doing this for the immediate area of our complaint and will revert to their original marking outside this area.

The principal area (Site 5) assessed in this inspection was across the road from Site 1, and it was evident that it too had been remarked, with Rs over-sprayed with Hs and previously unmarked trees identified as H and R trees.

On Sunday 24 February NEFA assessed tree retention over an area of approximately 6 hectares that had been logged since February 13. With remarking, we found that within this area 29 H trees (4.8/ha) and 27 R trees (4.5/ha) had been marked for retention, which is an improvement on the original marking, though still inadequate.

We found that one marked H tree had no hollows. One hollow-bearing tree was unmarked and 2 R trees had obvious hollows and should have been identified as H trees to make up the numbers, and in preference to some of those selected (being larger trees). A further 2 R trees apparently had hollows, though were also suppressed trees. One H tree had its crown knocked out and was unlikely to survive. A further 2 H trees had dieback damage to their roots and trunks from machinery.

In general we found that many R trees were not the most appropriate selections with larger and more appropriate potential R trees logged, the principal criteria was to select non-commercial trees. Specifically 5 R trees were unsuitable selections because they are suppressed or defective. 3 R trees suffered root and/or trunk damage.

2.1. Hollow-bearing Trees



Ironbark marked H tree with crown knocked out, unlikely to survive 6758132 505711



Spotted Gum with obvious hollows not marked for retention 6758264 505784



Ironbark tree without hollows marked as a H tree 6758114 505794



LEFT: Spotted Gum retained as H tree with machinery use over roots and minor trunk damage 6758075 505786. RIGHT Spotted Gum marked as H tree with machinery use over roots and minor damage to base. 6758234 505789

2.2. Recruitment Trees



Spotted Gum retained as R tree with obvious hollows 6758081 505713



Ironbark tree marked as R tree with obvious hollow. 6758347 505845



Spotted Gum retained as R tree with apparent hollow, also suppressed tree 6758250 505792.



LEFT: Spotted Gum marked as YBG3 feed tree which is suppressed and has significant butt damage. 6758185 505781. RIGHT: Spotted Gum marked as R tree with obvious hollow, also suppressed 6758169 505773



Small stringybark marked as R tree with suppressed growth. 2 marked H trees and 4 marked R trees were stringybarks, all were small trees, the 2 H trees had small hollows. These trees

were not targeted for logging so were used to meet tree retention requirements, though the 2 additional R trees are not representative of the other H trees retained. 6758126 505766



Defective Ironbark retained as R tree 6758089 505767



LEFT: Spotted Gum marked as R tree with machinery use over roots and minor damage to base. 6758125 505740 RIGHT: Ironbark retained as R tree with machinery use over roots and trunk damage 6758052 505778



Spotted Gum belatedly marked as R tree, with machinery damage to roots and trunk damage. Small tree, below average size removed. 6758108 505793

Waypoints

ident	y_proj	x_proj	Type	Species	DBH	Comment
804	6758083	505646	H	Ironbark	0	Remarked as H
805	6758094	505665	Koala scratch	Grey Gum	35	no search
806	6758132	505711	H canopy	Ironbark	0	
807	6758124	505712	Koala scratch scats R	Grey Gum	65	no search 21 scats
808	6758137	505647	H	Ironbark	0	
809	6758152	505642	R	Spot Gum	0	
810	6758161	505710	H	Ironbark	0	
811	6758168	505716	H	Ironbark	0	
812	6758170	505723	R YBG2	Spot Gum	0	YBG2
813	6758165	505736	H	Ironbark	0	
814	6758111	505750	Koala scratch H	Grey Gum	80	no search lots scratch
815	6758128	505763	H	Spot Gum	0	YBG8
816	6758125	505740	R trunk root	Spot Gum	0	
817	6758126	505766	R supress	stringybark	0	
818	6758100	505768	R	Ironbark	0	
820	6758089	505767	R defect	Ironbark	0	
821	6758101	505827	Koala scratch H YBG7	Grey Gum	0	no search, lots scratch, YBG7
822	6758077	505835	H	Ironbark	0	Remark R
823	6758054	505839	H	Ironbark	0	
824	6758075	505786	H root	Spot Gum	0	
826	6758040	505797	R	Spot Gum	0	
827	6758052	505778	R root	Ironbark	0	
828	6758081	505713	R hollow	Spot Gum	0	Obvious hollows
829	6758063	505707	H	Ironbark	0	
830	6758089	505721	R	Spot Gum	0	
831	6758184	505739	H	Ironbark	0	
832	6758193	505717	H	stringybark	0	small
833	6758219	505746		Grey Gum	45	no search
834	6758215	505751	H	Ironbark	0	
835	6758231	505772	Koala scratch R	Grey Gum	50	no search lots scratches
836	6758195	505773	H	stringybark	0	Remark R
837	6758185	505781	YBG3 trunk supress	Spot Gum	0	pre-exist
838	6758169	505773	R hollow supress	Spot Gum	0	
839	6758156	505786	R	Ironbark	0	
840	6758108	505793	R trunk root	Spot Gum	0	

841	6758114	505794	H no hollow	Ironbark	0	
842	6758247	505812	Koala scratch R	Grey Gum	0	no search
843	6758250	505792	R hollow supress	Spot Gum	0	Apparent hollow
844	6758234	505789	H trunk root	Spot Gum	0	
845	6758251	505804	Koala scratch trunk	Grey Gum	25	no search
846	6758280	505831	Koala scratch R	Grey Gum	56	no search
847	6758278	505841	Koala scratch	Grey Gum	23	no search
848	6758275	505836	Koala scratch	Grey Gum	47	no search
849	6758274	505841	H	Ironbark	0	
850	6758282	505831	H	Ironbark	0	
851	6758279	505789	H	Ironbark	0	
852	6758264	505784	Unmarked H	Spot Gum	0	
853	6758254	505781	H	Spot Gum	0	
854	6758246	505768	R	Ironbark	0	
855	6758233	505826	Koala scratch scats R YBG4	Grey Gum	33	no search 111 scats
856	6758216	505671	H	Ironbark	0	Remark R
857	6758222	505691	H	Ironbark	0	
858	6758245	505690	R supress	stringybark	0	inappropriate
859	6758249	505692	R	stringybark	0	
860	6758259	505681	Koala scratch H	Grey Gum	94	no search lots scratch, Remarked R
861	6758308	505710	H	Spot Gum	0	Remarked R
862	6758316	505747	R	stringybark	0	
863	6758330	505788	R	Spot Gum	0	
864	6758329	505790	H	Ironbark	0	small
865	6758347	505845	H R hollow	Spot Gum Ironbark	0	R ironbark has hollows
866	6758310	505851	R	Spot Gum	0	
867	6758308	505857	Koala scratch R	Grey Gum	39	no search
868	6758198	505835	Koala scratch scats YBG1	Grey Gum	60	no search 8 scats
869	6758134	505850			0	
870	6758009	505775			0	
871	6757961	505799	Koala scratch	Grey Gum	40	no search

872	6757954	506026			0	
873	6758011	505914	Koala scratch scats R YBG1	Grey Gum	50	no search 4 scats
874	6758079	505852	Koala scratch	Grey Gum	42	
875	6757892	505685	Koala scratches	Grey Gum	55	no search lots scratches
876	6757867	505755			0	
877	6757871	505761			0	
878	6757882	505850	Koala scratch	Grey Gum	60	no search 42 scats