

Review of Long Footed Potoroo (*Potorous longipes*) (“LFP”) detection locations and the adequacy of Department of Environment and Primary Industries (DEPI) and/or VicForests “Special Management Zones” (“SMZ”) within VicForests scheduled logging coupes

Introduction

1. The Fauna and Flora Research Collective Inc. (“FFRC”) have been involved in the detection of the LFP and involved in corresponding on the appropriateness of responsive forest management planning for at least the 37 locations (which are considered within this report) in State Forests within scheduled logging coupes from 2009 to the present.
2. The details of each of these detections were contained in 27 survey reports and letters submitted to the Department of Sustainability and Environment (“DSE”), now the DEPI and collectively herein “the Department”, and VicForests.
3. The Department has confirmed as “verified” detections and created Special Management Zones (“SMZ”) for almost all of these detections (see below).
4. The Department's online interactive mapping program Biodiversity Interactive Maps (“BIM”) shows that all of these detections minus 4 (the “Brown Mountain”, “Little Yalmy River Survey #2”, “Black Cuttings Track [skull detection]” and “Yalmy Regnans” detections) are now contained within some form of Special Management Zone (“SMZ”) designated as a consequence of these detections within State Forest.¹
5. The continued debate over the quality and appropriateness of the design, approval and spatial arrangement of each of these SMZ's remains the subject of this letter.

Background

6. The Long-footed Potoroo is listed as “threatened” under the Flora and Fauna Guarantee Act (1988) (“FFGA”) for which the Long-footed Potoroo Action Statement # 58 (“AS #58”) has been prepared.
7. The FFGA AS #58 requires the following in response to a Long-footed Potoroo detection outside the core protected area –
 - (1) Each Long-footed Potoroo (LFP) detection site outside the Core Protected Area will generate a Special Management Zone (SMZ) of approximately 150 ha.
 - (2) As far as possible, SMZ boundaries will follow recognisable landscape features such as ridges, spurs and watercourses.
 - (3) **Within each SMZ, at least one third (~50 ha) will be protected from timber harvesting and new roading.**
 - (4) **This will be known as Long-footed Potoroo Retained Habitat.**
 - (5) **The LFP Retained Habitat will include the best LFP habitat in the SMZ, which will generally be in gullies and on lower, sheltered slopes.**
 - (6) **The LFP Retained Habitat may include areas otherwise unavailable for timber harvesting due to restrictions under the Code of Practice for Timber Harvesting.**
 - (7) The SMZ will also have a general restriction of one third of the total area that can be harvested in any three year period. If more than one coupe is to be harvested in an SMZ in the same year, the coupes

1 b) The “Yalmy Regnans” detection now falls within the Snowy River National Park and is not concerned by this letter. c) Additional remains of the LFP were observed and confirmed by DSE fauna officers during a “site visit” to the “Black Cuttings Track [skull detection]” location. d) the “Little Yalmy River Survey #2” detection was the last detection submitted as concerned in this report and was an additional detection location submitted approximately 500m from another “verified” detection location referred to in this letter as “Little Yalmy River Catchment (03)”. e) All other detections concerned in this letter were obtained via infra-red remote survey cameras supported by correspondence located confirming their “verified” status.

- must be separated by at least the equivalent of another coupe width.
- (8) The SMZ, with the LFP Retained Habitat clearly delineated, will be shown as part of the Forest Management Area zoning scheme.
 - (9) The SMZ will be designed by DSE, in consultation with VicForests, and approved by DSE.
 - (10) If the ~150 ha area includes any part of an existing conservation reserve or Special Protection Zone (SPZ), these areas will retain their existing reservation or zoning status but will be considered for inclusion as part of the area of retained habitat. In such cases, the final area designated as SMZ may be correspondingly smaller. [emphasis added]

8. In *Environment East Gippsland v VicForests* [2010 VSC 335] His Honour Justice Osborne included in his judgment criticism by a DSE biodiversity officer of a proposed LFP Retained Habitat area that failed to cover the detection site itself at [419]:

“1. The intent of the SMZ and especially the Retained Habitat (RH) is to provide protection for the habitat of the LfPs [Long-footed Potoroos] around the detection site, partly so we can demonstrate that we are NOT knowingly logging forest likely to be the home range of the individual detected.

“2. The home range of LfPs appears to be in the order of 10 to 20 ha, with some animals ranging over larger areas (up to 100 ha). Thus, the RH should be designed to try to capture an area of this order (ie low tens of ha) around the detection site (which is why the Action Statements states the RH is to be about 50 ha). Designing the RH so that it is greater than a few hundred metres from the detection site is not within the purpose and spirit of the prescription. Lee’s recommended SMZ design places about half of the RH further than 500 m from the detection size and thus well outside the expected home range of the detected individual.”

9. His Honour also stated at [420] that:

“The formulation of the retained habitat must [...] take into account each of the first, second and third detections.”

Assessment of the spatial design of the SMZ's (Method)

10. The quality and appropriateness of the design of each SMZ was assessed according to the following criteria derived from the FFGA AS # 58 Appendix 1. “prescriptions to be applied in State Forest” and the information relied upon and the statement made by His Honour Justice Osborne above:

- a) Whether the Long-footed Potoroo Retained Habitat (“LFP RH”) Special Protection Zone (herein the “SPZ”) incorporates the “best” LFP habitat within the SMZ.

NOTE:

- i. **This report considers that the first and strongest indication of where the “best” available habitat (“FFGA AS #58 Appendix 1. (5)”) for the LFP is within the SMZ is defined, in the first instance, by the only available evidence of the species' presence at the given site which is (in the absence of further studies undertaken to ascertain the boundaries of the detected LFP individuals' “home range”) the actual location where the species was detected.**
 - b) Whether the detection location was included in the Special Protection Zone (“SPZ”), i.e. that portion of the SMZ which will not be logged;
 - c) Where the detections location was not included within the SPZ, how far it is positioned from the nearest boundary of the SPZ, and;
 - d) Whether more than 50% of the closest 50ha surrounding the detection location (as the centroid of the closest 50ha area) was incorporated in the SPZ.
 - e) Whether the SPZ was centred on the detection location.

- f) Whether the area of forest included in the SPZ was logged in the last 20 years.
11. The results of this assessment are contained within Appendix A Table i. (attached) and are displayed in the accompanying Appendix B (attached) as the compilation of Figures 1-37.

12. Appendix B

- Figures 1-37 within Appendix B displays each detection location as a “green square” (and is labelled respectively). Each detection is shown where it is located within each SMZ (the yellow area) and where the LFP RH SPZ is located (the pink areas) as well as National Park boundaries where applicable (the green-grey-dash outlined and white-filled areas).
- The blue-outlined-hashed areas show the closest 50ha surrounding each detection location. This is the area which this report concludes should contain at least the majority of the SPZ generated following the detection of the LFP at each location.
- Where applicable other LFP detections contained within the Victorian Government datasets VBA_25 and VBA_100 are shown as green and purple circles respectively.
- The currently scheduled and approved logging coupes threatening the habitat of the threatened LFP at each location is shown as the red outlined polygons.
- Surrounding prior logging history is shown in various shades of purple, where the darkest purple is the most recent logging event shown.
- Roads, streams and topographic contours are also shown.

Results/Discussion

Appendix A

13. Table i. of Appendix A shows each of the 27 survey reports and 37 detection locations with the corresponding analysis of each SMZ according to the method outlined at Item 10 above and as displayed as Figures 1-37 of Appendix B.
14. In total the SMZ's generated cover 34 out of the 37 detection locations. However, only 19 of the 37 detection locations are contained within SPZ's (or LFP RH), and 32 of the 37 detection locations have SPZ's where greater than 50% (> 25ha) of the SPZ is **not** within the 50ha immediately surrounding the LFP detection location.
15. In summary, only 3 of the 37 required SMZ's can be assessed to meet the criteria detailed at Item 10 above as derived from the information outlined within Items 6-9. Within these 3 SMZ's the greatest percentage of SPZ in close (i.e. >50%) proximity to the actual detection was 69%, with 51.2% and 55% comprising the remaining two sites.

Conclusion

16. 34 of the Special Management Zones created are designed such that they do not meet the requirements detailed from Items 6-10 within this report and so do not meet the requirements of the Flora and Fauna Guarantee Act (1988) Action Statement #58 Appendix 1. and the judgement in Environment East Gippsland v VicForests.
17. Until SMZ's for each of the 34 sites listed within Appendix A to this report are designed and actioned according to the FFGA AS #58 and the judgement in Environment East Gippsland v VicForests logging will be (or has been) unlawful within the logging coupes encompassing these detections as listed in the reports referenced (and linked) within Appendix A.