

Hewittville: A History of Non-compliance Demands Action

This is a review of the compliance history of Hewittville for their property at Limpinwood in the Tweed Local Government Area. It shows a long history of non-compliance and environmental damage overseen by inept Government agencies who refuse to take the regulatory action required to stop the offences continuing. The Community believes that this history warrants the EPA issuing a legal Stop Work Order and rescinding the Hewittville Property Vegetation Plan and Forest Operation Plan.

The Environment Protection Authority issued a Property Vegetation Plan (PVP) for part of the Hewittville property on 29 April 2013. The contents of that plan and the subsequent Forest Operation Plan remains unknown.

Road and clearing works began sometime after August that year in both the PVP area and other parts of the property. These involved clearing of native vegetation and construction of a road on a Crown Road Reserve, and in part a Council 7(d) Environmental Protection Zone, without consent, causing significant and ongoing pollution of a creek and Hopping Dicks Creek. At the same time clearing of riparian vegetation along 5 mapped streams and Hopping Dicks Creek was undertaken, including the filling of one stream for a house site.

The neighbour's attempts to get action to halt the clearing were frustrated by delays caused by bureaucratic buck-passing, inadequate and incomplete remedial works, a failure to hold the landowner to account, and finally by the Government's sign-off foreclosing Council's attempts to take prosecution action.

For the second time in March 2017 Hewittville cleared vegetation and constructed another access road on a Crown Road Reserve without consent, this time through 3 neighbour's properties as well as in the PVP area. Despite Council and the Department of Lands attempting to stop works, they apparently continued. The neighbours are still waiting to find out what the Government will do, if anything, but are hopeful that Council will take legal action on their behalf.

Now for the third time Hewittville were found in September 2017 to have cleared vegetation and constructed a road in a Crown Road Reserve without consent in the PVP area. Roding and logging was also undertaken in two Environmental Protection Zones without consent from Council, with some 18 hectares affected. Both EPA and Council claim to have repeatedly told the landowner that consent was required. Council have resolved to consider legal action and the landowner has told the EPA he will stop work, though the EPA refuse to impose a legal Stop Work Order,

This has now gone on for over 4 years, with pollution from the first offence still continuing. The current roding and clearing in a Crown Road Reserve is the third time the landowner has been found to be doing so without consent, obviously the minor consequences of previous actions has not acted as a deterrent. Both the EPA and Tweed Shire Council claim to have informed the landowner on multiple occasions not to undertake works within the Environmental Zones without Council consent, thus the failure to comply with this requirement has been done knowingly and intentionally.

The EPA's performance with monitoring activities associated with this PVP has been poor and irresponsible. Their failure to investigate roading in the Environmental Zones and complaints of clearing (mostly of riparian buffers) within the PVP area in 2013/14 and their claims not to have inspected the current and extensive roading and logging activities within the Environmental Zones before NEFA's visit, demonstrates their lax regulation. The repeat offences are testimony to regulatory failure. Deliberate flouting of environmental laws should not be rewarded, there needs to be an example made in this case. Given the history of this site the community believes that it was irresponsible for the EPA not to issue a legal Stop Work Order. The community is calling for the PVP to be rescinded due to the long history of contravention of legal requirements associated with this property.

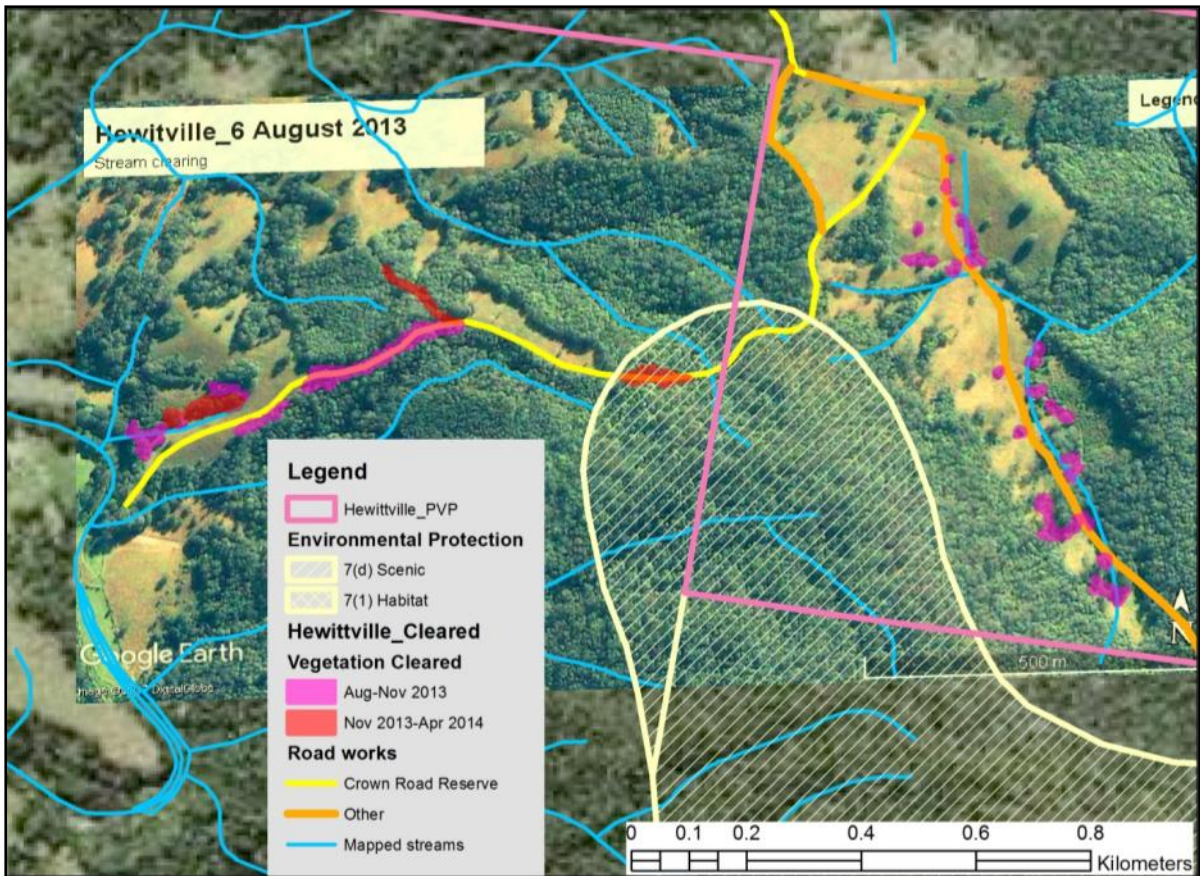
This report reviews the three offences that have occurred on this property since the EPA issued their PVP in 2013. It is clear that each time these have involved activities within the PVP area, and that the earlier offences associated with roading in Crown Road Reserves were committed with the primary purpose of gaining access to the PVP area.

1. FIRST SERIES OF OFFENCES

On the 29 April 2013 PNF-PVP-03294 for 217 ha was issued to Hewittville P/L by the EPA for lots 136 and 138 in Tweed Shire. This was only part of their holdings. The date of the Forest Operation Plan remains unknown.

Sometime after early August 2013 clearing began on lots 127, 128, 129, 136 and 138 of the then Hewittville property. From a review of Google Earth images it is apparent that by April 2014 clearing of native vegetation occurred for the construction of a road to access the PVP area, and in the vicinity of 4 mapped streams and 1 unmapped stream within the PVP area, apparently including clearing vegetation for the construction of a dam. Outside the PVP area, aside from the access road, there was clearing of vegetation in the vicinity of Hopping Dicks Creek and the clearing and filling of a mapped 1st order stream for a house site.

The Google Earth Landsat images are of low resolution so it has been only possible to approximately map gross disturbances for this desktop review. It is thus unlikely to identify the full extent of clearing that occurred. The PVP is not publicly available (not even to Council) so it has not been possible to ascertain what it approved, though it is considered likely to have approved (or at least identified) the access road and roadworks on the Crown Road Reserve and within the 7(d) Environment Protection Zone, though it is unlikely that it would have permitted the clearing of riparian vegetation within the PVP area. Tweed Shire Council maps most of the cleared vegetation as Flooded Gum Open Forest.



ABOVE: Mapping of roads constructed and vegetation cleared from 6 August 2013 until 11 April 2014 on the Hewittville property. This shows clearing of native forests for roadworks, the clearing of riparian vegetation on mapped streams (including in the PVP area), the filling of a first order stream for a house site, and the construction of a dam on another. The total area identified as cleared is 2.6ha, with around 1ha cleared within the PVP area (mostly in riparian buffers), 1ha cleared for road construction mostly within the Crown Road Reserve (including 0.2ha cleared within the 7(d) Environmental zone), and 0.6 ha cleared along the mapped stream adjacent to Hopping Dicks Creek. The access road was constructed for some 1.7 km through the Crown Road Reserve, into the PVP area (including 340 metres through the 7(d) zone).



8 th August 2013



7 th November 2013



11 th April 2014

ABOVE: Sequence of Google Earth landsat images showing progressive clearing of vegetation for roadworks and the filling of a mapped drainage line (note the actual drainage line is to the north of the mapped drainage line).



ABOVE LEFT: Detail of ladsat image from 11 th April 2014 showing clearing and filling of mapped 1st order drainage line outside the PVP area. RIGHT: Photo showing clearing of riparian vegetation at the juncture of first order stream and Hopping Dicks Creek, 14 September 2013.

On 11 September 2013 the neighbour (Susie Header) reported clearing of the riparian zone of Hopping Dicks Creek by Hewittville to EPA hotline (EPA I14727/2013), outside the PVP area. Which was also reported to NSW Office Water (Ref: 00395/2013) on 19 September. No immediate action was taken. The landsats show that clearing and filling of a mapped drainage line and clearing for roadworks continued after this complaint.

Two months after the complaint on 11 December 2013 Office of Water (Andrew Mennel) visited the site, by which time there were many other problems. On 18 December OOW claims to neighbour to have issued a verbal stop work order and referred to OE& H for follow up. Report was closed on 23 January 2014 after the landholder gave a verbal assurance not to do any more clearing. There was no regulatory action or consequences.

It is apparent from Google Earth landsats that clearing of riparian vegetation along first and second order streams had also occurred by the 7 November 2013 within the PVP area. The EPA comment to us on 4 October 2017 that they were unaware of any of the first offences suggests that the EPA did not investigate or take any action in relation to these activities in the PVP area.



ABOVE: Comparison of Google images for 6 August 2013 and 7 November 2013. Shows clearing of vegetation along mapped streams and unmapped stream in PVP area (Note the mismatch of the mapped streams and their apparent location on the ground, which is primarily considered to be both a problem with the 1:25,000 mapping relied upon by the EPA and to a lesser extent a rectification problem). Note the small triangular dam constructed on the stream. There appears to have been extensive clearing of vegetation within riparian buffers on first and second order streams and works involved with constructing a dam.



ABOVE: Comparison of Google images for 6 August 2013 and 7 November 2013. Shows clearing of vegetation along mapped first order stream in PVP area, to south of above (Note the mismatch of the mapped streams, with the actual stream apparently to the east of mapped stream). There appears to have been extensive clearing of vegetation within riparian buffers and clearing of regrowth vegetation to the east.

Sometime after August 2013 works were begun to construct an access road on a Crown Road Reserve from Hopping Dicks Creek for about a kilometer up to boundary of the PVP area for access for logging. Roadworks extended well within the PVP on lot 136, both on and off the Crown road reserve. The roading had no approval from Crown lands and involved removal of native vegetation. At this time the road was constructed for some 340 metres through the 7(d) Environmental Zone, with around 177m of this within the PVP area, without Council consent. This included clearing after 7 November within the 7(d) area, but outside the PVP area, and likely other clearing associated with the roadworks in the PVP area. It is presumed that these roads were identified in the PVP and/or Forest Operation Plan, and that this road (including outside the PVP area) was identified as the logging access road.



Road constructed on Crown Road Reserve for logging access, without approval. While apparently approved in the EPA's PVP as an access road, it was not approved by Crown Lands. Note the cleared mapped stream at lower centre of picture. 9 December 2014.

On 20 March 2014 the neighbour (Susie Header) reported extensive clearing for roadworks and other activities to EPA (EPA C04671/2014). On 24 March 2014 OEH (Alex Simpson) tells her that the property is covered by PVP and misinforms her that Environment zones 7d and 7h are exempt from the PNF approval. Despite extensive clearing having been undertaken unlawfully within the Crown Road Reserve, a 7(d) Environmental Zone, and riparian buffers along mapped streams, investigations into clearing were closed on 7 May 2014 without the OEH having undertaken any regulatory action.

On 17 March 2014 the neighbour (Susie Header) reports beginning of stream pollution due to runoff from the poorly constructed road to the Office of Water and Tweed Shire Council (No ILL14/0321).



LEFT: 28. March 2014 close up of sediment at bottom of 1st road (just up from causeway) RIGHT: 29 March 2014 sediment in watercourse (Subject of cleanup notice) near boundary fence.

On 27 March a particularly significant water pollution event occurred following heavy rainfall. On 31 March 2014 the neighbour (Susie Hearder) was told by OEH (Alex Simpson) that the EPA would make an assessment of her complaints, and may do an audit, as the landowner must comply with the code of practice for roads. Though was informed a couple of weeks later that the EPA had decided not to undertake a site inspection.



LEFT: 31.March 2014 sediment into Hopping Dicks Creek at bottom of 1st road at causeway RIGHT: 6 April 2014 pollution of Hopping Dicks Creek approx 400m downstream of causeway

On 2 April 2014 the Environmental Defenders Office (EDO) wrote to EPA and other agencies on behalf of Susie Hearder.

On 16 April Tweed Shire Council issued 2 x \$1500 PINs, one for filling in the stream and a dam for a house pad on lot 127 and one for pollution of Hopping Dicks Creek, and considers Class 5 proceedings in NSW Land and Environment Court. On the same day Tweed Shire Council issued Hewittville with a Clean Up Notice to remove sediment from a mapped stream, which extends onto a neighbour's property. On 22 August 2014 a second clean-up notice was issued. On 22 September the landowner requested NSW Soil Conservation Service prepare a works plan to remediate the mapped stream and Hopping Dicks Creek. Rather than removing the sediment the plan was to plant lomandra to stabilise the bed, a inappropriate species of lomandra was planted which all subsequently died. On 20 April 2015 OoW issued a Sediment Clean-up Notice Closeout Report without some remediation works ever being done, and others being done inadequately.

Susie Hearder continued to complain that further earthworks, bulldozing and excavation works were unlawfully carried out causing further pollution of creek. For example on 6 November 2014 substantial sediment was washed into Hopping Dicks Creek from multiple sources. On the 10 November 2014 (EPA- C16301/2014) and 23 January 2015 (EPA - C00960/2015) additional reports of water pollution from the roadworks were made to the EPA. On 11 November EPA (Geoff Cram) rings Susie Hearder, though claims the EPA doesn't have a role and refused to investigate.

On 3 December 2014 EDO write to Mark Gifford, Chief Environmental Regulator, EPA complaining that attempts to address the erosion have been largely unsuccessful, stating "*the ongoing water pollution incidents are of a scale that warrants enforcement action by the EPA*", noting:

In our view, there is sufficient evidence to satisfy the definition of water pollution and that one or more water pollution offences under section 120 of the POEO Act have occurred. The mud and debris entering Hopping Dicks Creek and tributaries has had an impact on the waterway ... the ongoing water pollution may constitute a continuing offence.

...

... our client asks the EPA to concern itself with the matter, undertake a full investigation and either commence proceedings or take other immediate enforcement action".

The EDO also advised:

In addition, we understand that a private native forestry agreement exists in relation to Lots 136 and 138 DP 755724 ... We are instructed that clearing in excess of, or not in accordance with, the agreement may have and still be occurring on the property.



Silt in watercourse (subject of cleanup notice) on the boundary of Hewittville and neighbouring property LEFT: 2 May 2014 RIGHT: 9 December 2014.

In response the EPA visited the site on 5 December 2014. The pollution continued, on 23 January Susie Hearder provided the EPA hotline with photos of red mud entering creek after 2 hrs rain (COO960/2015), On 29 January EPA (Graeme Budd) told the neighbour that cleanup had nothing to do with the EPA. Photos sent to EPA on 20 February 2015 after 7 pollution events in 2 weeks, only to be told the case was closed,. After reporting another pollution event to the EPA hotline 21 February, the EPA did another site inspection. On 3 March EDO sent a follow-up letter. On 20 May Crown Lands (Richard Cheerings) told Susie Hearder that according to EPA there is no off-site impact and that the EPA are satisfied with the work .

On 7 August 2014 Tweed Shire Council voted in favour of taking legal action, though dropped the case in July 2015 on the grounds of staff advice that *"it was very difficult for council to revisit compliance actions against the developer given the state agencies had signed off of the clean-up notices"*. Mayor Bagnall was reported as stating *"any reasonable person"* could see the clean-up was inadequate as *"there's still a metre of mud there"*, *"This (developer) is getting off scot free despite the destruction of the landscape, we're talking half a great big hillside he's moved and pushed into the creek"*, and *"If I did that, council staff would be onto me in five minutes, yet this guy just walks scot free, despite those works going on for six months"*.



LEFT: 9.December 2014 Hopping Dicks Creek approx 250 metres downstream from causeway RIGHT: Sediment entering Hopping Dicks Creek, 13 February 2015.



Sediment in stream on neighbour's property, after case was closed on 18/3/2015.

While only a relatively small area of native vegetation was cleared, it was significant because much of it occurred within the vicinity of mapped streams, including the filling in of one mapped stream for a house site, and because the inadequate mitigation of erosion from the roadworks and associated clearing resulted in significant pollution of the adjacent stream and into Hopping Dicks Creek, The significance of the offences is compounded by the fact that at the time of the roadworks most works occurred with a Crown Road Reserve without consent. and partially within a 7 (d) environmental

zone without Council consent. Crown lands sold the road reserve to Hewittville to absolve itself of responsibility. It is not known if the roadworks and clearing within the PVP area were ever investigated.

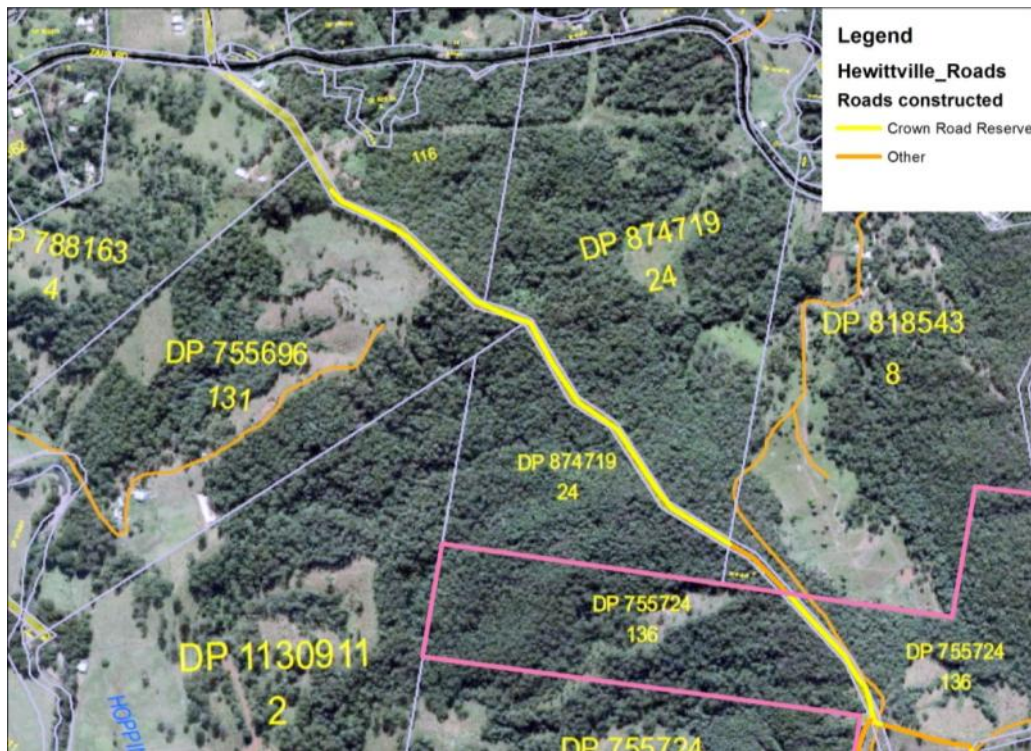
The inept regulation by Government agencies, their failure to take appropriate regulatory action, and the lack of consequences set a poor example to act as a disincentive. Tweed Shire Council was stopped from proceeding with a prosecution after the Government agencies signed off on the outcomes. The environmental consequences are ongoing, with the creek on the neighbour's property still choked with sediment and her still reporting pollution of Hopping Dicks Creek with heavy rainfalls.



The sediment runoff continues 4 years later, photo 15 October 2017.

2. SECOND SERIES OF OFFENCES

It is no wonder that a second offence occurred in March 2017 with Hewittville's construction of a 1.5 km road on a Crown Road reserve through 3 private properties (Jenny Chilcott, landowner, pers. comm.), involving extensive vegetation clearing, without consent from any property owners or any permits from Crown Lands or Tweed Shire Council . At the same time the same road was apparently also constructed for 360m through the Crown Road Reserve within the PVP area of Hewittville's property.



Route of roadworks within Crown Road Reserve March 2017 (the pink boundary is the PVP area)

The roadworks and vegetation clearing were reported to Council on Monday 13th March 2017. Crown lands advised that no current permit had been issued and that a prior permit to do light grading and pothole filling expired in November 2016. Tweed Shire Council gave a stop work order on Wednesday 15th March after viewing significant erosion.

The EPA was contacted on 16 March 2017.



LEFT: Photo of roadworks, 13 March 2017. RIGHT: Photo of erosion during Council inspection, 15 March 2017.

An inspection on Friday 17th March 2017 by Crown lands (Grahame Hicks) found *"developer in attendance working and had clearly worked the previous day, as previously felled trees had been cut through with chainsaws and more extensive road works, removing and mounding of washed soil and silt buildup onto roadsides had occurred after the council stop work order and inspection"* (Jenny Chilcott, landowner, pers. comm.). Another stop work order was issued on 17 March 2017.

The landowner appealed to Minister Gabrielle Upton on 21 March 2017 to stop the works, stating; *He has done major earthworks with a D8 Dozer, the tree clearing is extensive, pushed into gullies mounded on road side some of which are extremely large old growth trees. The earthworks have no erosion and sedimentation controls in place. Mounds of earth were pushed into gullies and after rain there is major silt build up and extensive erosion which has now contaminated two neighbours dams and we believe the creek adjoining development.*

On Friday 28th April 2017 Crown Lands authorised the road closure due to public safety issues and to stop further environmental damage, with gates installed on 18 May 2017. The landowner Jenny Chilcott (pers. comm.) claims that despite the closure a bobcat created a track around the gate and that further works have been undertaken on the road.

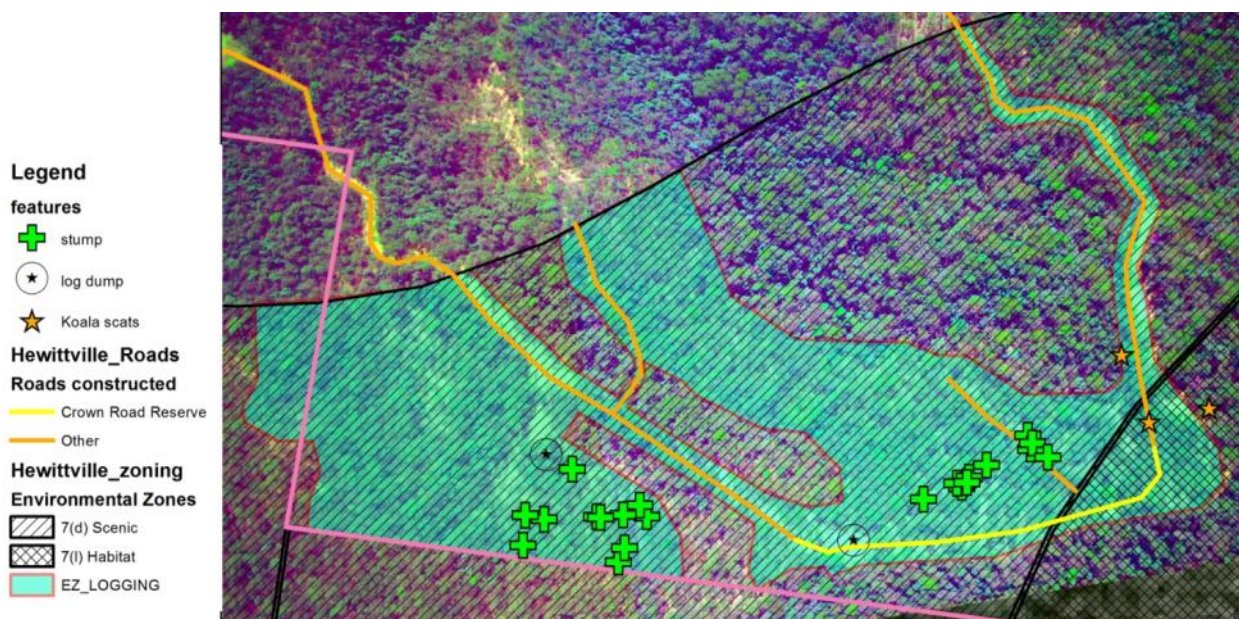
It appears that both Council and Crown Lands have been ineffective at stopping unauthorised clearing and roadworks and are apparently reluctant to take the legal measures required to ensure rehabilitation. Once again the environmental damage is ongoing. The neighbours are still waiting for regulatory action.

3. THIRD SERIES OF OFFENCES

In response to concerns about logging operations from neighbours NEFA decided to undertake an initial assessment of Lot 136 from the Crown road reserve that runs through it, to assess the habitat suitability and the presence of owls and Marbled Frogmouths on the property through playback of their calls from the road reserve. The assessment occurred on the afternoon and evening of Saturday 9th September 2017.

During the course of the assessment it became obvious that extensive logging and roadworks had been undertaken in the Zone 7 (d) Environmental Protection (Scenic/Escarpment) and 7(l) Environmental Protection (Habitat), despite the landholder having no consent to do so. A small part of these areas was assessed by NEFA to document a sample of breaches. NEFA documented 22 trees that had been cut down within the 7(d) Environmental Protection zone, 3 of which were within the Crown road reserve.

NEFA have since reviewed aerial photographs taken on behalf of the Northern Rivers Guardians and estimate that with the logging and roading combined affected around 18ha of the 7(d) and 7(l) Environmental Zones, with the main road constructed for 1.3km through 7(d) and (l) zones. Some 400m of the road (and one log dump) are on the Crown road reserve. There were also significant other roads, snig tracks and 2 log dumps constructed in the 7(d) zone. See map below.



NEFA preliminary mapping of the extent of logging and roadworks within the 7(d) and 7(l) Environmental Protection zones on the Hewittville property. Note that this mapping is only preliminary and requires ground truthing.



LEFT: Logging and roading within Environmental Protection zones. RIGHT: Detail of lower log dump in 7(d) zone.



Examples of logging in 7(d) Environmental Protection Zone. The locations of 22 stumps were documented, 3 of which are also in the road reserve.

The manner in which the roading and logging operations are being undertaken demonstrates extremely poor practice, with extensive major earthworks for roads and snig tracks with little attempt to mitigate erosion and stream pollution. The failure of the EPA to recognise and redress such blatant and widespread breaches of PNF requirements beggars belief.



There was a widespread failure to appropriately drain roads and snig tracks which went unobserved by EPA. **LEFT:** A 23° snig track over 150m long (6864887, 525475), that should have had 8 cross banks, though didn't have any. **RIGHT:** A newly constructed stretch of road (6864819, 525247) over 250m in length required over 6 drains, yet only had one inadequately constructed side drain.



LEFT: Roadworks within the Crown road reserve in the Environmental Protection zone 7(l), note the piled trees bulldozed out for the road. **RIGHT:** Top log dump on Crown road reserve in Environmental Protection zone 7(d) (6864785, 525329)

In summary, despite there being no consent from Tweed Shire Council or Crown lands:

- Within the PVP area some 18 hectares of Environmental Zones 7(d) and 7(l) have been logged or cleared.
- Logging appears to have extended into Lot 124 which is outside the PVP area
- Some 1.3km of roads, involving clearing of trees and extensive soil disturbance, were reconstructed and newly constructed through the 7(d) and (l) zones, along with extensive snig tracks and 2 log dumps.
- Some 400m of the road (and one log dump) within the Environmental Zones 7(d) and 7(l) are on the Crown road reserve.

- Drainage implemented to prevent erosion of roads and snig tracks was very limited and did not satisfy PNF requirements.
- Unmapped drainage lines have been extensively disturbed and large volumes of soil pushed into one for a crossing.
- Operations within the Environmental zones took place within habitat of Koala, Masked Owl and potentially the Marbled Frogmouth.

The EPA apparently visited the site three times before NEFA's visit, most recently the Monday before NEFA. They have since undertaken an additional visit. At our meeting with the EPA on 4 October 2017 we were informed that the EPA had not inspected the environmental zones prior to NEFA's complaint. The EPA's failure to inspect the active logging and roading in the environmental zones on their visit a few days before NEFA shows lax supervision. The EPA seemed blithely unaware that every time they visit the site they use a road constructed without consent through the 7(d) Environmental Zone, including in the PVP area, and past cleared riparian areas.

On 4 October the EPA said they had told the landowner 4 times that he needed permission for forestry activities in the Environmental Zones. Tweed Shire Council (21 September 2017) also advises "*The owners of the subject site have been provided with an extensive briefing of these LEP consent requirements on multiple occasions*". The landowner's failure to seek the required approval despite 4 reminders from the EPA and multiple advices from Council indicates that the breach was made knowingly and deliberately. Despite this and the previous breaches, after NEFA's complaint the EPA accepted a voluntary undertaking by the landowner to stop work, with nothing in writing and no commitment to notify the EPA before recommencing work. As an example of ill-informed decision making the EPA claimed to be aware of the second offence, though claimed to have no knowledge of the first offence.

This is the third time that Hewittville have undertaken unapproved works within a Crown Road Reserve, being asked to stop works on the first occasion and contravening a Stop Work Order and road closure on the second occasion. A third offence deserves a meaningful response.

At its meeting of 21 September 2017 Council resolved that:

1. *Council engages its solicitors to provide advice regarding the unauthorised forestry and road works within that portion of Lot 136 DP DP755724 Boormans Road, Tyalgum affected by Tweed Local Environmental Plan 2000 environmental zones, as identified in this report, and that a further report be submitted to Council providing preferred options for prosecution of the site owners, and best options to impose a statutory stop work order under the Environmental Planning and Assessment Act 1979 and a **Clean Up Notice under the Protection of the Environment Operations Act 1997**;*
2. *Council endorse that a systematic site assessment be undertaken to inform any investigation and compliance action including:*
 - a. *Survey all constructed roads via vehicle traverse with differential GPS;*
 - b. *Survey the aerial extent and location of all areas of vegetation clearing;*
 - c. *Assessment by a suitably qualified ecologist to quantify the vegetation classification of areas impacted by vegetation clearing; and*
 - d. *Assessment by a suitably qualified ecologist of the quantified extent of vegetation clearing in relation to the impacts of the clearing on threatened species and threatened species habitat.*

3. Council officers continue to work with relevant State and Federal Government compliance agencies to seek a prosecution of the site owners under their legislation and appropriate site management.

4. Subject to the advice in 1 above the Stop Work Notice and the Clean Up Notice may be issued by the General Manager or delegate without the need for a further report to Council.

5. Council requests in the strongest terms and makes representations in person to the state government to revoke this Private Native Forestry licence due to the significant impacts for Tweed's World Heritage values, threatened species, waterway pollution, safety issues with the instability of the works for compliance officers and on site workers, the unsuitability of the external road network, the significant costs of the extensive compliance actions required, the distress caused in the community, and the ongoing risks of further compliance breaches as evidenced by the significance and similarity of these repeat offences.

Given the history of this site the community believes that it was irresponsible for the EPA not to issue a legal Stop Work Order. The community is calling for the PVP to be rescinded.