



Conservation Agreement

between the

**MINISTER FOR SUSTAINABILITY, ENVIRONMENT, WATER, POPULATION &
COMMUNITIES**
on behalf of the
COMMONWEALTH OF AUSTRALIA

And the

TASMANIAN MINISTER FOR ENERGY AND RESOURCES
on behalf of the
STATE OF TASMANIA

And

FORESTRY TASMANIA
ABN 91 628 769 359

in relation to the

**PROTECTION AND CONSERVATION OF BIODIVERSITY UNDER THE
ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT
1999 (Cth)**

**And in relation to the protection and management of public native forest in accordance
with the Tasmanian Forest Agreement 2012**

in the

STATE OF TASMANIA

SCHEDULES

Schedule 1 – Map based on the area identified as Tranche 1 and Tranche 2 on Map B in clause 35(a) and 35(b) of the Tasmanian Forest Agreement 2012 as verified by the State

Schedule 2 – Agreed exclusions for the purposes of this Conservation Agreement from the map in Schedule 1

CONSERVATION AGREEMENT

PARTIES

This is an agreement between:

Parties	The Minister for Sustainability, Environment, Water, Population and Communities on behalf of the Commonwealth of Australia, and
	The Tasmanian Minister for Energy and Resources on behalf of the State of Tasmania, and
	Forestry Tasmania

Minister	Name	Minister for Sustainability, Environment, Water, Population and Communities on behalf of the Commonwealth of Australia
	Address	Parliament House CANBERRA ACT 2600
	Telephone	(02) 6277 7640
	Fax	(02) 6273 6101
	Attention	Assistant Secretary, Biodiversity Policy Branch, Department of Sustainability, Environment, Water, Population and Communities

Tasmanian Minister	Name	Minister for Energy and Resources on behalf of the State of Tasmania
	Address	Parliament House HOBART TASMANIA 7000
	Telephone	(03) 6233 6454
	Fax	(03) 6233 2272
	Attention	Deputy Secretary, Strategy and Policy Department of Infrastructure, Energy and Resources

Forestry Tasmania	Name	Forestry Tasmania (a corporation established by the <i>Forestry Act 1920</i> (Tas))
	ABN	91 628 769 359
	Address	79 Melville Street HOBART TASMANIA 7000
	Telephone	(03) 6235 8333
	Fax	(03) 6235 8223
	Attention	Managing Director

PURPOSE

- A. Section 305(1)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) provides that the Minister for Sustainability, Environment, Water, Population and Communities (the **Minister**) may, on behalf of the Commonwealth, enter into an agreement with a person for the protection and conservation of biodiversity in Australia.
- B. The Parties have agreed to enter into this Agreement under section 305 of the EPBC Act in relation to the Land. The Land is subject to the *Forestry Act 1920* (Tas) (**Forestry Act**).
- C. Under this Agreement, Forestry Tasmania agrees not to carry out Forestry Operations on the Land for the term of this Agreement.
- D. For the purposes of section 305(2) of the EPBC Act, the Minister is satisfied that this Agreement will result in a net benefit to the conservation of biodiversity and is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan.
- E. The Parties have agreed that this Agreement only relates to Forestry Operations on the Land and does not apply to any other activities on the Land.
- F. This Agreement has the effect of binding the Commonwealth, the State and Forestry Tasmania.

OPERATIVE PART

1 Interpretation

- 1.1 In this Agreement, unless a contrary intention appears:

Agreement means this Agreement signed by the Parties, as amended from time to time in accordance with section 308 of the EPBC Act or clause 16.1 and includes the Schedules attached to this Agreement.

Agreement Period means the period specified in clause 2.

Business Day means a day; not being a Saturday, Sunday or public holiday in Tasmania.

Commonwealth means the Commonwealth of Australia.

Department means the Commonwealth agency responsible for administering the EPBC Act, currently the Department of Sustainability, Environment, Water, Population and Communities.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

EPBC Regulations means the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth).

Forest Practices Plan means a plan certified by the Forest Practices Authority in accordance with the *Forest Practices Act 1985* (Tas).

Forestry Act means the *Forestry Act 1920* (Tas).

Forestry Operations means the following activities:

- (a) the harvesting of trees or other forest products;
- (b) the thinning of trees for harvesting;
- (c) planting of trees for harvesting;
- (d) land clearing to facilitate harvesting;
- (e) preparation of land to facilitate harvesting; and
- (f) construction of new roads to facilitate any of the purposes outlined in paragraphs (a) – (e) above.

Forestry Tasmania means the statutory corporation established by the Forestry Act which has the exclusive management and control of all State forest for the purposes of that Act.

Intergovernmental Agreement means the Tasmanian Forests Intergovernmental Agreement between the Commonwealth of Australia and the State of Tasmania signed on 7 August 2011.

Land means the area of public land subject to the Forestry Act at the time of this Agreement contained within the land shown as tranche 1 and tranche 2 on Map B in clause 35(a) and 35(b) of the Tasmanian Forest Agreement on the map in Schedule 1 of this Agreement as verified by the State but excluding those areas identified in Schedule 2 of this Agreement.

Minister means the Minister administering the EPBC Act or a delegate of the Minister pursuant to section 515(1) of the EPBC Act.

Parties means the parties to this Agreement and/or their legal successors and permitted assigns, and includes any person bound by this Agreement as a result of section 307(c) of the EPBC Act.

Protection Order means any order or other provision that provides for land to be proposed as reserves which is made in accordance with legislation enacted by the Tasmanian Parliament to give effect to the Tasmanian Forests Agreement 2012.

State means the State of Tasmania.

Tasmanian Forest Agreement means the Tasmanian Forest Agreement signed on 22 November 2012 by representatives of the Australian Conservation Foundation, the Australian Forest Contractors Association, the Construction, Forestry, Mining and Energy Union, Environment Tasmania Inc, the Tasmanian Forest Contractors Association, the Forest Industries Association of Tasmania, the Tasmanian Sawmillers Association, The Wilderness Society Inc and the Tasmanian Wilderness Society (Tasmania) Inc.

Writing means any representation of words, figures or symbols capable of being rendered in a visible form.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) all references to dollars are to Australian dollars;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth or Tasmania (as indicated) as amended or replaced from time to time;
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (h) any Schedule or any attachments form part of this Agreement;
- (i) where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of a Schedule or attachment (if any), the terms and conditions of the clauses prevail; and
- (j) reference to a Schedule or an attachment is a reference to a Schedule or an attachment to this Agreement, including as amended or replaced from time to time.

1.3 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

- 1.4 The powers or functions of the Minister under this Agreement may be exercised by the Secretary of the Department, a Deputy Secretary or the First Assistant Secretary of the Biodiversity Conservation Division or the Assistant Secretary of the Biodiversity Policy Branch of the Department in accordance with the Delegation of powers and functions of the EPBC Act and EPBC Regulations dated 1 December 2009.
- 1.5 Nothing in this Agreement operates to interfere with, hinder or prevent, contrary to the law, the free exercise by any Minister of the Crown of any duty or authority of that office.

2 Commencement and duration

- 2.1 The Parties agree that this Agreement commences on the date on which it is executed and dated by the last Party.
- 2.2 This Agreement is legally binding on the Commonwealth, the State and Forestry Tasmania.
- 2.3 This Agreement ends on and ceases to be of any effect on the earlier of:
 - (a) 30 June 2013; or
 - (b) the date on which a Protection Order is made.
- 2.4 This Agreement has the effect of binding the Parties for the duration of this Agreement but only to the extent that this Agreement is consistent with the obligations, rights and liabilities of each Party under any applicable law.

3 Protection and conservation of biodiversity

- 3.1 Subject to clause 3.2, Forestry Tasmania must not conduct or allow to be conducted any Forestry Operations on the Land.
- 3.2 Clause 3.1 does not prevent the following activities being undertaken on the Land in accordance with the requirements of the *Tasmanian Reserve Management Code of Practice 2003 and/or the Forest Practices Code 2000*, and which will result in the net conservation of biodiversity:
 - (a) remediation of the Land;
 - (b) rehabilitation or regeneration of vegetation on the Land designed to achieve reforestation as closely as possible to that which approximates the natural canopy tree composition for the site, and which is in accordance with requirements of certified Forest Practices Plans;
 - (c) establishment of fire boundaries;
 - (d) prescribed burning;

- (e) any seed collection, surveying, monitoring, trapping, sowing or management of fauna required to implement the activities outlined in clauses 3.2(a), 3.2(b), 3.2(c) or 3.2(d);
- (f) the recovery of previously-felled forest products from Land that has been recently harvested and not yet regenerated; and
- (g) previously permitted non-forestry activities including bee-keeping, recreational and tourism activities.

3.3 The Minister acknowledges that:

- (a) this Agreement has the effect of protecting the carbon stored in the native forest on the Land; and
- (b) this a key objective of the State and Forestry Tasmania.

4 Access to the Land

4.1 Forestry Tasmania agrees to give to the Minister, or any authorised Departmental representative of the Minister, access at all reasonable times to the Land for the purpose of:

- (a) monitoring compliance with this Agreement; and
- (b) taking any action that is required to remedy or monitor any breach of this Agreement.

5 Assignment and novation

5.1 Forestry Tasmania must not novate any or all of its rights, obligations and liabilities, and must not assign any or all of its rights under this Agreement, without approval in writing from the Minister and the State, such approval not to be unreasonably withheld.

6 Dispute resolution

6.1 Any dispute arising during the course of this Agreement shall be dealt with as follows:

- (a) first, the Party claiming that there is a dispute shall send to the other Parties a notice setting out the nature of the dispute;
- (b) secondly, the Parties shall try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
- (c) thirdly, the Parties have twenty (20) Business Days from the sending of the notice to reach a resolution or to agree that the dispute shall be submitted to mediation or some other form of alternative dispute resolution procedure;

- (d) fourthly, the Parties shall try to resolve the dispute by arbitration at a tribunal agreed by the Parties or if there is no agreement, at a nationally accepted arbitration tribunal that is suitable for hearing this kind of dispute; and
- (e) lastly, if:
 - i. there is no resolution or agreement; or
 - ii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within thirty (30) Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the thirty (30) Business Days,

then, a Party may commence legal proceedings.

- 6.2 Despite the existence of a dispute, a Party shall (unless requested in writing not to do so by the Minister) continue to perform its obligations under this Agreement.
- 6.3 This clause does not preclude any Party from commencing legal proceedings for urgent interlocutory relief or otherwise under the EPBC Act.

7 Termination by agreement

- 7.1 This Agreement may be terminated by agreement between the Minister, the State and Forestry Tasmania in accordance with subsection 308(3) of the EPBC Act.

8 Representations and warranties

- 8.1 Forestry Tasmania hereby represents and warrants that the Land is either owned, vested in, or controlled by, Forestry Tasmania.
- 8.2 For the purposes of section 305(2)(a) of the EPBC Act, the Minister is satisfied that the implementation of this Agreement will result in a net benefit to the conservation of biodiversity and is not inconsistent with any recovery plan, threat abatement plan or wildlife conservation plan relevant for the Land.
- 8.3 The rights of the Minister under this Agreement are in addition to any rights the Minister has under the EPBC Act.
- 8.4 For the avoidance of doubt, nothing in this Agreement operates to restrict or limit any Party's rights or powers in relation to the Land, or to affect the status of the Land, following the expiry or termination of this Agreement.

9 Negation of partnership and agency

- 9.1 The State and Forestry Tasmania must not represent themselves and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being partners or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.
- 9.2 The State and Forestry Tasmania are not by virtue of this Agreement partners or agents of the Commonwealth, nor do the Parties, other than the Minister, have any power or authority to bind or represent the Commonwealth.

10 Waiver

- 10.1 If a Party does not exercise (or delays in exercising) any of its rights, obligations and/or liabilities that failure or delay does not operate as a waiver of those rights, obligations and/or liabilities.
- 10.2 Whole or partial exercise by a Party of any of its rights, obligations and/or liabilities does not prevent the further exercise of any right, obligation and/or liability.
- 10.3 In this clause 'rights, obligations and/or liabilities' means rights, obligations, liabilities or remedies provided by this Agreement or existing under law.

11 Costs

- 11.1 Each Party shall bear their own costs in relation to the preparation and execution of this Agreement.

12 Notification of certain matters adversely affecting the conservation and protection of biodiversity on the Land

- 12.1 Forestry Tasmania must notify the Minister of any actions related to Forestry Operations, including actions proposed or undertaken by a third party, where those actions could significantly adversely impact upon the conservation and protection of biodiversity on the Land.

13 Response to Minister's communications

- 13.1 Forestry Tasmania must respond promptly to all communications from the Minister relating to this Agreement.

14 Notices

- 14.1 Any notice, request or other communication to be given under this Agreement is to be in writing and dealt with as follows:

- (a) to the Minister – marked for the attention of the Forest Policy Section at the Department of Sustainability, Environment,

Water, Populations and Communities, GPO Box 787 Canberra ACT 2601 or as otherwise notified by the Minister; and

- (b) in all other cases - to the address of the relevant Party as set out at the beginning of this Agreement and marked to the attention of the person listed for the relevant Party at the beginning of this Agreement.

14.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is also to be sent to the addressee by pre-paid post.

14.3 A notice, request or other communication shall be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid ordinary post within Australia, to a place within the mainland of Australia, upon the expiration of 10 (ten) Business Days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

15 Governing law

15.1 This Agreement is governed by the law of Tasmania and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Tasmania.

16 Variation


16.1 Subject to the Minister's rights under section 308 of the EPBC Act, no agreement or understanding varying or extending this Agreement is legally binding on the Parties unless the agreement or understanding is in writing and signed by all Parties.

17 Counterparts

17.1 This Agreement may be executed in counterparts. All executed counterparts constitute one document.

SIGNED AS AN AGREEMENT


SIGNED by the MINISTER FOR
SUSTAINABILITY, ENVIRONMENT,
WATER, POPULATION AND
COMMUNITIES


.....
(signed)


.....
(name)


Date: 31/1/13

In the Presence of Witness:


.....
(signature)

Emma Campbell
.....
(name)

SIGNED by the TASMANIAN
MINISTER FOR ENERGY AND
RESOURCES


.....
(signed)

Bryan Green
.....
(name)

Date: 4/2/13

In the Presence of Witness:


.....
(signature)

KAREN M VADASZ
.....
(name)


SIGNED by FORESTRY TASMANIA


.....
(signed)

RL GORDON
.....
(name)

Date: 31/1/13

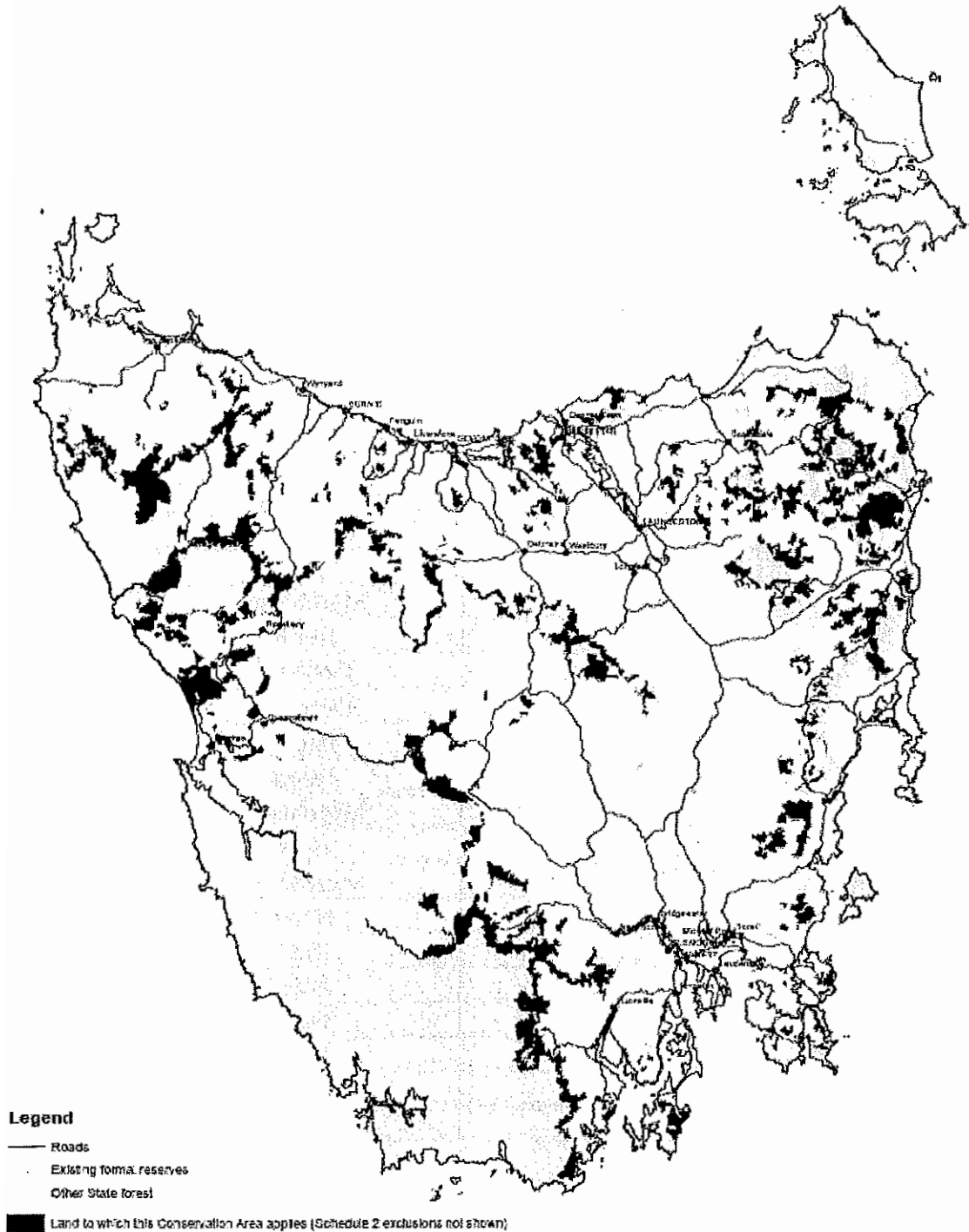
In the Presence of Witness:


.....
(signature)

Steve Whiteley
.....
(name)

SCHEDULE 1

MAP BASED ON THE AREA IDENTIFIED AS TRANCHE 1 AND TRANCHE 2 ON MAP B IN CLAUSE 35(A) AND 35(B) OF THE TASMANIAN FOREST AGREEMENT 2012 AS VERIFIED BY THE STATE



SCHEDULE 2

AGREED EXCLUSIONS FOR THE PURPOSES OF THIS CONSERVATION AGREEMENT TO THE AREA IN SCHEDULE 1

The following land is excluded from Schedule 1:

- Any land which is not vested in or owned or controlled by Forestry Tasmania
- Any land on which plantation forests have been established.
- Any existing coupe partially on the Land and on other land adjacent to the Land but only if the part of the coupe that is located on the Land is less than 25% of the total area of that coupe.
- The following coupes and any roads required to access these coupes (unless subsequently removed from this list by written agreement of the Parties) – noting that the Minister and Forestry Tasmania are continuing their efforts to reduce the number of coupes:

Coupe	Net Harvest Area (ha)	District
BA388D	41	Bass
BT009D	29	Derwent
BT011C	32	Derwent
BT012D	31	Derwent
BT013A	10	Derwent
CD103A	43	Bass
CF027A	13	Murchison
CM017C	39	Huon
CO008A	18	Derwent
CZ006C	36	Derwent
EP011A	33	Huon
EP048C	38	Huon
FD056C	24	Murchison
FL105C	14	Bass
FR015A	Road	Murchison
HA045E	28	Huon
NL111A	105	Bass
NL111B	100	Bass
NL111G	16	Bass
NL115H	20	Bass
PC015B	27	Huon
PC043G	25	Huon
SA044B	13	Bass
SB038A	5	Huon
SB040A	20	Huon
SX019I	19	Derwent
TN051C	15	Derwent
TY032A	24	Bass
UR034A	20	Bass
29	837	Total