



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

CONSERVATION AGREEMENT

Conservation Agreement for the protection and conservation of areas of State Forest separating the Tasmanian Wilderness World Heritage Area from adjoining wood production coupes

Commonwealth of Australia as represented by the Minister for Environment, Heritage and Water (the **Minister**)

The State of Tasmania as represented by the Minister for Energy and Resources (the **Tasmanian Minister**)

Forestry Tasmania (**Forestry Tasmania**)

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Details

Parties

1. The Minister for Environment, Heritage and Water (the **Minister**) on behalf of the Commonwealth of Australia and representing the Department of Sustainability, Environment, Water, Population and Communities (the **Department**).
2. The Minister for Energy and Resources (the **Tasmanian Minister**) on behalf of the State of Tasmania and representing the Department of Infrastructure Energy and Resources.
3. Forestry Tasmania (**Forestry Tasmania**).

Recitals

- A. Section 305(1)(a) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) provides that the Minister may, on behalf of the Commonwealth, enter into a Conservation Agreement for the protection and conservation of biodiversity in Australia.
- B. On 24 June 2013, the World Heritage Committee agreed to the minor boundary modification to the Tasmanian Wilderness World Heritage Area, as requested by the Australian Government. This included areas which the signatories to the Tasmanian Forest Agreement 2012 recommended for inclusion in the World Heritage Area.
- C. The extensions to the Tasmanian Wilderness World Heritage Area include areas along the northern and eastern boundary of the property, including parts of the Mersey River Valley and Western Tiers, the Upper Florentine and areas within the Styx, Huon, Picton and Counsel River Valleys consistent with the areas agreed for protection by the Tasmanian Forest Agreement 2012.
- D. The Commonwealth worked collaboratively with the State of Tasmania and Forestry Tasmania to ensure that a workable management boundary was achieved.
- E. It was agreed that there was a requirement for operational separation along some parts of the extended boundary, where the Tasmanian Wilderness World Heritage Area boundary is near wood production coupes. This operational separation area of State Forest is the Land identified in Annexure A.
- F. The purpose of this Agreement is to:
 - (i) protect and conserve the biodiversity values present in the Land; and
 - (ii) support efficient and effective forestry operations in State Forest adjacent to the Land.
- G. The Minister has agreed to enter into this Conservation Agreement with the State and Forestry Tasmania under section 305 of the EPBC Act in relation to the purposes described in Recital F.

- H. For the purposes of section 305(2) of the EPBC Act, the Minister is satisfied that the implementation of this Agreement will result in a net benefit to the conservation of the biodiversity of the Land and is not inconsistent with any recovery plan, threat abatement plan or wildlife conservation plan.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, terms have the meaning they are given in the EPBC Act and otherwise the following definitions are used:

Activity	the activity specified in Item 1.3 of Schedule 2.
Activity Objectives	the activity objectives described in Item 1.2 of Schedule 2.
Agreement	this agreement between the Minister the Tasmanian Minister and Forestry Tasmania, as amended from time to time in accordance with section 308 of the EPBC Act or clause 9.2 and includes its Schedules and Annexure A.
Agreement Period	the period specified in clause 2.
Business Day	in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.
CAR values	the conservation values as described by the JANIS Reserve Criteria embodied in the CAR Reserve System and published in the JANIS Report that was published by the Joint ANZECC/MCFFA National Forests Policy Statement Implementation Sub-committee in June 1997 titled 'Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia.
Commonwealth	the Commonwealth of Australia.
Department	the Commonwealth agency responsible for administering the EPBC Act, currently the Department of Sustainability, Environment, Water, Population and Communities.
Department Representative	the person identified in Item 2 of the Schedule 1.
Electronic Communication	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).
End Date	the date specified in Item 7 of Schedule 1.
EPBC Act	the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
Forestry Act	the <i>Forestry Act 1920</i> (Tas).
Forestry Tasmania	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.

Forestry Tasmania Representative	the person identified in Item 4 of Schedule 1.
Land	the area described in Item 8 of Schedule 1.
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government.
Minister	the Minister administering the EPBC Act or a delegate of the Minister pursuant to section 515(1) of the EPBC Act.
Native Forest Harvesting	has the same meaning as in section 3 of the <i>Tasmanian Forests Agreement Act 2013</i> (Tas).
Protected Matter(s)	a matter protected by a provision of Part 3 of the EPBC Act.
Review	the review the parties agree to undertake in accordance with clause 6.
State	the State of Tasmania.
State Forest	has the same meaning as in the Forestry Act.
Tasmanian Forest Agreement 2012	the agreement dated 22 November 2012 between the: <ul style="list-style-type: none"> (a) Australian Conservation Foundation; (b) Australian Forest Contractors Association; (c) Australian Forest Products Association; (d) Construction, Forestry, Mining and Energy Union; (e) Environment Tasmania Inc; (f) Forest Industries Association of Tasmania; (g) Tasmanian Forest Contractors Association; (h) Timber Communities Australia; (i) Tasmanian Sawmillers Association; (j) The Wilderness Society Inc; and (k) The Wilderness Society (Tasmania) Inc.
Tasmanian Department Representative	the person identified in Item 6 of Schedule 1.
Tasmanian Wilderness World Heritage Area	the area of that name identified in Maps 1-15 in Annexure A.
World Heritage Convention	the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as amended and in force for Australia from time to time.

**World Heritage
Committee**

the group which decides on the places to be listed as the UNESCO World Heritage List.

1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by meaning of, for example or similar expressions;
- (d) a reference to a clause, paragraph, Schedule or Annexure is to a clause or paragraph of, or Schedule or Annexure to, this Agreement;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency;
- (g) a reference to time is to the time in the place where the obligation is to be performed;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.

1.3 Free exercise of duties of office

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. Agreement Period

- (a) This Agreement commences on the date of execution by the last party.
- (b) This Agreement ends on and ceases to be of any effect on the earlier of:
 - (i) the End Date;
 - (ii) the date the parties subsequently agree in writing that this Agreement should end; or
 - (iii) the date this Agreement is terminated under clause 9.
- (c) 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. Priority of documents

If there is any inconsistency between any of the documents forming part of this Agreement those documents will be interpreted in the following order of priority to the extent of the inconsistency:

- (a) the 'Agreed terms' of this Agreement (being clauses 1 through to 11);
- (b) the Schedule(s) in their order of appearance;
- (c) any Annexure(s) in their order of appearance; and
- (d) documents incorporated by reference in this Agreement.

4. Protection and conservation of the Land

4.1 Obligation to undertake Activity

Forestry Tasmania must carry out the Activity:

- (a) to protect and conserve biodiversity on the Land;
- (b) in accordance with all applicable Laws;
- (c) so as to deliver the Activity Objectives and meet all reporting requirements, in accordance with the requirements of this Agreement; and
- (d) otherwise in accordance with the provisions of this Agreement.

5. Notification requirements

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

Forestry Tasmania must notify the Minister of such Native Forest Harvesting that it is aware of, or becomes aware of, on the Land, where this activity could significantly adversely impact upon Protected Matters on the Land.

6. Review of this Agreement

6.1 Review

- (a) A review of the operation of this Agreement (**Review**) may be undertaken by the parties as specified in Item 2.1 of Schedule 2.
- (b) If a Review is to be undertaken the parties will agree in writing on:
 - (i) the terms of the Review;
 - (ii) the scope of the Review; and
 - (iii) the date by which the Review will be completed.
- (c) Failure to undertake the Review contemplated by clause 6.1(a) does not invalidate this Agreement.
- (d) This clause does not limit the Minister's powers to terminate or vary this Agreement under section 308 of the EPBC Act.

7. Access

7.1 Access to the Land and Data

Forestry Tasmania acknowledges and agrees that the Department, or any authorised representative, may, at all reasonable times and on giving reasonable notice to Forestry Tasmania:

- (a) access and inspect the Land for the purposes of:
 - (i) monitoring compliance with this Agreement; and
 - (ii) taking any action that is required to remedy or monitor any breach of this Agreement; and
- (b) require Forestry Tasmania, including any subcontractors, to provide access to records, documents and information relevant to the performance of this Agreement in a data format and storage medium accessible by the Department.

7.2 General

- (a) Each party must bear its own costs of any inspections, reviews, audits and enquiries conducted pursuant to this clause 7.
- (b) Each party must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 7.
- (c) This clause 7 applies for the duration of the Agreement Period and for a period of seven years from the termination or expiry of this Agreement.

8. Dispute resolution

8.1 Dispute resolution

The parties must endeavour to resolve any dispute under this Agreement by mediation or other dispute resolution method before they commence legal proceedings (except proceedings for urgent interlocutory relief).

8.2 Obligations continue

- (a) Despite the existence of a dispute, the parties must continue to perform their respective obligations under this Agreement, unless a direction is issued in accordance with clause 8.2(b).
- (b) If directed and notified in writing by the Department to do so, the parties must cease performing the obligations of the parties under this Agreement which are specified in the Department's notice until the Department issues a further written notice to the parties directing them to resume performance of those obligations.

8.3 Costs

Each party to a dispute must pay its own costs of complying with this clause. The parties to the dispute must equally pay the costs of any mediator.

8.4 Breach of this clause

If a party to a dispute breaches clauses 8.1 to 8.3, the other party does not have to comply with those clauses in relation to the dispute.

9. Termination or variation

9.1 Termination for default

- (a) This Agreement may be terminated or varied with the written agreement of the parties.
- (b) This Agreement may be terminated or varied by the Minister by order published in the *Gazette* in accordance with section 308(4) of the EPBC Act. The parties are not entitled to any compensation in respect of the termination or variation by such an order.
- (c) This Agreement may be terminated by the State or Forestry Tasmania in accordance with section 308(7) of the EPBC Act.

9.2 Variation

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 upon a party unless the agreement or understanding is in writing and signed by all parties.

10. Notices

10.1 Service of notices

A party giving notice or notifying under this Agreement must do so in English and in writing or by Electronic Communication:

- (a) directed to the other parties' contact persons at the other parties' addresses (as set out in the Agreement Details and as varied by any notice); and
- (b) hand delivered or sent by prepaid post or Electronic Communication to those addresses.

10.2 Effective on receipt

A notice given in accordance with clause 10.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

11. General clauses

11.1 Rights and powers of the Minister

The rights and powers of the Minister under this Agreement are cumulative with any rights the Minister has under the EPBC Act.

11.2 Ownership of Agreement

All copyright and other intellectual property rights contained in this Agreement remain the property of the Commonwealth.

11.3 Approvals and consents

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

11.4 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

11.5 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

11.6 Counterparts

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

11.7 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

11.8 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

11.9 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

11.10 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

11.11 Waiver

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

11.12 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

11.13 Governing law and jurisdiction

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

11.14 Effect of Agreement

Despite anything else in this Agreement, this Agreement ceases to have effect to any Land that ceases to be State Forest.

Schedule 1

Item No.	Description	Clause reference	Details
1.	Department details	1.1	Commonwealth of Australia as represented by the Department of Sustainability, Environment, Water, Population and Communities ABN 34 190 894 983
2.	Department Representative	1.1	Name: Claire Howlett Position: Assistant Secretary Phone: 02 6274 2501 Email: claire.howlett@environment.gov.au
3.	Forestry Tasmania details		Forestry Tasmania
4.	Forestry Tasmania Representative		Name: Steve Whiteley Position: Acting Managing Director CEO Phone: 03 6235 8187 Fax: 03 6235 8191 Email: steve.whiteley@forestrytas.com.au
5.	Tasmanian Department details		State of Tasmania as represented by the Department of Infrastructure, Energy and Resources
6.	Tasmanian Department Representative		Name: Gary Swain Position: Deputy Secretary Strategy & Policy Phone: 03 6233 3879 Fax: 03 6233 3441 Email: Gary.Swain@dier.tas.gov.au
7.	End Date	1.1 and 2	Subject to clause 11.14, ongoing
8.	Land	1.1	That area of State forest which separates the Tasmanian Wilderness World Heritage Area from adjoining wood production coupes as identified in the Maps 1-15 in Annexure A of this Agreement
9.	Address for notices	10.1	Department: Position: Assistant Secretary

Item No.	Description	Clause reference	Details
			<p>The Department of Sustainability, Environment, Water, Population and Communities</p> <p>Postal address: GPO Box 787, Canberra, ACT, 2601</p> <p>Physical address: 13 Keltie Street, Woden, ACT</p> <p>Email: claire.howlett@environment.gov.au</p> <p>Tasmanian Department:</p> <p>Name: Gary Swain</p> <p>Position: Deputy Secretary Strategy & Policy</p> <p>Phone: 03 6233 3879</p> <p>Fax: 03 6233 3441</p> <p>Email: Gary.Swain@dier.tas.gov.au</p> <p>Forestry Tasmania:</p> <p>Name: Steve Whiteley</p> <p>Position: Acting Managing Director</p> <p>Phone: 03 6235 8187</p> <p>Fax: 03 6235 8191</p> <p>Email: steve.whiteley@forestrytas.com.au</p>

Schedule 2

1. Activity

1.1 Context

The parties acknowledge that, in declaring the extension to the Tasmanian Wilderness World Heritage Area, there are areas of high conservation value that are in the Land outside of the Tasmanian Wilderness World Heritage Area.

1.2 Activity Objectives

The objective of the Activity is to:

- (a) protect and conserve the biodiversity values present in the Land; and
- (b) support efficient and effective forestry operations in State Forest adjacent to the Land.

1.3 Activity description

Forestry Tasmania undertakes to identify the Land on its Management Decision Classification system and manage the Land as if the Land were an Informal Reserve as defined in the Regional Forest Agreement 1997 (Tas).

2. Review and reporting (clause 5)

2.1 Review

A review must be done collaboratively by all parties within 3 years after the last party has signed the Agreement.

Execution page

EXECUTED as a Conservation Agreement under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

SIGNED for and on behalf of the **Commonwealth of Australia** as represented by the Minister for Environment, Heritage and Water

MARIE BUTLER
Name
[Signature]
Signature
2 AUGUST 2013
Date

KAREN GROGAN
Name of witness (print)
[Signature]
Signature of witness
2 August 2013
Date

SIGNED for and on behalf of the **State of Tasmania** as represented by the Minister for Energy and Resources

BRYAN GREEN
Name
[Signature]
Signature
27/8/13
Date

KAREN VADASZ
Name of witness (print)
[Signature]
Signature of witness
27/08/13
Date

SIGNED for and on behalf of the **Forestry Tasmania** by Steve Whiteley who warrants that they have the authority to sign this Agreement on behalf of **Forestry Tasmania**

STEVE WHITELEY
Name
[Signature]
Signature
27 AUGUST 2013
Date

JOHN HICKY
Name of witness (print)
[Signature]
Signature of witness
27 August 2013
Date

Annexure A – The Land

The Land is the area of State Forest which separates the Tasmanian Wilderness World Heritage Area with adjoining wood production coupes depicted in dark green in Annexure A.

