



## tasmanian conservation trust inc

Members of the Legislative Council  
Parliament House  
Hobart Tas 7000

7 December 2012

### **TCT submission to the Legislative Council regarding the Tasmanian Forests Agreement Bill 2012**

#### **EXECUTIVE SUMMARY**

The Tasmanian Forests Agreement Bill 2012 (TFA Bill) and the Tasmanian Forests Agreement (the Agreement), if implemented unchanged, will not deliver a comprehensive forest conservation outcome or peace in the Tasmanian community. The TFA Bill, as it stands, is likely to increase the threat to those forests outside reserves, mostly on private land, which are the most important for conservation of biodiversity including threatened species. These forests need the protection afforded by a strong and scientifically based Forest Practices Code (Code).

The provisions of the TFA Bill could potentially weaken the Code at a time when it should be strengthened. Retention of a strong Code which protects biodiversity values is also required to give confidence to buyers and consumers that the timber products come from authentically sustainable forest sources.

#### **Key recommendations of this submission**

**Concerns regarding Clause 5:** The TCT recommends that the Legislative Council amends the TFA Bill 2012 by deleting Clause 5 in its entirety so that it cannot be used to override the State's planning and environment legislation.

**Forest Practices Code:** The TCT recommends that the Legislative Council amends the TFA Bill to ensure that it cannot be used to override or amend the Forest Practices Act and/or the Forest Practices Code, in ways that are detrimental to sustainable forest management or to endanger biodiversity, by deleting Clause 5(e) and inserting a new Clause 5(2) to remove doubt.

**Reform of Forestry Tasmania:** The TCT recommends that the Legislative Council amends the TFA Bill to remove provisions that would frustrate efforts to bring meaningful reform to Forestry Tasmania, especially the proposed changes of 'Multiple Use Forest Land' to 'Permanent Timber Production Zone Land'.

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### **TCT's Forests Policy**

The TCT's Forest Policy (copy attached) is based on:

- **Our Vision:** All high conservation value forests (HCVF) on both public and private land should be protected from logging and other processes which threaten their integrity. These forests should be actively managed and protected to ensure they retain their conservation value.
- **Biodiversity:** The TCT's prime focus and interest in forest conservation is the protection of biodiversity, on both public and private land.
- **Reservation:** The TCT supports the reservation of the 563,000 hectares of public forests as proposed by the ENGO signatories to the Agreement.
- **Native forest logging:** The TCT supports industrial native forest regrowth logging and ongoing supply of specialty timbers. Native forest logging may be environmentally acceptable and commercially desirable, provided that the HCVF (defined in the TCT's policy) are appropriately identified and protected both through reserves and through a strengthened Forest Practices Code.

### **TCT's political independence**

The TCT prides itself on remaining independent of all political parties and any non-aligned members of parliament, and aims to treat them all fairly and equally.

### **Conclusion**

In conclusion, we would like to remind Legislative Councillors that the Minister for Energy and Resources has been sitting on advice from the Forest Practices Authority on upgrading the Forest Practice Code to meet national biodiversity conservation commitments and expectations pending resolution of the so-called peace process. We note that the Legislative Council Government Administration Committee 'A' recommended in its July 2011 report, 'The Impact of the proposed transition out of public native forest logging', that the 'The Tasmanian Government complete the review of the Forest Practices Code' before any new reserves are created.

We ask that the Legislative Council seek a written commitment from the Minister that the Code will be upgraded pursuant to that advice and that, under no circumstances, will this legislation be used to override it before the Council concludes its deliberation on the TFA Bill.

The TCT's full submission follows and it provides a detailed description and justification of our recommendations. We look forward to providing a briefing to the legislative Councillors on Monday 10 December 2012. Please do not hesitate to contact the TCT Director at any time for further information.

Yours sincerely,



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# **TCT submission to the Legislative Council regarding the Tasmanian Forests Agreement Bill 2012**

## **MAIN SUBMISSION**

### **Abbreviations**

Tasmanian Forests Agreement Bill 2012 = TFA Bill  
Tasmanian Forests Agreement = TFA or the Agreement  
Tasmanian Conservation Trust = TCT  
Independent Verification Panel = IVP  
Forest Practices Authority = FPA  
Forest Practices Code = Code  
Forestry Tasmania = FT  
Environmental Non-government Organisations = ENGO  
High Conservation Value Forests = HCVF  
Minister for Energy and Resources = Forests Minister  
National Reserve System = NRS  
Tasmanian Regional Forests Agreement = RFA

## **1. CONCERNS REGARDING THE POTENTIAL USE AND UNPREDICTABLE CONSEQUENCES OF CLAUSE 5**

- **RECOMMENDATION:** The TCT recommends that the Legislative Council amends the TFA Bill 2012 by deleting Clause 5 in its entirety.

Clause 5 states that, if there are inconsistencies between the TFA and the nine listed acts, the TFA prevails to the extent of the inconsistency. Its intent appears to be to that the TFA prevails over virtually all environment, land management and planning legislation in Tasmania where there are deemed to be inconsistencies. It is disturbing that, in relation to one untested act, that:

- it prevails over so many important acts;
- a very broad range of legislative provisions may be deemed to be inconsistent with the TFA and in particular with the broad and flawed 'Vision for Tasmania's Forests' which is included as Schedule 1 of the TFA;
- the determination of inconsistencies lies solely with the Forests Minister.

Without any explicit clause in the TFA which defines and limits the application of Clause 5 and upholds sustainability and environmental objectives of other legislation, Clause five should be deleted.

We also urge the Legislative Council to request information from the state government about why the TFA Bill has powers to prevail over the other named acts. We find it hard to image why, for example, the TFA Bill is intended to prevail over the: Land Titles Act, Land Use Planning and Approvals Act or Local Government (Building and Miscellaneous Provisions) Act?

## 2. FOREST PRACTICES CODE

- RECOMMENDATION: The TCT recommends that the Legislative Council amends the TFA Bill 2012 by deleting sub-clause 5(e) and inserting a new sub-clause 5(2) which states that:
  - 'The TFA shall not be taken to override or amend the Forest Practices Act and/or Forest Practices Code and cannot be taken to provide any person or organization with authority to do so'.

The TCT is particularly concerned regarding the impact of Clause 5 on the Forest Practices Act. The intent of Clause 5 is to remove the possibility that the existing Forest Practices Code (Code) might limit the ability to provide the promised minimum wood volumes pursuant to Clause 6(1) of the TFA Bill. We are concerned that the provisions of the current Code could be weakened to allow wood volumes to be supplied from a reduced area of forest following the creation of new reserves. Intensification of logging in remaining unreserved forests would require a weakening of the Code's provisions, which aim to protect biodiversity values, where they conflict with the need to supply timber.

It also provides the government of the day with powers to prevent any substantial improvements to the Code, including those proposed by the completed but, as yet, not implemented review of the biodiversity provisions of the Code done by the Forest Practices Authority (FPA) in 2007-10.

This would be a disastrous outcome for Tasmania's forest biodiversity but it would also send an equally bad message to the industry's buyers and consumers.

Our negative view of the impact of weakening or failing to improve the Code stems from a wide range of scientific reports (some referenced below and in Section 4) that show that the unprotected forests which are most important for conservation of forest-dependent biodiversity including threatened species are found outside proposed reserves. The conservation of these biodiversity rich forests is therefore heavily dependent on retaining a strong Code. Weakening the Code would put the most threatened forests under greater threat.

The TCT raised concerns regarding the likely intensification of logging and the weakening of the Code in greater detail in its submissions to the Jonathon West-lead IVP process earlier this year. The TCT also provided similar evidence in April 2011 to the Legislative Council Government Administration Committee 'A' inquiry into 'The Impact of the proposed Transition out of Public Native Forest Management and harvesting in Tasmania'. Copies of both submissions are attached.

Similar concerns were raised by the Forest Practices Authority (FPA) in its submission to the IVP process (also attached).

Concerns regarding the failure of the Code to adequately conserve biodiversity led to the 2007-10 review of the Code. The Tasmanian forest

industry needs a strong and respected Code, based on up-to-date scientific knowledge and regulated by an independent FPA, if it is to convince buyers that the products are derived from sustainable sources. To weaken the Code or to restrict the capacity of the FPA to implement improvements based on current scientific knowledge would send a very damaging message to buyers and consumers of Tasmanian timber products.

If there is any doubt about our concern that Clause 5 will be used to override the Forest Practices Act and that this would have very serious effects, then reading the relevant clauses of the Tasmanian Forests Agreement provides greater clarity regarding the likely actions open to government.

Clause 53 of the Agreement proposes that the state government amend the Forest Practices Act's 'guiding principles and objectives to give effect to' 'the vision in legislation and to the outcomes of this agreement'. It also recommends also that the Forest Practices Act be amended so that the Forest Practices Authority is required to 'consider social, economic and environmental outcomes of their decision-making processes', but it is not stated how these matters be weighted or prioritised.

Furthermore, Clause 54 of the Agreement supports the progression of the existing review of the Forest Practices Code but only if it is 'consistent with this agreement'.

We anticipate that the recommended amendments to the Forest Practices Act (yet to be tabled by the Government) will establish the process by which the powers provided for in Clause 5 of the TFA Bill are administered and by whom. Under these changes, the Special Council may have a role in advising the Minister as to when the FPA is impinging on the TFA vision and outcomes. It is important to note that the Special Council is composed of representatives who are unelected, not expert based and a majority of whom have an industry interest.

We note that the Legislative Council Government Administration Committee 'A' recommended in its July 2011 report, 'The Impact of the proposed transition out of public native forest logging', that 'there not be any additional reserves of native forests or any transition out of public native forest' 'without consideration of the following' and the list of requirements included that the:

'The Tasmanian Government complete the review of the Forest Practices Code' (page 39).

In conclusion, we would like to remind Legislative Councillors that the Minister for Industry Energy and Resources has been sitting on advice from the Forest Practices Authority on upgrading the Code to meet national biodiversity conservation commitments and expectations pending resolution of the so-called peace process. We ask that the Legislative Council seek a written commitment from the Minister that the Code will be upgraded pursuant to that advice and that, under no circumstances, will this legislation be used to override it before the Council concludes its deliberation on the Bill.

### 3. REFORM OF FORESTRY TASMANIA

- RECOMMENDATION: The TCT recommends that the Legislative Council amends clause 6(1)(1) of the TFGA Bill by placing a sunset clause of five (5) years in relation to provision of minimum annual volumes of high quality sawlogs. Clause 6(1)(1) should be amended to state: 'Each year, for not more than five years from the commencement of the TFA, the corporation must make available:'
- RECOMMENDATION: The TCT also recommends that the Legislative Council amends the TFA Bill by removing Clause 7 and all other reference to Multiple Use Forest Land, Permanent Timber Production Zone Land and Register and Permanent Timber Production Zone Land.

Members of the Legislative Council have for years raised concerns regarding the poor financial performance of Forestry Tasmania (FT) and its failure to be able to respond to changes in the market for forest products. These concerns are perhaps the reasons why the state government contracted the consultants URS to provide advice and options for restructuring and reforming Forestry Tasmania.

If the TFA Bill is passed in its current form the provisions which guarantee high quality sawlog volumes, and any other commitments that might be made by subsequent regulation, and the proposal to rename Multiple Use Forest as 'Permanent Timber Production Zone Land' would constrain efforts to bring meaningful change to FT.

The TCT wants to see FT restructured to separate the commercial timber harvesting and selling functions from public land/forest management functions. We recommend that a Land Stewardship Council be established to manage state forests for multiple uses, including commercial regrowth timber supply, and selling rights to harvest such timber. FT should be converted into a state owned corporation which has a limited role of purchasing such rights and harvesting and selling the timber.

There would arguably be little benefit in creating a new Land Stewardship Commission to manage multiple use state forests if it was bound by the legislative requirements to provide minimum sawlog and veneer log volumes, other than as a transitional arrangement. The LSC would not be able to significantly change how state forest is managed or how forest resources are allocated and for what purpose if constrained to provide fixed amounts of timber regardless of commercial realities. This is exactly why FT is in financial trouble today. It does not seem sensible to continue to entrench the problem while seeking to fix it.

Similarly, if all available sawlogs and veneer billets have been allocated in contracts and through the TFA Bill, the LSC could hardly play a significant role in progressing new and more financially rewarding uses of timber sourced from public forests and supplied to potential new entrants.

While the proposal in the TFA Bill to replace Multiple Use Forest Land with Permanent Timber Production Zone Land seems to make no legal or practical change, it sends a powerful symbolic message that the Parliament intends that state forest land is to be used solely for 'timber production' and is off-limits for multiple use. This is despite the inescapable reality that native forests have multiple uses and values – and that the State has an inescapable responsibility to manage public land to maintain and conserve recognised uses and values.

#### **4. PROPOSED RESERVES AND OTHER IMPORTANT FORESTS**

If unchanged, the TFA Bill and the Tasmanian Forests Agreement fail to provide a comprehensive forest conservation outcome and will put biodiversity values at greater threat outside reserves.

It is recognized that the TFA would deliver significant conservation outcomes through reservation of wilderness and World Heritage value forests on public land (which we very much support) but that there are other equally significant biodiversity conservation outcomes (principally forest biodiversity conservation on private land) which it will not deliver and may perversely place under greater threat (see Section 2 of this submission).

The TCT wishes to impress upon the Legislative Council that the unprotected forests which are the most important for conservation of biodiversity values, including threatened species, are outside of the areas proposed for reserves as a part of the TFA Bill.

It is astonishing that the TFA Vision for Tasmania's Forests fails to mention the need for conservation of biodiversity and other environmental values outside of the formal reserve system. By omission the vision contains an untenable assumption that effective protection of biodiversity will be delivered through the proposed formal reserves on public land.

There are numerous examples of forest values which are found primarily outside the current and proposed reserve proposals and some key examples are:

- **Habitat of iconic fauna e.g. Swift parrot and masked owl:** almost all unreserved habitat and a majority of total habitat of these two endangered oldgrowth forest-dependent fauna species is outside the proposed reserves and found on private land. Only about 10% of the total area of high quality swift parrot nesting habitat is on state forest and only half of that is within the proposed reserves. In contrast, nearly 50% of the total area of high quality nesting habitat for this species is on private land.
- **Threatened forest communities:** Out of the total statewide area of threatened forest communities of 254,000 hectares, only 5000 ha or less than 2% is within the ENGO proposed reserves. By comparison, 138,000 ha or 54% is within unreserved land and land not proposed for reservation.

The Forest Practices Authority submission to the Jonathon West-lead IVP process (copy attached) raises similar concerns. The FPA have made it clear that, if the Code is to be upgraded as recommended by its recent review, 'headroom' (discounts of potentially available timber to allow environmental constraints to be met) would have to be significantly increased. It is also clear that the so-called peace deal negotiated between industry representatives and some ENGOs will force a reduction in 'headroom' such that weakening of the existing Code will be required to facilitate its implementation.

We also refer the Legislative Council to the excellent papers presented to the Ecological Society of Australia symposium, 'Forgotten Conservation Priorities in Tasmania', held in Hobart in April this year. The full program for the symposium can be down-loaded from the ESA web site at:

[http://www.ecolsoc.org.au/documents/Priorities\\_symposium\\_program.pdf](http://www.ecolsoc.org.au/documents/Priorities_symposium_program.pdf)

These papers demonstrate the broad and deep concern within the scientific community at the prospect of a so-called peace deal which is expected to exacerbate biodiversity conservation problems outside reserves.

We also wish to table the Rod Knight Report 1A to the IVP process 'Analysis of comprehensiveness of existing conservation reserves and proposed additions to the Tasmanian forest reserve system'. This report assesses the contribution made by the proposed and existing reserves to key forest conservation targets including the National Reserves System (NRS) targets. It is clear that the proposed public land reserves make little contribution to efforts to implement ongoing Tasmanian Regional Forest Agreement (RFA) commitments to reach NRS targets.

Almost all of these additional reservation targets can only be met on private land. We note that, since the RFA was signed in 1996, some \$70-80M of Australian taxpayers money has been effectively spent, without any great fanfare, on payments to landholders for establishing reservation covenants but that this so-called peace deal does not include any additional funding to facilitate this high priority conservation work.

As mentioned in section two of this submission, part of the reason the Tasmanian Forests Agreement proposes such a bad outcome for biodiversity conservation is that the parties to the agreement focused solely on achieving conservation outcomes through reservation on public land. They failed to apply a comprehensive set of criteria to identify high conservation value forests across all land tenures and to identify where reservation was warranted or where application of an upgraded Forest Practices Code would suffice.

We wish to remind the Legislative Councilors that the November 2011 Legislative Council Government Administration Committee 'A' report 'The Impact of the proposed transition out of public native forest logging' recommended that 'there not be any additional reserves of native forests or any transition out of public native forest' 'without consideration of the following':



'a. The definition of key terms such as High Conservation Value Forest (HCVF) be settled and based upon a scientific methodology and applied to any future conservation decisions' (page 38).

Despite this recommendation, the TFA Bill, the Tasmanian Forests Agreement and the IVP Reports all fail to define HCVF. The TCT's Forest Policy lists what we see as important criteria for determining HCVF.

Also, it is important to have regulatory systems such as the Forest Practices Code which respond to applications from landowners interested in clearing or logging and makes a determination about the HCVF on the land and potential impacts of proposed activities on it. These systems can be, and are, updated as more information comes available as apposed to processes which aim to propose areas for protection based upon current information.

## **ATTACHMENTS**

1. TCT's Forests Policy, 14 February 2012.
2. TCT submission to the Independent Verification Panel under the Tasmanian Forests Inter-governmental Agreement, 16 February 2012.
3. Forest Practices Authority submission to the Independent Verification Panel under the Tasmanian Forests Inter-governmental Agreement, 6 December 2012.
4. TCT submission to the Legislative Council Government Administration Committee 'A' inquiry, 'The Impact of the proposed transition out of public native forest logging', 19 April 2011.
5. Report to the Independent Verification Panel by Rod Knight, 'Analysis of comprehensiveness of existing conservation reserves and proposed additions to the Tasmanian forest reserve system', February 2012.