

VICTORIAN GOVERNMENT
SOLICITOR'S OFFICE

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Terms of Settlement and Release

Environment East Gippsland Inc

(Plaintiff)

and

Secretary to the Department of Environment, Land, Water and Planning

(First Defendant)

and

VicForests

(Second Defendant)

Environment East Gippsland

(Plaintiff)

and

Secretary to the Department of Environment, Land, Water and Planning

(First Defendant)

and

VicForests

(Second Defendant)

Background/Recitals

- A. By proceeding no. SCI 2014 05096 the Plaintiff has initiated a Proceeding in the Supreme Court of Victoria seeking orders against the First and Second Defendants.
- B. Without any admission that the Plaintiff is, or at any time was previously, entitled to any of the relief sought in the Supreme Court proceedings, and to avoid the cost and inconvenience of litigation, the Plaintiff and the Defendants agree to settle the Claims brought by the Plaintiff in the Proceeding as set out in these Terms of Settlement.

Agreed terms

1. Definitions and Interpretation

- 1.1 In these Terms of Settlement, unless the context otherwise requires:

Brown Mountain means the area shaded red on the map enclosed and marked Annexure A.

Claim means any claim, action, proceeding or judgment however incurred or brought or made or ordered against any person however arising (whether or not presently ascertained, immediate, future or contingent).

DELWP means the Department of Environment, Land, Water and Planning in the State of Victoria.

Fire Affected OMAs means the OMAs affected by the Orbost Fire Complex.

GST means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

Large Forest Owls means the Sooty Owl, Masked Owl and Powerful Owl.

MOMA means an East Gippsland Masked Owl Management Area.

OMA means an East Gippsland Owl Management Area.

POMA means an East Gippsland Powerful Owl Management Area.

Proceeding means proceeding number S CI 2014 05096 issued by the Plaintiff against the Defendants in the Supreme Court of Victoria.

Proposed Additional Habitat means the area within the 100 POMAs proposed to be increased from 500 to 800 hectares by the First Defendant pursuant to paragraphs (a), (b) & (c) of Clause 2.1.

Studies means the study referred to in paragraph (f) of Clause 2.1 together with the ground-truthing referred to in paragraph (g) of Clause 2.1.

1.2 In these Terms of Settlement, unless the context otherwise requires:

- (a) 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;
- (b) the singular includes the plural and vice versa;
- (c) headings are for guidance only and are to be ignored in interpreting these Terms of Settlement;
- (d) a reference to a person includes a firm, a body corporate, an unincorporated association or a responsible authority, as constituted from time to time;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes, permitted assigns, employees, servants, agents, consultants, contractors, advisers, financiers, subcontractors, licensees and invitees;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) words importing any gender includes all other genders, as applicable;
- (h) words or phrases derived from a defined word have a corresponding meaning to the defined word; and
- (i) 'dollars' or '\$' refers to Australian currency.

1.3 These Terms of Settlement are not be interpreted against a party only because that party was responsible for preparing it.

1.4 If anything to be done under these Terms of Settlement falls on a day which is not a business day, it must be done on the next business day.

2. Consideration

2.1 The Defendants agree to settle this proceeding on the following terms:

- (a) On or before 30 November 2015, the First Defendant will increase the area within the 100 POMAs from 500 to 800 hectares, as set out in the *Code of Practice for Timber Production 2014*, such additional area within the POMAs to include coupes 885-503-0003 and 885-503-0015.
- (b) On or before 30 July 2015, the First Defendant will prepare and provide to the Plaintiff and the Second Defendant a map and a data layer of the Proposed Additional Habitat, with such preparation to be undertaken by an employee or employees of DELWP with expertise in biodiversity.
- (c) On or before 31 August 2015, the First Defendant will meet with each of the Plaintiff and Second Defendant, so that each of the Plaintiff and Second Defendant will have the opportunity to provide any feedback with respect to the Proposed Additional Habitat.
- (d) On or before 30 November 2015, the First Defendant will identify and create two additional MOMAs of at least 500 hectares each, such additional MOMAs to include coupe 830-506-0013, with such identification to be undertaken by an employee or employees of DELWP with expertise in biodiversity.
- (e) On or before 30 November 2015, the First Defendant will use its best endeavours to increase the area of MOMA 0016 to 500 hectares.
- (f) On or before 30 November 2015, the First Defendant will conduct a study of the return times of Large Forest Owl populations after fire events, using historic data of owl presence and fire severity mapping, with such study to be undertaken by an employee or employees of DELWP with expertise in

biodiversity and/or a consultant or consultants engaged by DELWP with expertise in biodiversity.

- (g) On or before 30 November 2015, the First Defendant will ground-truth the fire severity data of a minimum of 20% of fire-affected OMAs, including at least 3 sites affected by each fire severity class, to assist in determining the suitability of habitat for owls post-fire across each fire severity class, with such ground-truthing to be undertaken by an employee or employees of DELWP with expertise in biodiversity and/or a consultant or consultants engaged by DELWP with expertise in biodiversity.
- (h) On or before 15 December 2015, the First Defendant will provide the results of the studies to the Plaintiff and Second Defendant.
- (i) On or before 1 July 2016, the First Defendant will consider the results of the studies and Dr Bilney's reports dated 1 July 2014 and 3 May 2015, to inform whether a review should occur of the OMAs and whether other protective measures are necessary.
- (j) The First Defendant will pay the Plaintiff's costs, including disbursements, incurred in obtaining the reports of Dr Rohan Bilney dated 1 July 2014 and 3 May 2015 fixed as \$40,000 inclusive of GST.
- (k) The First Defendant agrees to zone as Special Protection Zone the area known as Brown Mountain.
- (l) Subject to Clause 2.2, the Second Defendant agrees that it will not, whether by itself, its servants, agents, contractors or howsoever otherwise:
 - (i) undertake harvesting operations (within the meaning of Section 3 of the *Sustainable Forests (Timber) Act 2004* (Vic));
 - (ii) prepare sites for timber harvesting operations;
 - (iii) carry out forest regeneration and site rehabilitation;
 - (iv) carry out any road construction and road improvement operations for timber harvesting operations,

in the following coupes until 31 May 2019:

- Erinnundra, The Pines coupes 893-507-0013, 893-507-0012, 893-507-0014 and 893-507-0015
- Old Bendoc Bonang Road coupe 893-504-0002
- Bonang coupe 891-516-0037
- Martins Creek coupes 836-516-0005 and 836-516-0006
- North Freds Track coupes 830-501-0024, 830-501-0025 and 830-503-0018
- Kuark coupes 830-510-0006, 830-509-0004, 830-510-0004, 830-509-0011 and 830-509-0006,

and in the following coupes until 30 November 2015:

- 885-503-0003, 885-503-0015 and 830-506-0013,

and in the area known as Brown Mountain prior to that area being designated as Special Protection Zone pursuant to clause 2.1(k).

2.2 The parties agree that the Second Defendant, whereby by itself, its servants, agents, contractors or howsoever otherwise, can undertake seeding, regeneration and site rehabilitation activities, including a prescribed burn, in the part of Kuark coupe 830-510-006 shaded red on the map enclosed and marked Annexure B, notwithstanding Clause 2.1(l).

2.3 The Plaintiff acknowledges that completion of the matters set out in Clause 2.1 is in full and final settlement of all Claims against the Defendants in this Proceeding.

3. Releases

3.1 The Plaintiff releases and forever discharges the First and Second Defendants from the Proceeding.

3.2 The parties release each other party from any Claim each party may have or may have had against each other party:

- (a) but for these Terms of Settlement; or
- (b) otherwise connected with the facts or circumstances of the Proceeding, or the negotiations for settlement resulting in these Terms of Settlement.

4. Settlement of the Proceeding

- 4.1 Within 2 business days of executing these Terms of Settlement, the Plaintiff and Defendants agree to sign a minute of proposed order, to be prepared by the First Defendant and filed by the Plaintiff's solicitors, consenting to orders that the Proceeding be dismissed between the Plaintiff and the Defendants, with no order as to costs.

5. Undertaking not to sue

- 5.1 Subject to completion of the matters as set out in Clause 2.1, the parties undertake:
- (a) not to commence proceedings against another party, in law or equity, based on the facts or circumstances giving rise to the Proceeding; and
 - (b) not to bring, or to assist any other person on their behalf to bring, any other legal proceeding, against another party based on the facts or circumstances giving rise to the Proceeding.

6. Denial of entitlement to relief and bar to suit

- 6.1 The parties acknowledge that:
- (a) the Proceeding has been settled without any admission that the Plaintiff is, or was at any time previously, entitled to the relief sought in the Proceeding and solely for the purpose of avoiding litigation; and
 - (b) these Terms of Settlement may be pleaded by the parties in bar to any Claim now or subsequently commenced by a party arising out of, or in connection with, the facts and circumstances giving rise to the Proceeding.

7. Variation

- 7.1 Any variation to these Terms of Settlement must be in writing and signed by each party.

8. Severability

- 8.1 If any part of these Terms of Settlement becomes void or unenforceable or is illegal then that part will be severed from these Terms of Settlement and all parts which are not void, unenforceable or illegal remain in effect.
- 8.2 If any provision in these Terms of Settlement is open to two or more interpretations, one of which would make the provision enforceable and the other of which would make it unenforceable, the interpretation which makes it enforceable will prevail.

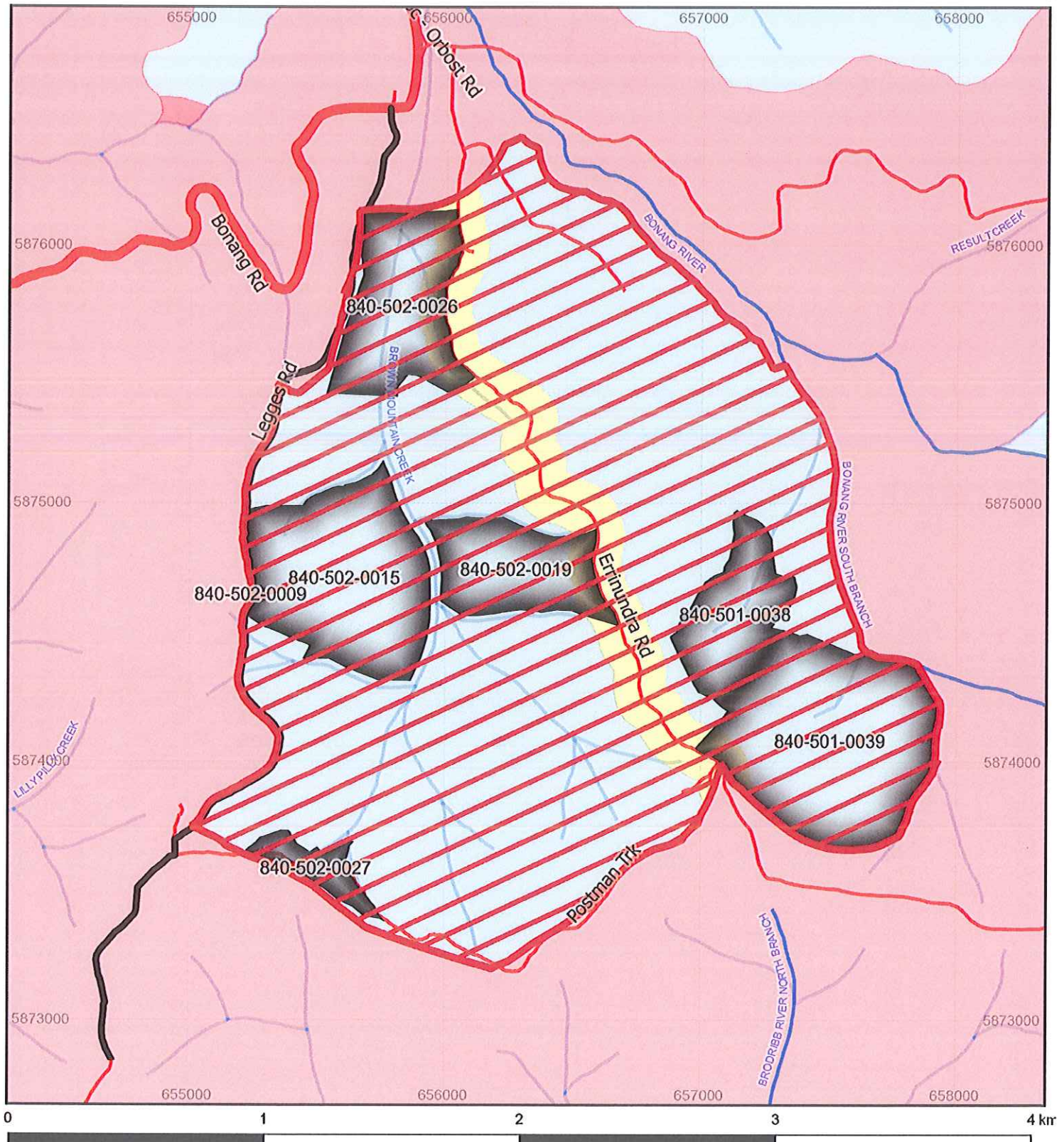
9. Counterparts and exchange

- 9.1 These Terms of Settlement may be signed in counterparts and all counterparts taken together constitute one document.
- 9.2 Given the number of parties to these Terms of Settlement, a facsimiled or emailed signed copy of these Terms of Settlement is to be exchanged by each party with all other parties and is to be relied on by all parties as a true and correct copy of the original counterpart.

10. Governing Law

- 10.1 These Terms of Settlement are governed by the law of the State of Victoria.

Annexure A



Legend



Proposed Brown Mountain SPZ



Timber Release Plan;
[Approved_TRP_
EGFMA_July2014])



Roads [TR_Road]



Watercourses

Forest Management Zones [FMZ_MAP100]

Conservation Parks and Reserves

Special Protection Zone

Special Management Zone

General Management Zone

Projection: EPSG: 28355
GDA94/MGA Zone 55

Map Scale:
1:20,000



04 June 2015

DISCLAIMER

This map shows indicative locations of coupes only. Accurate boundaries of coupes will be marked on the ground by field staff.

All coupe boundaries are to be defined in accordance with and subject to Victorian legislation. Without limiting the generality of this clause, no coupe plan shall include any "Heritage River Area" as defined in the Heritage Rivers Act 1992.



Map Projection:
GDA 94 Zone 55

Legend
Points of Interest

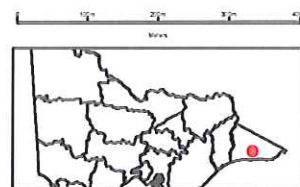
- Mapped Out - V&A Record
- Powerful Out - V&A Record
- Softy Out - V&A Record
- Current WOMA
- Current PCMA
- Current SOMA

Timber Release Plan - Gross Coupe Boundary

Approved TSP Gross Coupe Boundary - "The Coupes"

- Forest Management Zones**
- General Management Zone
 - Special Management Zone
 - Special Protection Zone
 - Code Forest Practice
 - Other Public Land
 - Conservation Parks and Reserves

- Harvested Area
- Other Parks and Reserves
- Limited Timber Harvesting
- Private
- Plantation
- Commonwealth Land
- Water Body



Note:
This information was compiled for use at 1:25,000 scale. It may not match boundary if plotted at large scales.
For further information about the map contact:
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