



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)**

**In relation to the protection and management of public native forest in accordance with
Clause 36 of the Tasmanian Forests Intergovernmental Agreement**

in the

STATE OF TASMANIA

SCHEDULES

Schedule 1 – Map of the area identified as ‘Immediate Protected Area (430,000 ha)’ at Attachment A to the Tasmanian Forests Intergovernmental Agreement

Schedule 2 – Agreed exclusions for the purposes of this Conservation Agreement from the area shown as ‘Immediate Protected Area (430,000 ha)’ on 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
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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	First Assistant Secretary, Tasmanian Forests Taskforce, 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, Energy and Resources 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 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 Conservation Agreement under section 305 of the EPBC Act in relation to the Land. The Land is subject to the *Forestry Act 1920* (Tas).
- 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 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, and includes the Schedules attached to this Agreement.

Business Day means a day, not being a Saturday, Sunday or public holiday in Canberra, Australian Capital Territory.

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) and any statutory modification, substitution or re-enactment of that legislation or legislative provision.

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 1920* (Tas) and 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 native forest shown as ‘Immediate Protected Area (430,000 ha)’ on the map in Schedule 1 of this Agreement but excluding those areas identified in Schedule 2 of this Agreement.

Minister means the Minister administering the EPBC Act.

New Conservation Agreement means a further conservation agreement under section 305 of the EPBC Act in relation to the Land to replace this Agreement.

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.

State means the State of Tasmania.

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 a First Assistant Secretary of the Department who is responsible for the Tasmanian Forests Taskforce.
- 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 2012; or
 - (b) the date on which this Agreement is replaced by a New Conservation Agreement pursuant to clause 5.2.
- 2.4 This Agreement does not apply to any part of the Land that ceases to be subject to the *Forestry Act 1920* (Tas).

- 2.5 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 clauses 3.2 and 3.3, 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 Clause 3.1 does not prevent the minimal essential harvesting of coupes on the Land during the period commencing on 1 March 2012 and ending on 30 June 2012 but only if all of the following requirements are satisfied:
- (a) the Parties have not entered into the New Conservation Agreement; and
 - (b) independent experts jointly appointed by the Minister and the State determine that:
 - i. the harvesting of those coupes is essential to enable Forestry Tasmania to maintain its contractual obligations to supply forest products (being contractual obligations that were in force as at the date of the Intergovernmental Agreement); and

- ii. those contractual supply obligations cannot be met through rescheduling on a reasonable commercial basis or through sourcing alternative supplies from coupes which are not located on the Land.

3.4 The Parties will work to maximise the availability of suitable alternative coupes outside the Land in the period after 29 February 2012 including, if necessary, by the Minister and the State providing funding for additional Forest Practices Officers to assist Forestry Tasmania in preparing Forest Practices Plans for coupes outside the Land.

3.5 Forestry Tasmania will ensure that, if any harvesting occurs in any public native forest coupes within the area shown at Schedule 1, and these coupes are subsequently identified by the independent verification process as being of high conservation value and compatible with guaranteed wood supply in accordance with Clause 29 of the Intergovernmental Agreement, these harvested coupes will be restored and regenerated as native forest.

3.6 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 New Conservation Agreement

5.1 The Parties agree to work cooperatively together in advance of the expiry of this Agreement to develop and agree the New Conservation Agreement in accordance with Clause 36 of the Intergovernmental Agreement to provide protection for those areas of high conservation value public native forest identified by the independent verification process as compatible with wood supply, in accordance with Clause 29 of the Intergovernmental Agreement.

5.2 The Parties must commence work to develop the New Conservation Agreement by 20 January 2012 at the latest. The Parties must use their best endeavours to enter into the New Conservation Agreement by 29 February 2012.

6 Assignment and novation

- 6.1 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.

7 Dispute resolution

- 7.1 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.

- 7.2 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.

- 7.3 This clause does not preclude any Party from commencing legal proceedings for urgent interlocutory relief or otherwise under the EPBC Act.

8 Termination by agreement

- 8.1 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.

9 Representations and warranties

- 9.1 Forestry Tasmania hereby represents and warrants that the Land is either owned, vested in, or controlled by, Forestry Tasmania.
- 9.2 For the purposes of section 305 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.
- 9.3 The rights of the Minister under this Agreement are in addition to any rights the Minister has under the EPBC Act.
- 9.4 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.

10 Negation of partnership and agency

- 10.1 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.
- 10.2 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.

11 Waiver

- 11.1 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.
- 11.2 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.
- 11.3 In this clause 'rights, obligations and/or liabilities' means rights, obligations, liabilities or remedies provided by this Agreement or existing under law.

12 Costs

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

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

13.1 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.

14 Response to Minister's communications

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

15 Notices

15.1 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 Tasmanian Forests Taskforce 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.

15.2 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.

15.3 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.

16 Governing law

16.1 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.

17 Variation

17.1 This Agreement may only be varied in writing signed by all Parties.

18 Counterparts

18.1 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 by the TASMANIAN
MINISTER FOR ENERGY AND
RESOURCES

.....
(signed)

.....
(signed)

.....
(name)

.....
(name)

Date:

Date:

In the Presence of Witness:

In the Presence of Witness:

.....
(signature)

.....
(signature)

.....
(name)

.....
(name)

SIGNED by FORESTRY TASMANIA

.....
(signed)

.....
(name)

Date:

In the Presence of Witness:

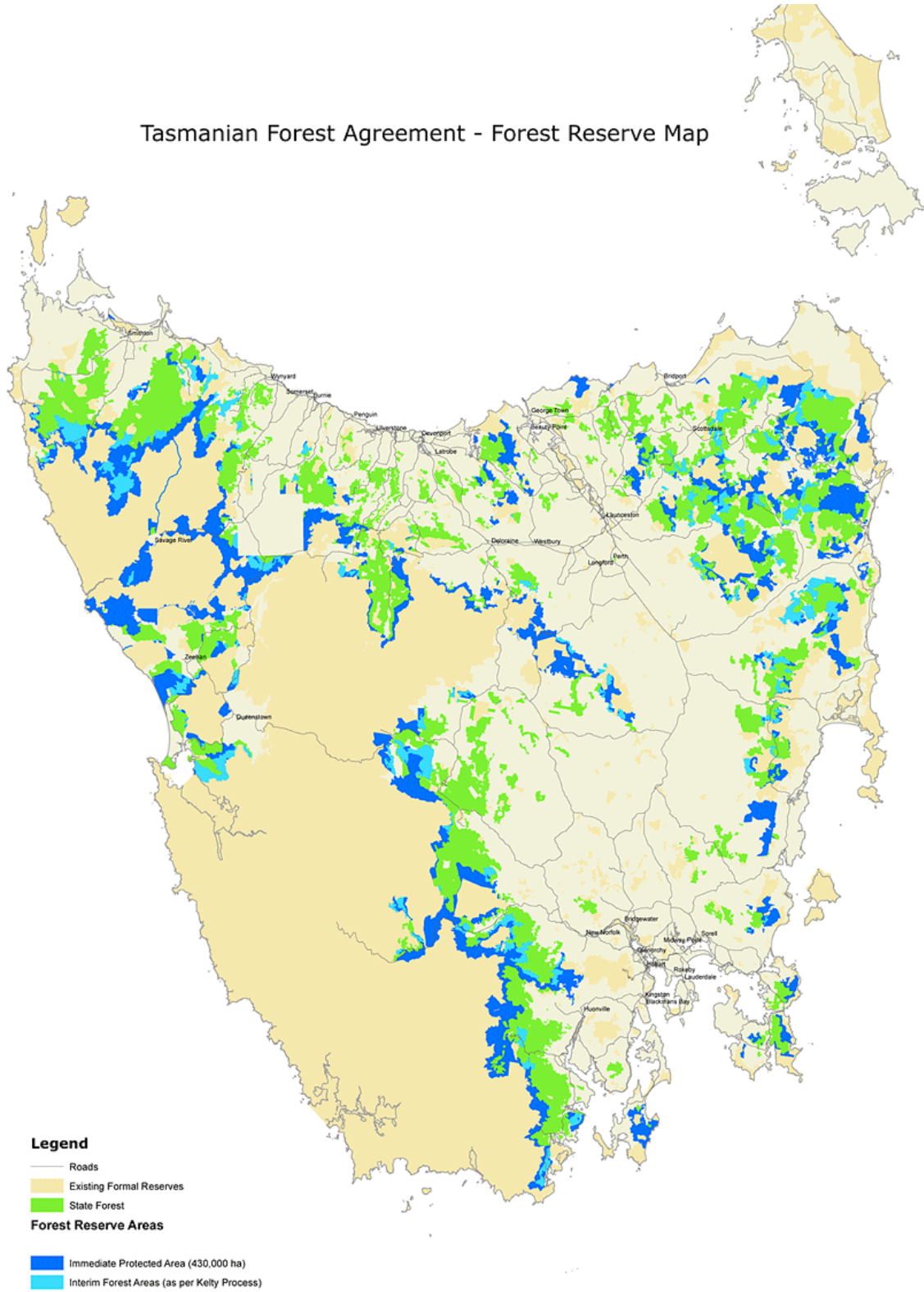
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(name)

SCHEDULE 1

MAP OF THE AREA IDENTIFIED AS 'IMMEDIATE PROTECTED AREA (430,000 HA)'

Tasmanian Forest Agreement - Forest Reserve Map



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:

A. Coupes scheduled to commence before the end of February 2012

District	Coupe	Net Harvest Area (ha)
BASS	RS117C	69
BASS	TY030G	54
DERWENT	BT009D	72
DERWENT	BT013A	94
HUON	PC015B	43
HUON	RU043H	53
HUON	CM004C	57
BASS	BS115H	60
BASS	MO109A	50
BASS	SA044B	25
DERWENT	DU020C	46
DERWENT	TA013A	20
DERWENT	TN044B	35
DERWENT	TN046A	18
HUON	PC070B	50
HUON	PC085A	40
MURCHISON	BV011B	48
HUON	PC024B	55
MURCHISON	MD102B	26
HUON	BB021C	49

District	Coupe	Net Harvest Area (ha)
HUON	HA011C	61
MURCHISON	CF043C	ROAD
HUON	BB021E	68
HUON	RU047E	25
DERWENT	BT011C	ROAD
DERWENT	BT012D	ROAD
DERWENT	SX020G	53
BASS	BS101D	60
BASS	FL105C	77
DERWENT	BT007A	45
DERWENT	DU021B	96
TOTAL	31 COUPES	1,449 hectares

B. Coupes scheduled to commence between 1 March and 30 June 2012.

District	Coupe	Net Harvest Area (ha)
BASS	TY032A	60
DERWENT	RP034A	137
DERWENT	TN012C	ROAD
DERWENT	DU022C	ROAD
HUON	HA019C	ROAD
HUON	PC072B	50
HUON	RU032B	40
HUON	WR008A	45
MURCHISON	BO093A	45
MURCHISON	MB011D	40
MURCHISON	NH010A	33
MURCHISON	CF027A	50
TOTAL	12 COUPES	500