

Forestry Corporation of New South Wales
and
Secretary of the NSW Department of Climate
Change, Environment, Energy and Water

DEED OF AGREEMENT

This Deed of Agreement is made on the day of 2024

BETWEEN:

Forestry Corporation of New South Wales ABN 43 141 857 613 (**Forestry Corporation**)

And

Secretary of the NSW Department of Climate Change, Energy, the Environment and Water (**Secretary of DCCEEW**)

(the **Parties**).

RECITALS

- A. National Parks and Wildlife Service (**NPWS**) is a Service (as defined under the *National Parks and Wildlife Act 1974* (the **NPW Act**)) supported by the NSW Department of Climate Change, Energy, the Environment and Water (**DCCEEW**). NPWS manages and conserves the NSW national park estate.
- B. Forestry Corporation is a NSW State owned corporation with functions including conduct of forestry operations on Crown-timber land, to sell and supply timber, and to establish and maintain plantations.
- C. On 26 February 1999, dedication as State forest was revoked over a part of Orara West State Forest and an extension to Bindarri National Park (**Bindarri NP**) was reserved under a gazettal notice issued pursuant to the *Forestry and National Estate Act 1998*.
- D. The new boundary between Bindarri NP and the Orara West State Forest was relevantly described in the gazettal as “the left bank of the drainage line or lines shown hereon.”
- E. The part of Orara West State Forest that became Bindarri NP included trees that were planted as plantation in about 1978.

- F. In about September 2018, maps were prepared and used by Forestry Corporation staff for plantation Harvesting Operation 200000179 in Orara West State Forest which showed an incorrect boundary, including part of Bindarri NP in the harvestable area.
- G. As a result, in about 2019 - 2020, Forestry Corporation caused approximately 1.44 hectares of forest including mature flooded gum plantation trees to be harvested on Bindarri NP, being land reserved under the NPW Act, without authorisation (the **Incident**).
- H. Following the Incident, Forestry Corporation re-planted trees in the Harvested Area and undertook weed control until it became aware that some of the operation was conducted in Bindarri NP.
- I. On 20 December 2022, Forestry Corporation notified NPWS of the Incident.
- J. Section 156A(1)(d) of the NPW Act makes it an offence for a person, on or in land reserved under the NPW Act, to cause or permit any removal or damage to any vegetation, rock, soil, sand, stone or similar substance.
- K. NPWS investigated the Incident and is of the opinion that Forestry Corporation has contravened s156A(1)(d) of the NPW Act as a result of the Incident (**Contravention**).
- L. Forestry Corporation acknowledges that the Contravention has occurred.
- M. In the interests of achieving the best environmental outcome, the Parties have agreed to execute this Deed which sets out actions to be taken by Forestry Corporation to:
 - a. formally acknowledge the Contravention,
 - b. take measures to promote the remediation and restoration of the Harvested Area,
 - c. pay an agreed sum to NPWS for the purchase of land for the National Parks reserve, or to revoke the dedication of an agreed area of State Forest for reservation as a national park.
 - d. implement a Protocol and training to avoid similar contraventions in the future, and
 - e. pay the costs of the above actions.

1. TERMS OF AGREEMENT

Definitions and Interpretations

1.1. In this Deed, except to the extent that such interpretation is excluded by the context:

- (a) **Agreed Sum** means \$500,000.
- (b) **Agreed Transfer Area** means the area or areas of State Forest agreed by NPWS to be reserved as national park for the purposes of this Deed pursuant to clause 5.2 of the deed.
- (c) **Bindarri NP** means Bindarri National Park.
- (d) **Contravention** means the contravention of s 156(1)(d) of the NPW Act as a result of the Incident.
- (e) **Commencement Date** means the date that the deed is executed by the Parties.
- (f) **Deed** means this agreement which includes any attachments that are incorporated into this agreement by reference, as amended from time to time in accordance with the terms of this agreement.
- (g) **DCCEEW** means the NSW Department of Climate Change, Energy, the Environment and Water.
- (h) **Electronic Delivery** has the meaning given in clause 15.2(a).
- (i) **Finalisation Period** has the meaning given in clause 4.3.
- (j) **Forestry Act** means the *Forestry Act 2012* (NSW).
- (k) **Forestry Corporation** means Forestry Corporation of New South Wales.
- (l) **Harvested Area** means the approximately 1.44 hectares of land that was harvested in Bindarri NP and shown on the map annexed to this Deed.
- (m) **Incident** means the harvesting by Forestry Corporation in about 2019 - 2020 of the Harvested Area, including mature flooded gum plantation trees on Bindarri NP, being land reserved under the NPW Act, without authorisation.
- (n) **Media Statement** means the media statement to be published by the Forestry Corporation under clause 3 of this Deed.
- (o) **NPW Act** means the *National Parks and Wildlife Services Act 1974* (NSW).
- (p) **NPWS** means the National Parks and Wildlife Service.
- (q) **Original composition and structure** with reference to the Harvested Area means its natural state before the conduct of any harvesting activities in the Harvested Area and is not limited to the state of the Harvested Area immediately before the Incident.
- (r) **Parties** means Forestry Corporation New South Wales and the Secretary of the NSW Department of Climate Change, Energy, Environment and Water.

- (s) **Payment** meant the amount to be paid pursuant to clause 5.1.
- (t) **Protocol** means a protocol devised by Forestry Corporation that sets out the steps to be taken before forestry operations occur adjacent to reserved land.
- (u) **Remediation Direction** has the meaning given in clause 4.1 of this Deed.
- (v) **Reserved Land** means land reserved pursuant to the NPW Act, and any land managed by the National Parks and Wildlife Service.
- (w) **State Forest** means land that has been dedicated as State forest under the *Forestry Act 2016* (NSW).
- (x) **Training Program** means a mandatory formal training program to be undertaken by Forestry Corporation staff and contractors involved in operational planning to ensure their awareness of the Protocol.

1.2. Except where the context otherwise requires:

- 1.2.1. A reference to a statute, regulation, ordinance, or by-law will be deemed to extend to include a reference to all statutes, regulations, ordinances, or by-laws amending, consolidating, or replacing that law from time to time;
- 1.2.2. a reference to a person which has ceased to exist or has been reconstituted, amalgamated, or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
- 1.2.3. the meaning of general words is not limited by specific examples introduced by “including” or “for example” or similar expressions;
- 1.2.4. no rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Deed or any part of it;
- 1.2.5. the headings and contents list in this Deed are for convenience only and do not affect the interpretation of this Deed.
- 1.2.6. if an act prescribed under this agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day.
- 1.2.7. a reference to time is a reference to Sydney time; and
- 1.2.8. a reference to \$ is to Australian currency unless denominated otherwise.

2. ACKNOWLEDGMENT OF CONTRAVENTION

- 2.1. Forestry Corporation acknowledges that in about 2019-2020 Forestry Corporation harvested approximately 1.44 hectares of forest from reserved land, namely Bindarri NP, without authorisation contrary to section 156A(1)(d) of the NPW Act.

3. MEDIA STATEMENT

- 3.1. Forestry Corporation must, at its own expense, publish a Media Statement on Forestry Corporation's public website on 19 December 2024 or such later date as is agreed by the Secretary of DCCEEW.
- 3.2. The Media Statement must be:
 - a. drafted to the reasonable satisfaction of NPWS; and
 - b. approved by NPWS before it is finalised and published under clause 3.1, such approval not to be unreasonably withheld.
- 3.3. The Media Statement must acknowledge:
 - a. that Forestry Corporation admits to the Contravention;
 - b. that Forestry Corporation will work with NPWS to remediate and restore the Harvested Area, including funding the remediation and restoration of the Harvested Area;
 - c. Forestry Corporation has agreed to either pay an amount of \$500,000 to NPWS to fund the purchase of native forest for gazettal under the NPW Act, or to the reservation of an agreed area of State Forest as national park; and
 - d. that Forestry Corporation will be implementing a Protocol and training to avoid similar contraventions in the future.
- 3.4 Forestry Corporation will provide the draft proposed Media Statement to NPWS by at least 12pm on 18 December 2024 or such later date as is agreed by the Secretary of DCCEEW.
- 3.5 NPWS will provide feedback on the proposed Media Statement to Forestry Corporation by at least 10am on 19 December 2024 or such later date as is agreed by the Secretary of DCCEEW.
- 3.6 Forestry Corporation will incorporate any reasonably suggested feedback from NPWS to NPWS' satisfaction.
- 3.7 DCCEEW acknowledges that nothing in this Deed is intended to limit Forestry Corporation's opportunity to provide any other statement, comment or response to the

media or other third parties in relation to the matters in this Deed including the Media Statement, that are not inconsistent with the Media Statement and this Deed.

3.8 Forestry Corporation acknowledges that nothing in this Deed is intended to limit DCCEEW or NPWS' opportunity to provide any statement, comment or response to the media or other third parties.

3.9 Without limiting clause 3.8, Forestry Corporation also acknowledges that the Media Statement may be, at the discretion of NPWS or DCCEEW more generally:

- a) published on the NPWS and DCCEEW's websites and social media accounts;
- b) referenced in materials or documents prepared by or on behalf of NPWS and DCCEEW; and
- c) where appropriate, published or referenced in newspapers, DCCEEW media statements or other publications.

4. REMEDIATION AND RESTORATION

4.1 The Secretary of DCCEEW will issue a direction to Forestry Corporation to carry out specified remediation and restoration work in relation to the Harvested Area (the **Remediation Direction**). The Remediation Direction will:

- a) identify measures which are:
 - (i) designed to promote the long-term objective of restoring species composition and structure in the Harvested Area, to the greatest extent practicable, to its original composition and structure; and
 - (ii) designed to promote the restoration of vegetation in the Harvested Area so that it is viable and self-sustaining;
- b) specify reasonable timeframes within which each measure should be carried out;
- c) have a term of up to 10 years; and
- d) require, as the Secretary considers appropriate, that a measure must be taken only by a person or organisation with specified experience and expertise.

4.2 Forestry Corporation will implement the Remediation Direction up to an amount of \$455,000 and must:

- a) take all reasonable steps to ensure value for money; and

- b) provide an annual report to NPWS detailing the amount spent in implementing the Remediation Direction, certified by Forestry Corporation's Chief Financial Officer.

4.3 Upon issue of a tax invoice to Forestry Corporation by DCCEEW and evidence of costs incurred, Forestry Corporation will be liable to pay all reasonable expenses up to an amount of \$40,000 incurred by the Secretary of DCCEEW in preparing the Remediation Direction (in addition to the costs of implementing the Remediation Direction in clause 4.2 above). Such expenses may include the commissioning of independent expert reports considered necessary by the Secretary for the preparation of the Remediation Direction including in relation to any of the matters referred to in clause 4.1(a)-(d) above.

4.4 To avoid doubt or in addition:

- a) Forestry Corporation must implement the Remediation Direction to the reasonable satisfaction of the Secretary of DCCEEW.
- b) If the Secretary of DCCEEW considers that the Remediation Direction is not being implemented to the Secretary of DCCEEW's reasonable satisfaction, the Secretary of DCCEEW may:
 - (i) cause the measures specified in the Remediation Direction to be carried out, taking all reasonable steps to ensure value for money; and
 - (ii) may recover as a debt from Forestry Corporation the cost of complying with those measures.
- c) The Secretary of DCCEEW may vary the Remediation Direction from time to time where reasonably necessary to promote the successful restoration of the Harvested Area.

4.5 The parties retain all rights and responsibilities in relation to any direction issued under Part 6A, Division 3 of the NPW Act, including any direction under section 91K of the NPW Act for matters covered by the Remediation Direction.

5 PAYMENT

5.1 Subject to clause 5.2 and upon presentation of a tax invoice, Forestry Corporation must pay the amount of \$500,000 to NPWS (the **Agreed Sum**) by the earlier of 17 September

2025 or a date notified by NPWS to Forestry Corporation (being a payment date at least 21 working days after any such notification).

5.2 Forestry Corporation does not have to pay the Agreed Sum if before 17 September 2025 all of the following have occurred:

- a) Forestry Corporation identifies and advises NPWS of an area or areas of State Forest that may be reserved as national park for the purposes of this Deed;
- b) NPWS agree to an area or areas of State Forest being reserved as national park for the purposes of this Deed (**Agreed Transfer Area**);
- c) the dedication of the Agreed Transfer Area as State Forest is revoked under the *Forestry Act 2012*; and
- d) Forestry Corporation uses its best endeavours to assist in the reservation of the Agreed Transfer Area as national park under section 30A of the NPW Act.

5.3 If payment is made under clause 5.1, NPWS must:

- a) apply the Agreed Sum toward the purchase of private land in the North Coast of NSW bioregion or the NSW section of the Southeast Queensland bioregion. NPWS should give priority to land that contains wet sclerophyll forests and is adjacent to or in the proximity of Reserved Land.
- b) take all reasonable steps to purchase the land within 12 months of the Agreed Sum being paid and to gazette it under the NPW Act as soon as reasonably possible after the date of acquisition.
- c) directly apply any amount of the Agreed Sum not applied toward the purchase described in clause 5.3 of this Deed to the effective management of the land purchased under clause 5.3.

5.4 Subject to clause 5.2, Forestry Corporation is to pay the Agreed Sum to NPWS by electronic funds transfer to the following account:

BSB: 032-001

Swift Code: WPACAU2S

Account No: 186827

Account Name: DCCEEW National Parks and Wildlife Fund

6 PROTOCOL AND TRAINING

- 6.1 Forestry Corporation will develop and adopt a protocol that sets out the steps to be taken before harvesting occurs adjacent to Reserved Land (the **Protocol**), within 12 weeks of the date of this Deed.
- 6.2 Forestry Corporation must implement the Protocol once the Protocol is adopted.
- 6.3 The steps in the Protocol must include notification of proposed forestry operations adjacent to any Reserved Land and consultation with NPWS for boundary verification prior to the commencement of any forestry operation. The Protocol is to mandate that Forestry Corporation submit its proposed harvest plan maps to NPWS prior to harvesting for confirmation of the reserve boundary.
- 6.4 NPWS will take all reasonable steps to consider and respond to Forestry Corporation's consultation under the Protocol and Forestry Corporation's submission of any proposed harvest plan map in a timely manner.
- 6.5 So far as the Protocol relates to NPWS, it must be drafted to the satisfaction of NPWS in its absolute discretion and NPWS must approve the Protocol before it is finalised.
- 6.6 Forestry Corporation will use reasonable endeavours to provide the draft Protocol to NPWS within 10 weeks following the Commencement Date.
- 6.7 NPWS will provide feedback on the draft Protocol within 1 week of receipt of the draft Protocol.
- 6.8 Subject to clause 6.9 below, Forestry Corporation must incorporate any suggested feedback into the draft Protocol from NPWS to NPWS' satisfaction, in its absolute discretion.
- 6.9 If NPWS has provided feedback that Forestry Corporation is unable to incorporate within 1 week, or that Forestry Corporation considers may not be practicable, Forestry Corporation may seek, and NPWS will not reasonably withhold, approval for an additional 4 weeks to negotiate amendments to the draft Protocol.

6.10 Forestry Corporation must develop and conduct a mandatory formal training program to be undertaken by Forestry Corporation staff and contractors involved in operational planning to ensure awareness of the Protocol (**Training Program**). The Training Program must be completed within:

- a) 2 months of the Protocol being adopted for existing Forestry Corporation staff and contractors; and
- b) before involvement in operational planning activities for any new Forestry Corporation staff and contractors.

7 GOVERNING LAW

This Deed and the rights and obligations of the Parties to it are to be construed in accordance with and are governed by the laws of the State of New South Wales and the Parties irrevocably submit to the exclusive jurisdiction of the Courts of New South Wales.

8 NO WAIVER

8.1 A party's failure to require full or partial performance of a provision of this Deed, does not affect that party's right to require its performance at a later date.

8.2 A single or partial exercise of, or waiver of the exercise of, any right, power or remedy does not prevent any other or further exercise of that or any other right, power or remedy.

8.3 A right under this Deed may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

9 VARIATION

9.1 Each Party agrees not to vary the terms of this Deed except in writing signed by or on behalf of each party.

10 SEVERABILITY

10.1 If any provision of this Deed is or becomes invalid or unenforceable, such provision shall be severed from this Deed so that the validity or enforceability of this Deed shall not be affected.

11 NO FETTER

11.1 This Deed does not:

- 11.1.1 oblige or force the exercise or non-exercise of any executive or statutory right, duty or function;
- 11.1.2 have the effect of fettering the discretion any Minister or Governor of New South Wales in the exercise of their rights, discretion or powers;
- 11.1.3 Affect NPWS' power to investigate a contravention arising from future conduct or to pursue a criminal prosecution or to lay charges or exercise other civil or regulatory powers under any legislation administered by the NPWS, including the NPW Act, and
- 11.1.4 affect the rights or remedies available to any other person or entity
- 11.1.5 affect any statutory obligations, including those under the NPW Act.

12 FURTHER ASSURANCES

12.1 Each party must promptly execute all documents and do all things that the other party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it, including any consultation under the Protocol.

13 EXECUTION OF SEPARATE DOCUMENT

13.1 If this Deed is signed in counterparts, each is deemed an original and all counterparts taken together will be taken to constitute one instrument.

14 COSTS

14.1 Each Party will pay and bear their own costs and expenses in connection with this Deed and the matters relating to this Deed unless specified otherwise.

15 ELECTRONIC EXECUTION

15.1 A Party may sign this Deed, and any variations to it, by electronic means where permitted by Law. Each Party consents to the signing of this Deed by electronic means.

15.2 In relation to the electronic exchange of documents:

- b) Parties may exchange executed counterparts of this Deed, or any other document required to be executed under this Deed, by delivery from one Party to the other Party by emailing a pdf (portable document format) copy of the executed counterpart to that other Party as an attachment to an email

or by transmitting the executed counterpart electronically via a secure digital platform such as DocuSign (**Electronic Delivery**); and

- c) Electronic Delivery of an executed counterpart will constitute effective delivery of the executed counterpart as if the original had been received, from the date and time that the email was sent, provided that the sending Party does not receive a delivery failure message within a period of 24 hours of the email being sent.

15.3 Electronic signatures complying with a law applicable in New South Wales will be deemed original signatures for the purposes of this Deed and any such digital, scanned or electronically applied signature is to be treated in all respects as having the same effect as an original signature

EXECUTED AS A DEED

Signed, sealed and delivered for and on behalf of the Secretary, Department of Climate Change, Energy, the Environment and Water, ~~(by their authorised representative);~~



Signature of authorised representative

~~Strike through if not signed electronically** I acknowledge this Deed has been electronically signed by me, the authorised representative named below, affixed at the time and on the date specified below.~~

ANTHONY LEAN

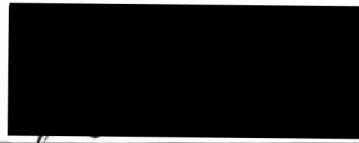
Name of authorised representative

SECRETARY

Position of authorised representative

18 DECEMBER 2024 12:40PM

Time and date



Signature of witness

~~Strike through if not signed electronically** I acknowledge this Deed has been electronically signed by me, the witness named below, affixed at the time and on the date specified below.~~

CANDICE MCCOWEN

Name of witness

23 (ELIZABETH ST SYDNEY NSW 2000

Address of witness (business address)

18 DECEMBER 2024 12:40PM

Time and date

~~Strike through if not witnessing over audio visual link** By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).~~

Executed by Forestry Corporation:

Signed, sealed and delivered for and on behalf of the Forestry Corporation by its duly authorised representative:



Signature of authorised representative

~~Strike through if not signed electronically** I acknowledge this Deed has been electronically signed by me, the authorised representative named below, affixed at the time and on the date specified below.~~

Ross Dickson

Name of authorised representative

General Manager, Governance & Assurance

AND COMPANY SECRETARY

Position of authorised representative

18 DECEMBER 2024.

Time and date



Signature of witness

~~Strike through if not signed electronically** I acknowledge this Deed has been electronically signed by me, the witness named below, affixed at the time and on the date specified below.~~

Alix Cameron

Name of witness

121-131 Oratava Avenue, West Pennant Hills

Address of witness (business address)

10:15am
18 December 2024

Time and date

~~Strike through if not witnessing over audio visual link**~~ By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Annexure A

