



# Conservation Covenants:

Options to improve security for the protection of private land in Tasmania

This report was prepared by EDO Tasmania for the North East Bioregional Network

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Cover image: Arwen Dyer [www.arwendyer.com](http://www.arwendyer.com)

#### **ABOUT EDO TASMANIA**

EDO Tasmania is an independent, non-profit community legal centre providing expert advice on public interest environmental and planning issues. Our aim is to increase public awareness of environmental laws and remedies, to strengthen the protections provided by the law, and to help the community to secure a healthy, sustainable Tasmania.

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## EXECUTIVE SUMMARY

In Australia, significant conservation effort has been spent protecting tracts of public land as national parks, reserves and conservation areas. While these reservation efforts are essential, many of Tasmania's threatened vegetation communities (and dependent species) occur primarily on private land, particularly in central and eastern areas of Tasmania. Vegetation on private land is also important for the maintenance of landscape-scale habitat connectivity. For these reasons, there has been an increasing focus over the past decade on the protection of the natural and cultural values on private land.

One way that formal protection of private land may be achieved is through the use of conservation covenants<sup>1</sup>: voluntary, legally binding agreements between individual landowners and the Tasmanian Minister for the Environment. Many conservation covenants also require approval from the Federal Minister, and are counted towards Tasmania's RFA obligations to maintain a Comprehensive, Adequate, and Representative (**CAR**) reserve system.<sup>2</sup>

Since their introduction in 1999, more than 810 conservation covenants have been entered into, protecting over 99,300 hectares of private land in Tasmania.<sup>3</sup> Conservation covenants have the objective of protecting significant values on private property, and may restrict the activities that can be carried out or impose obligations for active management of the land. In return for this protection, covenanted landowners often receive financial assistance and land tax and council rates concessions.

Despite the significant contribution conservation covenants make to the management of natural and cultural values, there are few safeguards in Tasmanian legislation to ensure that covenants provide secure, long-term protection. The number of covenants being discharged or varied is expected to increase in coming years as agreements mature and covenanted properties are sold to landowners who did not agree to the original restrictions.

For this reason, it is timely to consider whether current laws provide adequate security for the natural and cultural values protected by conservation covenants. This report identifies weaknesses in the current legislation, and recommends improvements to ensure that recognised natural values on private properties are not diminished by the inappropriate variation or discharge of conservation covenants.

The report also considers a range of other threats to the effectiveness of conservation covenants, including limited funding for ongoing management, lack of monitoring and enforcement, and overriding rights for mining activities.

With a number of relatively minor legislative and policy reforms to strengthen their effectiveness, conservation covenants can provide an invaluable tool to facilitate conservation outcomes on private land and improve habitat connectivity and species resilience across Tasmania.

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<sup>1</sup> Other options include declaration of private nature reserves or private sanctuaries under the *Nature Conservation Act 2002*, land management agreements under the *Threatened Species Protection Act 1995*, informal voluntary programmes such as Land for Wildlife (managed through the Private Land Conservation Program service operated in partnership between DPIWPE and the Tasmanian Land Conservancy), and Part 5 Agreements under the *Land Use Planning and Approvals Act 1993* (see section 3 of this report). The North East Tasmania Land Trust also runs a "Conserving Land for the Future" programme (see [www.netlandtrust.org.au](http://www.netlandtrust.org.au)). Informal voluntary programmes are a critical component of private conservation efforts, but more detailed discussion of such programmes is outside the scope of this report.

<sup>2</sup> Currently, more than 5% of the National Reserve System is made up of private land, managed under agreement between government (Commonwealth, state or territory) and the landholder (Department of the Environment (Cth), Ownership of protected areas. <http://www.environment.gov.au/land/nrs/about-nrs/ownership>. The Commonwealth expects such to last for at least 99 years, and ideally in perpetuity, and to be terminated only with the agreement of both parties (see *Standards for inclusion in the National Reserve System*, Department of the Environment (Cth), Private landholders).

<sup>3</sup> Department of Primary Industries, Parks, Water and Environment (Tasmania) website <http://dpiwpe.tas.gov.au/conservation/conservation-on-private-land/private-land-conservation-program>, accessed May 2017 (figures to December 2016). The 2017-2018 Budget Papers show the 2016-2017 cumulative area covered by "conservation agreements", including covenants and management agreements, as 106,000ha.

## KEY RECOMMENDATIONS

The report recommends the following key amendments to address deficiencies in the current regulatory framework and improve the long-term security of conservation covenants:

- Removing the power to revoke or discharge a conservation covenant;
- Requiring the Minister to be satisfied that any proposed variation of a conservation covenant will not threaten the natural or cultural values of the subject land;
- Providing a clear list of matters that the Minister is to take into account when considering any proposed variation of a conservation covenant, including any compensation received by the landowner;
- Inviting public submissions on any proposal to vary a conservation covenant where public funds have been paid to the landowner, or where the covenant is entered into pursuant to a permit condition;
- Where a covenant is entered into following refusal of an application for a private timber reserve or certification of a forest practices plan, requiring the Minister to consult with the Forest Practices Authority prior to varying the covenant.
- Where the Minister proposes to vary a conservation covenant that has been required by a condition of a development permit, requiring the Minister to:
  - Notify the relevant local council of the proposed variation;
  - Notify any person who made a representation in response to the development application to which the covenant relates;
  - Have regard to the purpose of the permit condition, and any comments made by the planning authority, in determining whether to agree to the variation
- Explicitly prohibiting mining leases or exploration licences from being granted over land subject to a conservation covenant.
- Establishing a statutory covenanting body with power to monitor and enforce covenant conditions (such as the Queen Elizabeth II Trust in New Zealand). In lieu of a specific statutory body, allow covenants to nominate authorised conservation organisations that will have power to monitor and enforce compliance with covenant conditions.
- Requiring vendors to provide prospective purchasers with information regarding covenant obligations and available resources to assist with compliance.
- Making it an offence for third parties to knowingly breach the terms of a conservation covenant.
- Allocating additional resources to support government covenanting programmes, including through partnerships and stewardship arrangements with and non-government organisations. Resources must be sufficient to provide education and assistance to covenant holders, and to facilitate rigorous monitoring and enforcement activities.

Legislative amendments to give effect to these recommendations are set out in [Appendix 1](#).



# 1. What is a conservation covenant?

A conservation covenant is a voluntary, legally binding agreement made between a landowner and the Tasmanian Environment Minister that aims to protect and enhance the natural, cultural and / or scientific values of private property. Since the first conservation covenant in Tasmania was registered in 1999<sup>4</sup>, more than 800 covenants have been entered into. As at December 2015, covenanted land covered 98,582ha of private land in Tasmania.<sup>5</sup>

## **How are conservation covenants made?**

Conservation covenants are made under Part 5 of the *Nature Conservation Act 2002 (NC Act)*. Under s.34(1) of the NC Act, the Environment Minister may enter into a conservation covenant if she or he considers it "necessary or desirable to do so for a conservation purpose."

Once the terms of the conservation covenant are agreed to, the covenant is registered by the Recorder of Titles. The covenant takes effect on the day of registration, and remains in force until a discharge is registered.<sup>6</sup>

Whilst entering into a conservation covenant is voluntary, the process for entering into a covenant may be initiated where the Forest Practices Authority has refused an application for forestry activities or private timber reserve status on private land on the basis that the land has significant natural or cultural values.<sup>7</sup> Conservation covenants initiated in this way have been used to achieve the Comprehensive, Adequate, and Representative (**CAR**) reserve system objectives under Tasmania's Regional Forest Agreement. In some cases, both the Tasmanian and Commonwealth Governments have spent considerable public funds to secure covenants for that purpose.

## **Terms and conditions**

The terms of conservation covenants will vary, depending on the values present on the land and the conditions agreed between the Tasmanian Minister and the landowner (and, in some circumstances, the Commonwealth Minister). The terms may require compliance with a detailed management plan for the covenanted land, or the terms may be imposed by the covenant itself.

Conservation covenants (and Nature Conservation Plans or Operations Plans approved for the covenant) may impose restrictions on land uses, limit vegetation clearing or confine the area in which buildings may be constructed. Unlike traditional covenants, conservation covenants may also impose positive management obligations, such as requiring the landowner to construct and maintain fences, control weeds and pests, or to undertake re-vegetation activities.

Conditions may also specify the duration of the covenant or set out provisions relating to compensation or other support to the landowner, and obligations to repay any funds received in prescribed circumstances.<sup>8</sup>

Where the covenant applies to a private sanctuary or private nature reserve, conditions imposed on the covenant must not be inconsistent with the management objectives for reserved land or any specific management plan for the land.<sup>9</sup> As at June 2015, fewer than three percent of conservation covenanted land has also been declared as a private nature reserve.<sup>10</sup>

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<sup>4</sup> Hardy, M. J., Fitzsimons, J. A., Bekessy, S. A. and Gordon, A. (2016), *Exploring the Permanence of Conservation Covenants. Conservation Letters*. doi: 10.1111/conl.12243 at Table 1. Prior to that date, covenants under the *Land Titles Act 1993* could impose restrictions to protect natural values, but could not impose positive obligations.

<sup>5</sup> Department of Primary Industries, Parks, Water and Environment (Tasmania) website <http://dpiipwe.tas.gov.au/conservation/conservation-on-private-land/private-land-conservation-program> accessed on 8 June 2016.

<sup>6</sup> Sections 38(1) and (2), NC Act

<sup>7</sup> Sections 16 and 19 of the *Forest Practice Act 1985* and Pt 5, Divisions 3 and 4, NC Act

<sup>8</sup> Section 34(2), NC Act

<sup>9</sup> Section 32(4), NC Act

<sup>10</sup> DPIPWE website: <http://dpiipwe.tas.gov.au/Documents/tas%20reserve%20class%20areas%2030th%20june%202015.pdf>

## Private land programs: Tasmanian Land Conservancy

The Tasmanian Land Conservancy (**TLC**) is a registered environmental organisation committed to “protecting irreplaceable sites, endangered species’ habitats, and rare ecosystems by buying and managing private land.” The TLC operates a number of covenanting programs aimed at protecting high conservation areas on private land and creating a rigorous, secure network of reserves.

Through its New Leaf Revolving Reserves program, the TLC purchases private land, secures a covenant over the land and on-sells the land to owners keen to support conservation. The New Leaf program has sold 10 properties, covering **2,735ha**, since 2010.

In partnership with the Department of Primary Industry, Parks, Water and the Environment (**DPIPWE**), TLC provides support to covenanted landholders to maintain the values on their land through a Stewardship and Monitoring program.

Key achievements of the Private Land Conservation Program in 2015/2016 include:

- Continuing marketing of additional New Leaf properties (**5,971ha**)
- Two additional New Leaf covenants under negotiation (**97ha**)
- Perpetual covenants over Gordonvale and Blue Tier reserves
- 1 new Protected Areas on Private Land covenant property registered (**25ha**)
- Stewardship plans over **2,636ha** of land in Tasmania’s Midlands

### **Effect of a conservation covenant**

Once the parties agree to the terms of the conservation covenant, the covenant is registered on the property title and, unless it is varied or discharged, will bind any future owners of the land.<sup>11</sup> Unless a shorter period is specified in the covenant, conservation covenants will generally run with the land in perpetuity, providing long-term protection for the natural and cultural values of the property. Land tax will generally not apply, and many councils offer rate rebates for covenanted land.<sup>12</sup>

It is an offence for a person bound by the covenant to contravene the terms of the covenant – currently punishable by a fine of up to \$15,700. A conservation covenant is enforceable between the parties to the covenant (which may include the Commonwealth Minister, or another listed third party). It is not enforceable by any other party (for example, a conservation group concerned that the covenant is not being complied with), and is not directly enforceable against another party (for example, a neighbouring owner who removes a fence on the property or a contractor who clears vegetation).

There are a limited number of broader protections offered by conservation covenants, including:

- Under the *Threatened Species Protection Act 1995*, it is an offence to “disturb” a listed threatened species on land subject to a conservation covenant. With some exceptions, on non-covenanted land an offence will not be committed unless there is evidence that a threatened species has been “taken” – a much narrower action than disturbance.<sup>13</sup>
- Covenanted land is treated as ‘reserved land’ under the *Cat Management Act 2009*.
- Any application for a dam permit on covenanted land must be subject to a detailed assessment, and cannot use the fast track procedure under Division 4 of the *Water Management Act 1999*.<sup>14</sup>
- Where covenanted land is also reserved land (e.g private nature reserve), any management plan approved for the reserve must be consistent with the terms of the covenant.<sup>15</sup>

<sup>11</sup> Section 32(6)(a), NC Act; s.102(2), *Land Titles Act 1980*

<sup>12</sup> Section 19A, *Land Tax Act 2000*

<sup>13</sup> Section 51(1) of the *Threatened Species Protection Act 1995*. Arguably, disturbance would include damage to habitat, while “taking” requires direct harm to the actual species.

<sup>14</sup> Section 159, *Water Management Act 1999*

<sup>15</sup> Section 28, *National Parks and Reserves Management Act 2002*

## 2. Variation and discharge of covenants

### **Process for variation and discharge**

Under s.35(1) of the NC Act, the Minister may vary or discharge a conservation covenant at any time by agreement with the landowner. The variation or discharge is registered with the Recorder of Titles, and takes effect upon registration.<sup>16</sup>

Before entering into a conservation covenant, the Minister must be satisfied that it is “necessary or desirable to do so for a conservation purpose.” Other than where the covenant is over a private nature reserve (see below), there is no similar requirement when discharging or varying a covenant. The Minister is required to have regard to the objectives of the Resource Management and Planning System (which include sustainable development and maintenance of ecological processes) when making any decisions under the NC Act, but is not required to be satisfied that the objectives will be met.

The only explicit restrictions on variations and discharge of conservation covenants are as follows:

- If the conditions of the covenant require Commonwealth approval, the covenant cannot be varied or discharged without the prior written consent of the Commonwealth Minister (s.35(2));
- If the landowner has received compensation or other payments in connection with the covenant, the covenant cannot be discharged or varied until at least 30 days after the Tasmanian Minister has published a notice of her or his intention to vary or discharge the covenant in the *Gazette* (s.35(4)). Whether any funds received must be repaid will depend on the terms of the covenant and the discretion of the Minister.

These restrictions are discussed in more detail below.

In contrast, if the land subject to the conservation covenant is a private nature reserve, the covenant cannot be discharged, or varied in a way that “might threaten the natural or cultural values of the land”, until the land ceases to be a private nature reserve.<sup>17</sup>

Land will only cease to be a private nature reserve if a proclamation revoking that status is approved by both Houses of Parliament and made by the Governor. If any money was paid under a management agreement for the private nature reserve, the Governor may only make a proclamation revoking the reserve if the owner has refunded the money, or the Minister is satisfied that a refund is not required.<sup>18</sup>

### **Restrictions on variation or discharge of covenant – Commonwealth approval**

Where the covenant expressly requires the consent of the Commonwealth for any amendment or discharge, this consent must be obtained before any variation or discharge can take effect.

Such a provision allows Commonwealth oversight of any variation or discharge of conservation covenants where Commonwealth funding has been paid. For example, the provision has applied to all conservation covenants arising from the Regional Forest Agreement negotiations and designed to satisfy the Comprehensive, Adequate and Representative reserve requirements under the RFA, and to covenants established to support Landcare projects. The majority of current conservation covenants are subject to this requirement.

There is no published information on how prior consent from the Commonwealth Government is obtained, or what criteria the Commonwealth Minister will consider before granting consent. In practice, DPIPWE officers assess an application for variation or discharge of a conservation covenant and prepare a minute to the Tasmanian Minister with a recommendation as to whether the application should be approved. If the recommendation is for the Tasmanian Minister to agree to the variation or discharge, the Minister will then write to the Commonwealth Environment Minister to seek consent.

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<sup>16</sup> Sections 38(1) and (2), NC Act

<sup>17</sup> Section 35(3), NC Act

<sup>18</sup> Section 21(6), NC Act

### **Restrictions on variation or discharge of covenant – Notification in the Gazette**

There is no legislative requirement for a landowner to repay any funds if a conservation covenant is ultimately varied or discharged, however the conditions of the covenant itself may make provision for repayment.

Regardless of the terms of the covenant, where a landowner has received compensation or financial payments from the Government, notice of any proposed variation or discharge must be published in the Gazette. Curiously, despite this public notification requirement, there is no formal opportunity for the public to comment on a proposed variation or discharge, no requirement to take any comments made into account, and no requirement for the Minister to have regard to any compensation paid when deciding whether to vary or discharge the conservation covenant.

Where public funds have been used to secure protection of biodiversity for a public conservation benefit, members of the public should be able to comment on any proposal to remove or reduce the protection “purchased” under the covenant.

### **Conservation covenants arising from forestry applications**

There are two circumstances in which negotiations in relation a conservation covenant may be initiated as a result of failed applications for forestry activities:

- Where a landowner has applied to have their land declared as a Private Timber Reserve and the application is refused on the basis that the land has significant natural and cultural values (s.16(3), *Forest Practices Act 1985*)
- Where the Forest Practices Authority refuses to certify a Forest Practices Plan, or significantly amends a proposed Forest Practices Plan, on the basis that the proposed clearing will have an inappropriate impact on natural and cultural values of the land (s.19, *Forest Practices Act 1985*).

In either of these situations, the landowner will be required to negotiate a conservation covenant in order to be eligible for compensation for the reducing forestry rights.

There are no provisions requiring the Forest Practices Authority to be consulted in relation to the terms of the conservation covenant, or any subsequent variation or discharge of the covenant.

#### **EXAMPLE 1: Varying a conservation covenant to allow tourist development**

In 2006 a conservation covenant was registered in perpetuity on the title of a 35ha rural property on Tasmania’s East Coast. The primary purpose of the covenant was to protect 20ha of coastal heath, including threatened vegetation such as *Melaleuca pustulata*. The terms of the covenant identified a 2ha area where a residential home and related activities were permitted (the ‘Domestic Zone’), and prevented clearing or development on the balance of the property (the ‘Conservation Zone’). The landowners received Council rate rebates on account of the covenant, and also received a small grant to control gorse on the property.

When the property was sold in 2012, the new owners applied to the Minister to vary the covenant to allow three self-contained eco-villas to be built in the Conservation Zone. The proposed site of the villas itself did not contain threatened vegetation, however a 500m access track was required through a stand of threatened vegetation.

The Minister did not have to advertise the proposed variation, as no compensation had been provided under the covenant to the new landowner. No Commonwealth approval was required.

Having regard to the natural values assessment submitted by the new owners, and support for the proposal from the local Council, the Minister agreed to reduce the size of the Conservation Zone to exclude the development area.

## Recommendations

Relatively few landholders have been reported as being released from their obligations under conservation covenants in Tasmania,<sup>19</sup> however a significant number of covenants have been varied by the Minister (at the request of the owner). The number of covenants being discharged or varied is expected to increase as the agreements mature and covenanted properties are sold to landowners who were not involved in making the original agreement with the Minister.

The following legislative amendments would improve the rigour with which any future applications for variation are assessed:

- Requiring the Minister to be satisfied that any proposed variation of a conservation covenant will not threaten the natural or cultural values of the subject land;
- Providing a clear list of matters that the Minister is to take into account when considering any proposed variation of a conservation covenant, including consideration of any compensation or financial payments received by the landowner in connection with the covenant;
- Allowing public submissions to be made regarding any proposal to discharge or vary a conservation covenant where public funds have been paid to the landowner;
- Other than in exceptional circumstances, authorising the Minister to require repayment of any compensation paid to the landowner (or their successors in title) if a conservation covenant is discharged or obligations / restrictions are reduced. Guidelines should be developed outlining situations in which partial repayment is appropriate (for example, where management activities have already been undertaken using the funding).
- Where compensation has been paid following refusal of an application for a private timber reserve or certification of a forest practices plan, requiring the Minister to consult with the Forest Practices Authority prior to varying or discharging the covenant. The landowner should also be prevented from applying for any further forestry activities on the land unless any compensation previously paid in respect of the covenant is repaid.
- Developing clear guidelines as to when a conservation covenant will include a condition requiring prior consent from the Commonwealth Minister, and what the Commonwealth Minister will have regard to when considering a request for consent.

The North East Bioregional Network also seeks to prevent conservation covenants from being discharged, on the basis that anything less than permanent protection for the natural values recognised as warranting a covenant in the first place would compromise the covenanting framework. Additional resources must be allocated to assist landowners to maintain effective protections (see below).

Legislative amendments to give effect to these recommendations are set out in [Appendix 1](#).

## 3. Conservation covenants as a planning tool

Under the *Land Use and Planning Approvals Act 1993 (LUPAA)*, a planning authority may grant a development permit subject to a condition requiring the landowner to enter into a 'Part 5 Agreement'. Part 5 Agreements can impose a range of binding obligations on the landowner, including restrictions on future development of the subject land or requirement to rehabilitate vegetation within areas of the site. Part 5 Agreements can be registered on the title and, if registered, will bind all future landowners.

In some circumstances, Part 5 Agreements have been used by planning authorities to secure biodiversity offsets to compensate for vegetation losses resulting from a development.

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<sup>19</sup> Hardy, M. J., Fitzsimons, J. A., Bekessy, S. A. and Gordon, A. (2016), *Exploring the Permanence of Conservation Covenants. Conservation Letters*. doi: 10.1111/conl.12243 at Table 2.

Notwithstanding the availability of Part 5 Agreements, some planning authorities continue to make development permits subject to a condition requiring a conservation covenant to be entered into as a way of meeting biodiversity criteria in the planning scheme. This is generally motivated by the perception that a conservation covenant is a more recognisable, secure and permanent tool for biodiversity protection on private land than a Part 5 Agreement.<sup>20</sup> However, unless the land is also a private nature reserve under the NC Act, there is currently little difference between the long term security provided by a conservation covenant and a registered Part 5 Agreement.

The principal difficulty in relying on a conservation covenant to secure compliance with a planning scheme requirement is that the planning authority will not be a party to the covenant (unlike a Part 5 Agreement). As a result, the planning authority will have little opportunity to influence the content of the covenant and no power to enforce its terms. There is also no requirement for the planning authority to be consulted, or even advised, if a conservation covenant is varied or discharged. As demonstrated in Example 2, this can lead to poor planning and conservation outcomes.

### EXAMPLE 2: Using a conservation covenant to secure a biodiversity offset

Kingborough Council received an application for subdivision of a 50 ha urban fringe property containing 15ha of a vegetation community that was rare in the region, but not listed as threatened under the *Threatened Species Protection Act 1995*. As a condition of the development permit for the subdivision, the developer was required to secure, by way of a conservation covenant, another 60ha tract of similar vegetation on neighbouring property (also owned by the developer).

Four years later, the planning authority received an application for a small residential development within the area that had been subject to the conservation covenant condition. Further investigation by Council officers revealed that, while the developer had applied for the covenant required by the permit condition, the Minister had refused to enter into a conservation covenant agreement as he was not satisfied that the vegetation intended to be protected by the offset was of sufficient conservation value. The developer had subsequently gone into liquidation and sold the offset property.

The planning authority was not aware that the conservation covenant had not been entered into because it was not a party to the negotiations. By the time this information was available, the developer was no longer a registered company and there was no mechanism by which the Council could enforce the permit conditions requiring the offset to be maintained by way of a covenant.

## Recommendations

The use of biodiversity offsets as a planning tool remains controversial.<sup>21</sup> However, as it is likely that offsets will play an increasing role in the assessment of development proposals, it is important to ensure that adequate tools are available to manage such assessments. The following changes could be made to improve the effectiveness of conservation covenants as a planning tool for securing biodiversity offsets:

- Ensuring planning schemes explicitly provide planning authorities with the option of requiring a conservation covenant to secure a biodiversity outcome. This will minimise legal challenges to the validity of permit conditions requiring covenants to be entered into.<sup>22</sup>
- Developing a statewide biodiversity offset policy to establish a rigorous, consistent framework for identifying, securing and maintaining appropriate offsets (whether through conservation covenants, Part 5 Agreements or other mechanisms).

<sup>20</sup> Southern Tasmanian Councils Authority (2013) *Guidelines for the Use of Biodiversity Offsets in the Local Planning Approval Process* at page 13

<sup>21</sup> For example, see Maron, M and Gordon, A (2013) "Biodiversity Offsets Could Be Locking In Species Decline". *The Conversation*. 6 June 2013. <http://theconversation.com/biodiversity-offsets-could-be-locking-in-species-decline-14177>

<sup>22</sup> The current State Planning Provisions allow for on-site biodiversity offsets but provide no explicit guidance regarding the mechanisms used to deliver the offset.

- Where a conservation covenant is required by a condition of a development permit, requiring the Tasmanian Minister to consult with the relevant planning authority prior to entering into the covenant.
- Where the Minister proposes to vary or discharge a conservation covenant that has been required by a condition of a development permit, requiring the Minister to:
  - Notify the planning authority of the proposed variation or discharge
  - Notify any person who made a representation in response to the development application to which the covenant relates<sup>23</sup>
  - Have regard to the purpose of the conservation covenant, and any comments made by the planning authority, in determining whether to agree to the variation or discharge

Legislative amendments to give effect to these recommendations are set out in **Appendix 1**.

## 4. Mining and exploration

Under the *Mineral Resources Development Act 1995*, mineral resources vest in the Crown (with some exceptions for historic titles) and mining leases and exploration licences may be granted by the Minister over reserved land, public land and private land.

The conservation values of a place (particularly when recognised by a conservation covenant) will be considered by Mineral Resources Tasmania in assessing exploration licence applications or proposed work programmes.<sup>24</sup> For covenanted land, applications may be referred to the Mineral Exploration Working Group to comment on potential impacts on conservation and cultural values and to make recommendations to minimise long-term impacts.

Owners of covenanted properties are also notified of exploration proposals over their property and can object to such proposals. In some cases, the applicant for the exploration licence will remove the covenanted property from the exploration area before the licence is issued.

However, while conservation values are considered during an assessment, they are not overriding criteria. The existence of a registered conservation covenant will not necessarily prevent the granting of a mining lease or exploration licence over the covenanted property, even where such activities would compromise the protection of natural or cultural values or contradict explicit restrictions on mining in the covenant conditions.

### EXAMPLE 3: Bimblebox Nature Reserve

Mining of covenanted land has not occurred in Tasmania to date, and informal practices are in place which aim to minimise impacts on covenanted land. However, the recent approval of a mining lease over the Bimblebox Nature Reserve in Queensland provides an example of the risks to conservation values where mining activities over such properties are not explicitly restricted.

The Bimblebox Nature Reserve was a nature refuge under the *Nature Conservation Act 1992* (which is similar to a conservation covenant under Tasmanian laws). The refuge had been in place for many years, and provided habitat for eight nationally-listed threatened species.

Despite these recognised values, the Queensland and Commonwealth Governments granted approvals for the Galilee Coal Project (also known as “China First”), authorising mining of thermal coal within the Bimblebox Nature Reserve. Notwithstanding that the refuge predated the mining applications, and the conservation values attributed to the site, there was no legislative impediment preventing the approval of mining operations within the reserve.

<sup>23</sup> This is similar to provisions relating to minor amendments to a planning permit – s.56(3), *Land Use Planning and Approvals Act 1993*

<sup>24</sup> See, for example, *Mineral Exploration Code of Practice* 5<sup>th</sup> edition. 2012. Mineral Resources Tasmania. p7 and Environmental Regulation information on the MRT website ([www.mrt.tas.gov.au](http://www.mrt.tas.gov.au)).

## Recommendations

The following changes would improve the security of the protection afforded by conservation covenants in Tasmania:

- Requiring the Minister to make an assessment of mineral prospectivity prior to entering into a conservation covenant, and to consult with the Minister for Resources to determine if there are any current applications for mining or exploration activities over the land.
- Prohibiting the Minister for Resources from granting (or renewing) any tenement under the *Mineral Resources Development Act 1995* that would be inconsistent with the terms of a registered conservation covenant.

Legislative amendments to give effect to these recommendations are set out in [Appendix 1](#).

## 5. Funding

*"Funds are essential to motivate and enable environmental stewardship; pay for technical support and training; fund labour and materials; and support research and measurement."*<sup>25</sup>

As outlined above, the Minister may enter into a conservation covenant if she or he considers it "necessary or desirable to do so for a conservation purpose", and subject to any conditions agreed to between the parties. Other than for covenants arising from refused forestry applications, compensation may be paid, but there is no obligation to do so.

For conservation covenants arising from the whole or partial refusal of an application for a forest practices plan, the affected landowner can apply to the Minister for compensation. Compensation is payable only if the landowner is being asked to exercise a higher duty of care than required under the Forest Practices Code, and where the landowner agrees to enter into a conservation covenant or management agreement. The amount of compensation is to be agreed between the parties or, failing agreement, determined by a commercial arbitrator.<sup>26</sup>

Regardless of the mechanism by which a compensation amount is agreed to, providing financial incentives to allow landowners to undertake protection works on private land will facilitate greater uptake of conservation covenants and improve the conservation outcomes on covenanted land. The Australian Panel of Experts on Environmental Law has observed that "more substantial incentives are required to persuade landholders to forgo production and enter into long-term conservation agreements compared with those not using their land for business purposes."<sup>27</sup>

However, the Tasmanian Government currently allocates very few resources to conservation covenants. The 2017/2018 Budget papers project the annual budget allocation to the DPIPWE branch administering conservation covenants<sup>28</sup> will be reduced by \$400,000 over the forward estimates. Despite this, the output performance indicators for the branch project a 4,000ha increase in the area of private land covered by a conservation agreement for 2017/2018.

At law, the Minister's decision to enter into a conservation covenant is guided only by conservation purposes. In practice, the availability of funds to provide compensation and financial assistance will undoubtedly affect the Minister's willingness to commit to a covenant arrangement.

An ongoing study of landowner experiences reveals that compliance difficulties regularly relate to a landowner's capacity to meet the costs of management.<sup>29</sup> As the Australian Panel of Experts on Environmental Law have recently recommended, efforts should be made to develop an effective

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<sup>25</sup> Australian Panel of Experts on Environmental Law, *Terrestrial Biodiversity Conservation and Natural Resources Management* (Technical Paper 3, 2017), p25. Available at [www.apeel.org.au/papers](http://www.apeel.org.au/papers) (APEEL Technical Paper).

<sup>26</sup> Sections 41 and 41A, NC Act

<sup>27</sup> APEEL Technical Paper, p31

<sup>28</sup> To be transferred from Resource Management and Conservation to a dedicated Threatened Species branch in 2017/2018

<sup>29</sup> Julie Groce (pers comm, 26 April 2017). To follow the progress of this study, go to <http://www.connectandconserve.com/>

fiscal model that ensures “the costs of environmental stewardship can be met over the long term, and are borne equitably across the community.”<sup>30</sup>

In May 2017, New Zealand’s Queen Elizabeth II National Trust announced a new fund, the Stephenson Fund for Conservation Enhancement, to provide strategic support for covenanted landowners facing management issues such as pests, floods and bushfire, weed or serious financial difficulties.<sup>31</sup>

## Recommendations

If conservation covenants are to be used as a mechanism to secure greater protection of biodiversity on private land, the Tasmanian and Commonwealth Governments must allocate additional resources to support covenanting programmes.

The Tasmanian government should continue to progress formal partnerships with conservation funding bodies to support conservation covenants, such as the TLC Stewardship and Monitoring Program. Partnerships could allow conservation funding bodies to provide financial assistance in return for being made a party to the conservation covenant and able to enforce its terms.<sup>32</sup>

The Australian Panel of Experts on Environmental Law’s Technical Paper 3, *Terrestrial Biodiversity Conservation and Natural Resources Management*, discusses a range of systemic reforms to encourage greater use of conservation philanthropy and conservation on private land. While these are beyond the scope of this report, we urge State and Commonwealth governments to consider the recommendations made in that paper. Policy and law reforms to encourage private land conservation may include:

- Resumption of the Commonwealth National Reserve System program assisting landowners to acquire land for conservation purposes
- Allowing costs of management actions required by covenants to be tax deductible
- Consistent application of local council rate rebates for conservation covenanted land
- Annual management payments to covenanted landowners calculated on the basis of the ecosystem service benefits of the management activities
- Better resourcing of stewardship programmes to undertake monitoring, data collection and reporting

## 6. Monitoring and enforcement

The effectiveness of conservation covenants in protecting biodiversity on private land relies on rigorous monitoring and enforcement. This is particularly important where covenanted land is counted towards national or international conservation targets. Without effective compliance action, it will be difficult for governments and private covenanting programmes to confidently report on the efficacy of covenants in achieving those targets.

Where a person is convicted of contravening a conservation covenant, the person may be fined up to \$15,700 and must also pay an amount determined by the Court, having regard to any compensation paid in relation to the covenant and any financial gain attained through the contravention. The court may also order the person to pay for any loss or expense incurred by the Crown (which could include the cost of remediation activities, ecological assessments and court fees).<sup>33</sup>

<sup>30</sup> APEEL Technical Paper, Recommendation 3.6, p32

<sup>31</sup> For more information about the Stephenson Fund, go to

[www.openspace.org.nz/Site/Managing\\_your\\_covenant/The\\_Stephenson\\_Covenant\\_Enhancement\\_Fund.aspx](http://www.openspace.org.nz/Site/Managing_your_covenant/The_Stephenson_Covenant_Enhancement_Fund.aspx)

<sup>32</sup> See s.77, *Reserves Act 1977* (NZ) for an example of provisions allowing conservation groups to be authorised parties to a covenant.

<sup>33</sup> Section 46(2), NC Act

### **Compliance by landowners**

A 2016 study by Hardy et al has shown that rates of non-compliance with conservation covenants are relatively low in Tasmania. However, the authors also noted that monitoring data was often not kept, so findings should be treated cautiously.<sup>34</sup>

Section 45(1) of the NC Act allows authorised officers to enter on and inspect covenanted land, provided reasonable notice is given to the landowner.<sup>35</sup> However, the Hardy et al study indicates that proactive compliance monitoring of conservation covenants is relatively low. Factors contributing to this include:

- Difficulties in accessing private land
- Lack of resources for compliance activities
- Limited public awareness of covenant requirements (therefore, limited reporting of breaches)
- The desire to maintain good relationships with covenanted landowners

Some non-compliance may also be explained by the limited information available to new owners regarding covenant responsibilities. While covenants are recorded on the title, and disclosed as part of a land information certificate under the *Local Government Act 1993*, there is no requirement for DPIPWWE officers to approach new landowners to explain covenant obligations and any assistance available to covenanted landowners.

Stewardship officers with the Private Land Conservation Program currently perform the role of contacting new owners to discuss the obligations they are committing to. This role would be strengthened by a formal notification process where covenanted land changes ownership.

### **Compliance by third parties**

Many covenants include a condition requiring landowners to inform the Minister of any event which has or could have a significant adverse impact on the land. However, where the event is outside the control of the covenanted owner, recourse is limited. The Hardy et al study also found that up to one quarter of reported incidences of non-compliance resulted from the actions of third parties.

Unlike development permits, which regulate activities on a property regardless of who is carrying out the activities, the terms of a conservation covenant are enforceable only against parties to the covenant.<sup>36</sup> Unless the person responsible for the non-compliance is a party to the covenant (or is authorised by a party to take the non-compliant action), there are very limited legal options to penalise contraventions by third parties.

Importantly, this can impose a significant burden on covenanted landowners to prevent third party activities or to remediate damage caused by third parties.

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<sup>34</sup> Hardy, M. J., Fitzsimons, J. A., Bekessy, S. A. and Gordon, A. (2016), *Exploring the Permanence of Conservation Covenants. Conservation Letters*. doi: 10.1111/conl.12243

<sup>35</sup> Section 45(2) also provides that the Minister and the landowner may make an agreement regarding the method and timing of access (for example, as one of the terms of the conservation covenant) – if such an agreement is made, it must be complied with.

<sup>36</sup> Sections 34(6)(b) and 46 of the NC Act. However, it is an offence for any person to disturb a listed threatened species that is covered by a conservation covenant (s.51(1)(d), *Threatened Species Protection Act 1995*)

#### EXAMPLE 4: Third party damage to covenanted land<sup>37</sup>

The owner of a coastal property in the northwest of Tasmania entered into a conservation covenant designed to protect vulnerable shorebirds and coastal vegetation. The land was also declared a private nature reserve. The terms of the covenant (and the associated management plan for the nature reserve) required fences to be erected and maintained to prevent access to dune areas providing habitat for the species, and prevented construction or use of vehicle tracks over the property.

The fences erected by the covenanted landowner were consistently damaged and removed by off-road vehicle drivers. The landowner placed signs on the fences to explain their importance, met with the local off-road vehicle clubs to raise his concerns and varied the fencing material used, but without effect.

The landowner wrote to the Minister to request assistance, but was advised that there was no action that the Minister could take against those damaging the fence and the covenanted landowner remained responsible for ensuring compliance with the terms of his conservation covenant. The landowner requested additional financial assistance to meet the cost of fence replacement, but no resources were provided.

#### Recommendations

The following changes will assist in improving compliance with conservation covenants in Tasmania:

- Improving the information available to new and prospective landowners regarding covenant responsibilities. This could be achieved through:
  - Requiring property agents to provide prospective purchasers with an information sheet regarding the covenant – at a minimum the information sheet should include an overview of the terms of the covenant, the relevant sections of the NC Act and contact details for the relevant DPIPW officer. A similar approach has been considered in relation to advising prospective purchasers in agricultural areas of potential nuisances from primary industry activities.<sup>38</sup>
  - Requiring the Recorder of Titles to notify the Resource Management and Conservation branch when a covenanted property is transferred, and encouraging the branch to contact the new owner to provide information regarding the covenant.
  - An accessible register of all conservation covenants (currently the LIST includes a search layer for conservation covenants, but data is incomplete).
- Ensuring sufficient resources are allocated to enable rigorous monitoring and enforcement activities. Funding should support the analysis of satellite imagery to monitor unauthorised clearing or other development taking place on remote covenanted properties.

Compliance resources may be extended through strategic partnerships with non-government conservation organisations (such as Landcare and TLC) or philanthropic conservation organisations. These organisations could be given statutory powers (such as those granted to the Queen Elizabeth II National Trust in New Zealand), and funded by government to undertake both engagement and enforcement activities.

As an interim measure within the existing legislative framework, conservation organisations can be made a party to any new conservation covenant and allowed to enforce its terms. NGO officers should also be authorised under s.45(1) to inspect covenanted land.

<sup>37</sup> This example is a hypothetical composite of reported experiences

<sup>38</sup> DPIPWE, 2016. *Review of the Primary Industry Activities Protection Act 1995 – Final Report*. Available at <http://dpiuwe.tas.gov.au/Documents/PIAP%20Act%20Review%20-%20Final%20Report.pdf>

- Ensure that all conservation covenants provide for approved Nature Conservation Plans or Operations Plans to be reviewed every 5 years (and provide resources to allow Stewardship Officers to conduct the reviews).
- Allow enforcement options for breach of covenant to include remediation orders. Where remediation works are not undertaken by the landowner, authorised officers can carry out the work and recover the costs from the landowner.
- Introducing offences for third parties who knowingly contravene the terms of a conservation covenant, with enforcement options to include remediation orders or fines to be paid into a remediation fund.

Where damage to a covenanted property is caused by an unknown third party, owners could apply for an allocation from the remediation fund to cover restoration expenses.

Legislative amendments to give effect to these recommendations are set out in [Appendix 1](#).



Image from <https://icsrg.info/2016/09/22/landholder-motivation-satisfaction-covenants/>

# APPENDIX 1:

## Proposed amendments to the *Nature Conservation Act 2002*

The following amendments are designed to give effect to the recommendations made throughout this report.

### 33. Interpretation of Part

Insert the following additional definitions:

**Authorised conservation body** means a registered environmental organisation authorised by the Minister, by written instrument, to be the authorised conservation body for any land specified in the instrument;<sup>39</sup>

**Prescribed amount** means \$10,000 or another amount prescribed by regulation;

**Prescribed circumstances** will apply:

- (a) Where the land subject to the conservation covenant contains threatened species or ecological communities listed under the *Environment Protection and Biodiversity Conservation Act 1999*;
- (b) Where compensation or financial assistance is provided to the landowner pursuant to any programme administered by the Commonwealth;
- (c) In any other circumstances prescribed by regulation;

### 34. Minister may enter into conservation covenants

- (1) The Minister on behalf of the Crown may enter into a conservation covenant with a landowner if the Minister considers it necessary or desirable to do so for a conservation purpose.
- (2) A conservation covenant may contain such covenants and other provisions as the Minister and the landowner agree.
- (3) Without limiting the generality of subsection (2), a conservation covenant may contain –
  - (a) provisions relating to the payment of compensation or the provision of financial or other assistance to the landowner; ~~and~~
  - (b) provisions relating to the repayment of money or, if applicable, the waiver of entitlements to statutory compensation; and
  - (c) provisions allowing an authorised conservation body to enforce the terms of the conservation covenant as if it was a party to the covenant under subsection (6).

(3A) Without limiting the generality of subsection (2), a conservation covenant must contain –

- (a) if **prescribed circumstances** apply, a provision requiring consent from the Crown in the right of the Commonwealth or an authorised conservation body prior to any variation of the conservation covenant;
- (b) if a conservation covenant contains provisions for compensation exceeding the **prescribed amount**, provisions relating to the repayment of the money in the event of a significant variation under section 35.

(3B) Without limiting the generality of subsection (2), if a conservation covenant is required by a condition of a permit under the *Land Use Planning and Approvals Act 1993*, the Minister is to consult the relevant planning authority prior to entering into the conservation covenant.

- (4) A conservation covenant in respect of reserved land in the class of private sanctuary or private nature reserve may not contain a provision which is –
  - (a) inconsistent with the management objectives for that class of reserved land; or

<sup>39</sup> Any authorised conservation body should also be authorised by the Minister under s.45(1) to inspect covenanted land

- (b) contrary to, or inconsistent with, a management plan in force in respect of that reserved land.
- (5) A conservation covenant may be a restrictive covenant or a positive covenant.
- (6) A conservation covenant –
  - (a) runs with the servient land as if it were a covenant to which section 102(2) of the *Land Titles Act 1980* applies; and
  - (b) is enforceable between the parties to it, and any person deriving title under any such party, as if the covenant were entered into by a fee simple owner of land for the benefit of adjacent land held by the Crown in fee simple that was capable of being benefited by the covenant and as if that adjacent land continued to be so held by the Crown.

### 35 Variation ~~and discharge~~ of conservation covenants

- (1) Subject to this section, the Minister on behalf of the Crown may vary ~~or discharge~~ a conservation covenant ~~at any time~~ by agreement with the owner of the land that is subject to the covenant.
- (2) If a conservation covenant so provides, it is not capable of being varied ~~or discharged~~ without the prior consent of the Crown in the right of the Commonwealth or an authorised conservation body.
- (3) If the land subject to a conservation covenant is a private nature reserve, the covenant is not capable of being varied in a way that might threaten the natural or cultural values of the land, ~~or of being discharged, until the land ceases to be or form part of a private nature reserve.~~
- (4) If any of the following circumstances apply:
  - (a) the landowner has received compensation or financial payments from the Crown under this Part or any other enactment in connection with a conservation covenant;†
  - (b) a conservation covenant has been entered into in compliance with a condition of a permit issued under the *Land Use Planning and Approvals Act 1993*; or
  - (c) a conservation covenant has been created pursuant to Division 3 or Division 4 of this Act,  
a conservation covenant is not capable of being varied ~~or discharged~~ unless the Minister, ~~by means of a notice published in the Gazette~~ has given at least 30 days' notice of his or her intention to vary ~~or discharge~~ the covenant in accordance with subsection (5).
- (5) Notice by the Minister under subsection (4) is to:
  - (a) be published in the Gazette and a daily newspaper circulating generally in the area of the land subject to the conservation covenant;
  - (b) be given to:
    - (i) where the conservation covenant was entered into pursuant to a permit condition under the *Land Use Planning and Approvals Act 1993*, the relevant planning authority and any person who made a representation under s.57(5) of that Act in relation to application for the permit
    - (ii) where the conservation covenant was entered into under Division 3 or Division 4, the Forest Practices Authority
    - (iii) where applicable, the authorised conservation body;
  - (c) specify the detail and purpose of the proposed variation;
  - (d) advise that any person can make a written representation regarding the proposed variation to the Minister during the period prescribed in the notice, which must be at least 14 days from the date of the notice;
  - (e) explain how representations may be made; and
  - (f) contain any prescribed information.
- (5A) Notice given under subsection (4) may include any other information determined by the Minister.
- (6) In making an agreement under subsection (1), the Minister must be satisfied that the variation is necessary or desirable for a conservation purpose, having regard to:
  - (a) the terms and purpose of the conservation covenant, including whether it was created as a result of a condition of a development permit;

- (b) the natural or cultural values present on the conservation covenant land;
  - (c) any advice received from the Crown in right of the Commonwealth or an authorised conservation body; and
  - (d) any representations received.
- (7) Without limiting subsection (6), if the agreement will reduce the area of land subject to the conservation covenant, the Minister must consider
- (a) whether the variation will threaten the natural or cultural values of the land;
  - (b) any practicable alternative to the variation of the covenant; and
  - (c) whether the landowner remains able to manage the natural and cultural values of the land;
  - (d) whether any amount of compensation or financial payments made by the Crown to the landowner in connection with the conservation covenant should be repaid.
- (8) The Minister must give written notice of any agreement under subsection (1) to any person who made a representation under this section.

Insert new provision

#### **44A Effect of variation**

Where a conservation covenant that has been entered into under this Division is varied under section 35, the landowner may only reapply to the Forest Practice Authority under section 18(1)(b) of the *Forest Practices Act 1985* for the certification of the relevant forest practices plan if:

- (a) the owner has refunded –
  - (i) any money paid for the purpose of securing the conservation covenant, or complying with the management objectives of the conservation covenant; or
  - (ii) an appropriate proportion of that money; or
- (b) special circumstances exist, as specified in a certificate provided by the Minister, that obviate the need for the refund of any money<sup>40</sup>; and
- (c) written consent to the application is provided by any person or body required to consent to the variation of the conservation covenant under section 35(2).

#### **46. Offence to contravene conservation covenant**

- (1) A person against whom a conservation covenant is enforceable must not contravene that covenant.  
Penalty: Fine not exceeding 100 penalty units.

(1A) A person must not knowingly or recklessly take an action, cause an action to be taken, or fail to take an action, where the action, or failure to take action, results in a contravention of a conservation covenant.

Penalty: Fine not exceeding 60 penalty units

- (2) A court that convicts a person of an offence under subsection (1), in addition to any penalty it imposes under that subsection –
- (a) must order that person to pay to the Crown the amount the court considers appropriate having regard to any compensation that has been paid to that person, or to any previous owner of the land that is subject to the covenant, by virtue of the covenant; and
  - (b) may order that person to pay to the Crown the amount the court considers appropriate having regard to any loss, or costs, incurred by the Crown as a result of the breach of the covenant; and
  - (c) must order that person to pay to the Crown the amount the court considers appropriate of any financial gain made by that person as a result of or in connection with the breach of the covenant; and

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<sup>40</sup> This is similar to the repayment obligations on revocation of a private nature reserve under s.21(6), NC Act

- (d) may order that person to take specified action to make good any damage resulting from the breach of the covenant.
- (3) A court that convicts a person of an offence under subsection (1A) may, in addition to any penalty it imposes under that subsection –
  - (a) order the person to take specified action to make good any resulting damage to the covenanted land;
  - (b) order the person to carry out restoration or enhancement activities on any area of the covenanted land; and
  - (c) order the person to pay the Crown, the landowner or any authorised conservation body that has incurred costs or expenses as a result of the contravention.

Insert new provision:

#### **46A. Remediation notices**

- (1) Where the Minister or an authorised conservation body is satisfied that a person against whom a conservation covenant is enforceable has contravened that covenant, the Minister or authorised conservation body may cause a remediation notice to be served on that person.
- (2) A remediation notice is to specify:
  - (a) the damage caused by the alleged contravention to which the notice relates;
  - (b) measures that must be taken to address the damage;
  - (c) any activities that must be discontinued on the covenanted property;
  - (d) the period within which the notice is to be complied with; and
  - (e) that the person served with the notice can object to the notice in writing to the Minister within 14 days of receiving the notice.
- (3) The Minister must consider any objection received under subparagraph (2)(e) and may
  - (a) revoke the remediation notice;
  - (b) amend any specification in the remediation notice; or
  - (c) confirm the remediation notice.
- (4) The Minister must advise the objector of the Minister’s decision under subsection (3) within 14 days of making the decision.
- (5) A person served with a remediation notice that has not been revoked under subsection (3) must comply with the notice.

Penalty: Fine not exceeding 100 penalty units.
- (6) If a person served with a remediation notice does not comply with the requirements of the notice within the period specified in the notice, the Minister or an authorised conservation body may take reasonable actions to comply with the requirements of the notice.
- (7) The reasonable costs and expenses incurred by any person taking an action under subsection (6) may be recovered as a debt from the person who failed to comply with the requirements of the remediation notice.

# Proposed amendments to other legislation

## **Property Agents and Land Transactions Act**

### **186. Vendors to provide relevant disclosure documents**

- (1) When advertising residential land, or land subject to a conservation covenant under Part 5 of the Nature Conservation Act 2002, for sale, a vendor or any agent of the vendor must ensure that the relevant disclosure documents are available to a purchaser in one or more of the following ways:
- (a) during business hours at to an address nominated by the vendor;
  - (b) in an electronic format that enables the information to be printed and saved to an electronic file;
  - (c) by post or electronic mail at the request of the purchaser.

### **190. Relevant disclosure documents**

For the purposes of this Part, the relevant disclosure documents include –

...

- (f) in the case of land that is subject to a conservation covenant under Part 5 of the Nature Conservation Act 2002,
- (i) a copy of the covenant agreement, including any variations approved by the Minister;
  - (ii) details of any outstanding obligations under the conservation covenant;
  - (iii) any covenant information sheet prescribed by regulation<sup>41</sup>

## **Forest Practices Act 1985**

### **19. Authority to certify or refuse to certify forest practices plan**

Insert new subsection (1AB):

(1AB) The Authority is not to certify a forest practices plan over land that is, or has been subject to a conservation covenant under Part 5 of the Nature Conservation Act 2002 unless the Authority is satisfied that the applicant has complied with section 44A of that Act.

## **Mineral Resources Development Act 1995**

### **5. Application of the Act**

Insert new subsection (10):

(10) This Act does not apply to land subject to a conservation covenant under Part 5 of the Nature Conservation Act 2002, where the terms of the conservation covenant prohibit or restrict mining activities.

### **97. Application of the Act**

Amend subsection (1):

- (1) Subject to subsection (1A), the Minister may –
- (a) grant an application for the renewal of a lease, with or without conditions; or
  - (b) refuse to grant the application.

Insert new subsection (1A):

(1A) The Minister must refuse to grant an application for the renewal of a lease if the lease would contravene the terms of a conservation covenant granted over the tenement under Part 5 of the Nature Conservation Act 2002.

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<sup>41</sup> As outlined in section 6 of the Report, DPIPWE should prepare a standard information sheet regarding compliance with covenant obligations