

Creating Reserves under the Tasmanian Forest Agreement Law

1. INTRODUCTION

This guide provides detail on the process by which reserves can be created under the *Tasmanian Forest Agreement Act 2013 (TFA Act)*. It should be read in conjunction with the shorter "Guide to the Tasmanian Forest Agreement Law".

This guide seeks to explain the *Tasmanian Forest Agreement Act 2013* and is not a commentary on the Act.

2. CREATING RESERVES THROUGH THE TFA ACT

2.1. Future Reserve Land

When the TFA Act came into force on 3 June 2013, **514,971** hectares of land immediately became "Future Reserve Land". The TFA Act effectively prohibits native forest harvesting in part, but not all, of the Future Reserve Land.

42 coupes of land, listed in Schedule 6 of the TFA Act, are excluded from the Future Reserve Land. The Act does not clearly identify the location and area of these coupes.

Approximately 21,000 ha of the Future Reserve Land remains available for timber harvesting. However, this land could still be reserved through the TFA Act process.

Special species timber harvesting in the Future Reserve Land

The TFA Act provides for the Minister for Energy and Resources (the **Minister**) to allow special species timber harvesting on certain Future Reserve Land specified in Schedule 5 of the TFA Act. The TFA Act also allows for regulations to be made to identify additional coupes in which special species harvesting can occur.

Special species include blackwood, myrtle, celery top, sassafras, huon pine and silver wattle.

The Minister can only allow special species harvesting under the TFA Act on advice from the Special Council that special species timber needs cannot be met from within the Permanent Timber Production Zone land (formerly, *Multiple Use Forest*). The Minister's decision to permit harvesting must be accepted by both Houses of Parliament before it will take effect. The Minister's decision to allow special species harvesting in a particular area will also result in that area being removed from the Future Reserve Land classification.

Any approved special species harvesting must be carried out in accordance with the TFA Act.

DISCLAIMER

This guide is for information purposes only and is not legal advice. For advice about a specific issue in relation to the new legislation, please contact EDO Tasmania on 6223 2770 or edotas@edo.org.au

2.2. Proposed Reserve Order

The Minister can make an order declaring Future Reserve Land to be “proposed reserves” under the TFA Act. The order must be made within certain time limits, depending on which land is concerned. There are three time periods set out in the TFA Act which relate to when the Proposed Reserve Order must be made. This is set out in Table 1 and Figure 1 below.

Table 1: The three types of Proposed Reserve Order and their respective time frames and areas

Order	Time Frame	Area (ha)
Initial Proposed Reserve Order	By 3 July 2013	392,232
Second Proposed Reserve Order	Not later than 1 March 2015	101,250
Third Proposed Reserve Order	Between 1 January 2022 and 31 December 2022	21,489 [†]

[†] This is the same part of the Future Reserve Land that is excluded from the prohibition on native forest harvesting.

If the Minister does not make the Initial Proposed Reserve Order within the time required, the TFA Act is repealed and will cease to be law in Tasmania. However, it is the clear intention of the current Minister to make the Initial Proposed Reserve Order.

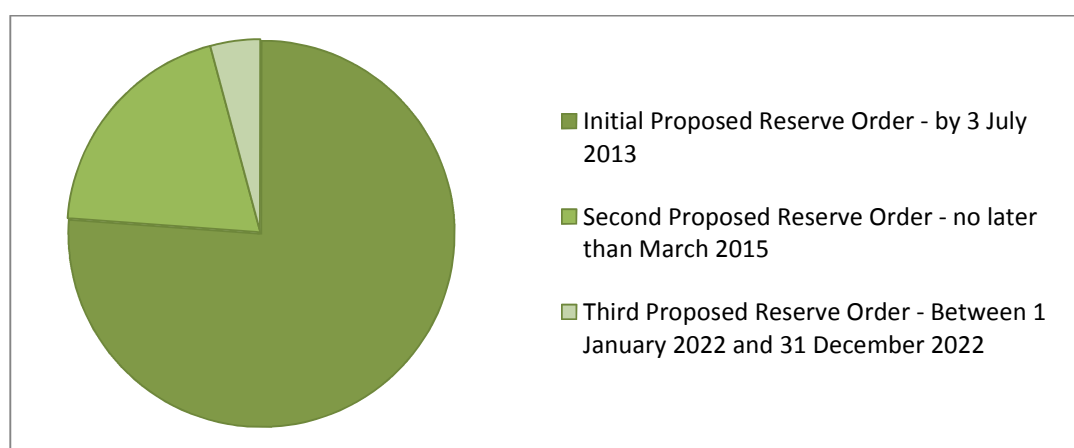


Figure 1 – Future Reserve Land – divided according to when the Proposed Reserve Order must be made.

The Minister has to do certain things before a Proposed Reserve Order can be made:

1. Obtain a durability report from the Special Council;
2. Obtain advice from the Federal Minister responsible for the national carbon farming law. This advice will address whether preventing native timber forest harvesting will generate carbon credits, and how much revenue such credits may attract; and
3. Obtain advice from Forestry Tasmania that Forest Stewardship Council certification has been obtained for forestry operations in the permanent timber production zone. This is not required for the initial Proposed Reserve Order.

While the durability report must be tabled in Parliament, there is no requirement for the Minister making the Proposed Reserves Order, or members of Parliament in considering the order, to take into account things such as the state of the forest industry or whether there have been protests or market disruption. It is up to each member of Parliament to decide what they take into account in deciding whether to accept or reject the Proposed Reserve Order. Both Houses of Parliament must accept the Proposed Reserve Order for it to have effect.

Forestry Facts

2: Creating Reserves

If either House of Parliament does not accept the initial Proposed Reserve Order, the entire TFA Act is repealed. This would mean there would no longer be a *Tasmanian Forest Agreement Act 2013*. This will be an early test of the legislation.

If the Minister does not make the second and third Proposed Reserve Orders in the time required, Schedule 1 of the TFA Act is repealed. Schedule 1 lists the 295 lots which can become reserves under the TFA Act. This means the TFA Act will no longer function. However, any reserves that have been declared prior to the repeal of Schedule 1 will not be affected.

If either House of Parliament does not accept the second or third Proposed Reserve Orders, the Minister can try to seek Parliament's approval a second time. The Minister must do this within 12 months of the first time the order is rejected by Parliament.

If, after the second time, either House of Parliament refuses to accept the second or third Proposed Reserve Order, Schedule 1 of the TFA Act is repealed. However, any reserves that have been declared prior to the repeal of Schedule 1 will not be affected.

Once the initial, second or third Proposed Reserve Order has been accepted by Parliament, the process moves to the next step: formalising the reserves.

2.3. Proposed Reserves Formalised

The third step in the process is to transfer land specified in the Proposed Reserve Order into formal reserves, such as national parks or nature reserves. The first part of this process is to confirm the boundaries, values and purpose of the proposed reserve. This is the job of the Nature Conservation Minister.

The proposed boundaries, values and purpose are all defined in Schedule 1 of the TFA Act for each of the 295 lots. For example:

Area	Purpose	Value
All that land comprising approximately 227 hectares as shown in Lot 1 on Annexure 1 to Plan 9580.	<ul style="list-style-type: none">■ The protection and maintenance of the natural and cultural values of the area of land and the sustainable use of the natural resources of that area of land.■ The removal of carbon dioxide from the atmosphere by all or any of the following means:<ul style="list-style-type: none">(i) Sequestering carbon in trees in native forest;(ii) Avoiding emissions of greenhouse gas attributable to changed forest management practices including the clearing or harvesting of native forest.	An area of land predominantly in a natural state.

The Minister can either:

- determine the boundaries, values and purpose of the proposed reserve as being **the same** as those approved by Parliament in the Proposed Reserve Order.

OR

- determine **different** boundaries, values and purpose of the proposed reserve to those approved by Parliament in the Proposed Reserve Order.

It is not clear why the boundaries, values or purpose might be different. This mechanism has presumably been included to deal with situations such as where the boundary agreed in the Tasmania Forest Agreement process was incorrect or needs to be changed for any reason.

There are some exceptions and restrictions in relation to the reserve boundary determinations:

- Some of the land included in the TFA Act cannot have its boundaries determined by the Nature Conservation Minister until after **1 October 2014** and until Forestry Tasmania has received FSC accreditation. This amounts to **248,394 ha**, which is all inside the initial Proposed Reserve Order land.
- Some of the land included in the TFA Act (about **34,500 ha**) cannot have its boundaries determined by the Nature Conservation Minister until Forestry Tasmania has received FSC accreditation and the land has been included in the World Heritage List. The World Heritage List is held and updated by the United Nations Educational, Scientific and Cultural Organisation. A decision in relation to the proposed extension of the Tasmanian Wilderness World Heritage Area to include these lots is likely to occur in June 2013.

2.3.1. WHAT IF THE MINISTER DETERMINES THE SAME BOUNDARIES, VALUES AND PURPOSES?

What happens at this point will depend on whether either House of Parliament has made a "determination", within the previous 12 months, that there has been a "failure of durability". Durability is not defined by the TFA Act, but a "failure of durability" determination may be made in respect of "substantial active protest" or "substantial market disruption" since the TFA Act began, or since a previous durability report was presented to Parliament.

A) If there has been a failure of durability determination?

If Parliament has made a failure of durability determination in the 12 months preceding the Nature Conservation Minister's determination of the boundaries, values and purpose, then the matter must go to Parliament. The Minister must provide to Parliament a document setting out the boundaries, values and purpose, as well as a durability report from the Special Council which addresses the issues which led to Parliament making the failure of durability determination.

If Parliament does not accept the boundaries, values and purposes, the land will no longer be Future Reserve Land. In effect, this will remove the prohibition on timber harvesting on the land.

If Parliament does accept the boundaries, values and purposes, the Minister must recommend to the Governor that the land be declared a reserve in one of the classes set out in the *Nature Conservation Act 2002*, for example national park.

B) If there has not been a failure of durability determination?

In this case Parliament is not involved in the process. The Minister must recommend to the Governor that the land be declared a reserve in one of the classes set out in the *Nature Conservation Act 2002*, for example national park.

TFA Act definitions:

Substantial active protests:

activity that has a negative material impact on forest operations legally carried out or on any processing of timber legally carried out

Substantial market disruption:

activity that has a negative material impact on the sale of legally harvested Tasmanian timber

Special species:

blackwood, myrtle, celery top, sassafras, huon pine and silver wattle.

2.3.2. WHAT IF THE MINISTER DETERMINES DIFFERENT BOUNDARIES, VALUES AND PURPOSES?

If the Nature Conservation Minister determines boundaries, values and purposes for proposed reserve areas that are significantly different from the Proposed Reserves Order, the revised proposal must go back to Parliament for approval.

If the Parliament does not approve the different boundaries, values and purpose, then the land is removed from the list of Future Reserve Land and is no longer a proposed reserve. Once it is removed from the Future Reserve Land, harvesting will no longer be prohibited on the land.

There is currently no guidance in terms of just how different boundaries, values and purposes can be before Parliamentary approval is required. This will be decided on a case-by-case basis and is likely to be subject to debate.

Once Parliament has approved the revised boundaries, values and purposes determined by the Nature Conservation Minister, the Minister must recommend to the Governor that the land be declared as a reserve under the *Nature Conservation Act 2002*.

2.4 Declaration by the Governor

If the Governor makes a declaration, the area becomes a reserve under the *Nature Conservation Act 2002*. There are ten classes of reserve, the most well-known being "national park".

The Governor will almost certainly also declare that:

- the land be removed from the register of *Multiple Use Forest* (which the TFA Act renames *Permanent Timber Production Zone Land*) and;
- the land is no longer "State forest".

Once the land is reserved, it will be managed by the Parks and Wildlife Service under the *National Parks and Reserves Management Act 2002*. The reserves would then have the same management regime (which is unlikely to include timber harvesting) as other reserves already in place in Tasmania.

One exception to this is special species timber harvesting. In theory this could occur in areas that have been made reserves through the TFA process, subject to Parliamentary approval.

3. CONCLUSION

The TFA Act provides a process for reserves to be created on over approximately 500,000 hectares of forest in Tasmania.

The process is not a simple one and Parliament retains complete control over what does and does not become a reserve.

Tasmanian Forest Agreement Act 2013 (the TFA Act) becomes a law of Tasmania. This means approximately 515,000 hectares of Tasmania becomes "future reserve land". With some exceptions, native forest harvesting is prohibited on this land for the time being.

The Minister (currently the Hon Bryan Green) makes a Proposed Reserve Order. There are time restrictions on when the proposed reserve order can be made. This will result in there being three proposed reserve orders.

- BEFORE making the Proposed Reserve Order the Minister must obtain:
- 1) A durability report from the Special Council.
 - 2) Advice from the Commonwealth Minister responsible for the carbon farming initiative.
 - 3) For the second and third proposed reserve orders, advice from Forestry Tasmania that FSC certification has been obtained for forestry in the Permanent Timber Production Zone.

By 3 July 2013 ("the initial order")

Before 1 March 2015 ("the second order")

Between 1 January 2022 and 31 December 2022 ("the third order")

Minister does not make order in time. The TFA Act is repealed and is no longer a law in Tasmania.

Minister does not make order in time. The part of the TFA Act which describes the lots is repealed and will no longer apply. This will not affect the land covered by the initial order.

Minister makes order within time. Minister must provide the reports and advice mentioned above to Parliament.

If Parliament rejects the initial proposed reserve order, the TFA Act is repealed

Second & Third Orders

Initial Order

If the second or third proposed reserve order is rejected, the Minister can submit it again within 12 months for Parliament to reconsider. A new durability report from the Special Council must be provided to Parliament when the proposed reserve order is presented a second time.

If Parliament accepts the Proposed Reserve Order, the Order is made and the process moves on to the "Making Reserves" stage (see overleaf)

If Parliament rejects the second or third order a second time, the Proposed Reserve Order is revoked. The TFA Act will cease to operate in relation to the land which is subject of the order. This will not affect the land covered by the initial order.

A Proposed Reserve Order has been made.

Nature Conservation Minister determines boundaries, values and purposes of land described in the Proposed Reserve Order. For this process, land covered by the TFA Act is divided into four categories:

Land that can be declared reserves immediately.

~ 210,000 ha

Land that cannot become reserves before **1 October 2014**.

Land also not able to become reserves until Forestry Tasmania achieves FSC accreditation

~248,000 ha
(Schedule 2—118 lots)

Land that cannot become reserves until Forestry Tasmania achieves FSC accreditation and the land has been included in the World Heritage list.

~34,000 ha
(Schedule 3—11 lots)

Land in the special species contingency area.

Land cannot be reserved if the Minister, on advice from the Special Council, has approved harvesting.

~19,000 ha (Schedule 5)
(may be more if specified in regulations)

Minister determines the boundaries, values and purposes are the same as those in the proposed reserve order.

Minister determines the boundaries, values and purpose are different to those in the proposed reserve order.

Where no "failure of durability" determination has been made, and the boundaries, values and purposes substantially accord with the proposed reserve order, the order does not need to go to Parliament.

If has been a "failure of durability" determination by Parliament in the previous 12 months the Minister must provide Parliament with a:

- Durability report from the Special Council; and
- Document with boundaries, values and purposes.

The Minister must provide to Parliament the details of the changed boundaries, values or purpose.

If Parliament **does not** accept the boundaries, values or purpose, the land is no longer a proposed reserve and is removed from Future Reserve Land.

The land reverts to the same situation it was in before the TFA Act.

Parliament **approves** the boundaries, values or purpose. This is the final determination of boundaries, values or purpose.

The proposed reserve is declared.

The reserve is placed in one of the classes specified in the *Nature Conservation Act 2002* (such as a National Park).

People who have suffered loss from the creation of the reserves in relation to forestry contracts, covenants and other rights may seek compensation.

Making reserves