

Dear Lily D'Ambrosio,
Minister for Energy, Environment and Climate Change
lily.d'ambrosio@parliament.vic.gov.au

URGENT: "Harvest Pending/taped out" logging coupe 864-501-0005 near to endangered Diamond Python record and without minimum assessments for rare, threatened or protected biodiversity values

Diamond Python (*Morelia spilota spilota*)

1. The following information concerns VicForests planned logging operations in close proximity to the threatened (endangered¹) Diamond Python (*Morelia spilota spilota*).
2. The Diamond Python's existence in Victoria is confined to a very small area in the far eastern corner of East Gippsland. There are *less than 50 records* of this species in Victoria contained within the Victorian Government's Victorian Biodiversity Atlas spatial database (the **VBA**). The largest cluster of these records is centred around the towns of Genoa and Mallacoota. There are two remaining outlier clusters. One is located between Point Hicks and the lower reaches of the Thurra River, and the other is from 3-10km south of Cann River. The map in Figure 1. below demonstrates the extremely restricted distributional range of the Diamond Python within Victoria.
3. A Fauna and Flora Guarantee Action Statement for the Diamond Python (No. 104) was first prepared in 2000 and was updated in 2004 though substantially only to include a handful of records obtained in the species' distribution map. This Action Statement made the following comments:

"A number of threats to the Diamond Python in Victoria have been identified. They are presented below, in perceived order of relative importance. The first three are likely to have widespread consequences for the Diamond Python population, and will be addressed as a matter of priority.

- *population reduction through high intensity bushfires and/or inappropriate fuel-reduction burning;*
- *habitat alteration due to forest management practices, including timber harvesting and silvicultural treatment;*
- *predation and attack on adults (particularly brooding females), eggs and hatchlings by introduced predators - the Red Fox *Vulpes vulpes* and the feral Cat *Felis catus*;*
- *illegal collection by reptile fanciers and traders;*
- *accidental death through road kills;*
- *killing of individuals by a misinformed public.*

The Diamond Python is thought, therefore, to have a limited distribution, a low population size, and to be subject to a number of threatening processes - consequently, it is considered vulnerable² in Victoria.

In its final recommendation the Scientific Advisory Committee (SAC 1992) determined that the Diamond Python is:

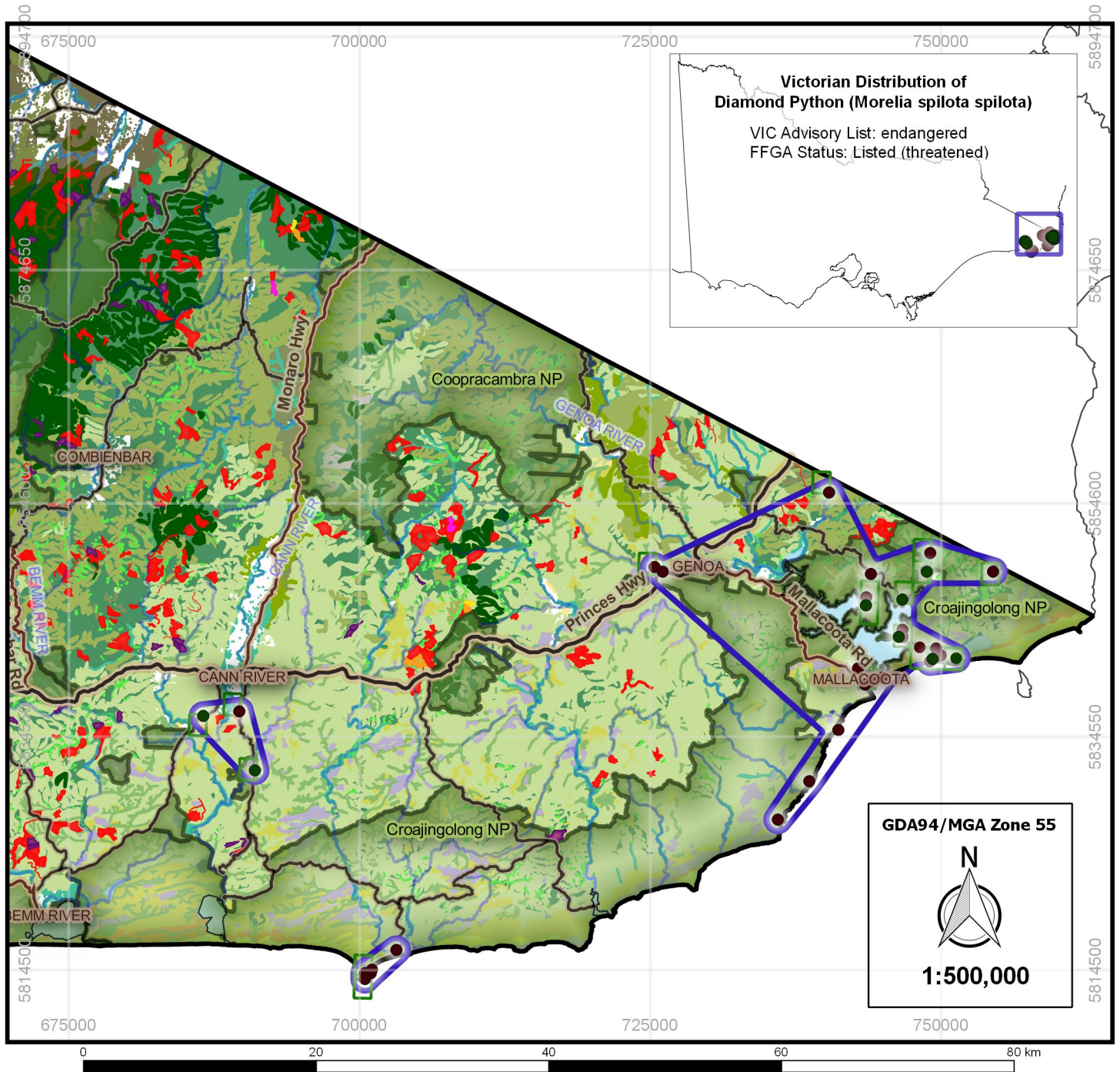
- *significantly prone to future threats which are likely to result in extinction; and*
- *very rare in terms of abundance or distribution.*"³

1 Current status = endangered ("Advisory List of Threatened Vertebrate Fauna in Victoria 2013", Victorian Government Department of Sustainability and Environment, Melbourne, March 2013)

2 NB: status has worsened from [former status] vulnerable to [current status] endangered

3 "Action Statement – Flora and Fauna Guarantee Act 1988 – No. 104 – Diamond Python *Morelia spilota spilota*", State of Victoria, Department of Sustainability and Environment, Melbourne, 2004, p. 2

Figure 1. Distribution of the Diamond Python (*Morelia spilota spilota*) in Victoria



Victorian Distribution of Diamond Python (*Morelia spilota spilota*)
 VIC Advisory List: endangered
 FFGA Status: Listed (threatened)

GDA94/MGA Zone 55
 N
 1:500,000

| Legend | | Ecological Vegetation Classes (modelled) [NV2005_EVCBCS] | | Other Layers | |
|---|---|--|--------------------------------|--------------|--|
| <i>Victorian Biodiversity Atlas (rare/threatened/protected)</i> | <i>Scheduled Logging</i> | Provisional | Montane Dry Woodland | Roads | |
| Diamond Python Records (<i>Morelia spilota spilota</i>) | VicForests Timber Release Plan [Approved_TRP_Boundaries_October_2016] | selected: | Montane Grassy Woodland | Watercourses | |
| ● VBA_FAUNA25 | Timber Harvesting Safety Zones | ■ Banksia Woodland | Riparian Forest | | |
| ● VBA_FAUNA100 | ■ In progress | ■ Damp Forest | Shrubby Dry Forest | | |
| □ VBA_FAUNA_GRID_1M | ■ In Progress | ■ Grassy Dry Forest | Sub-alpine Woodland | | |
| ■ Clusters of Diamond Python Records | ■ Harvest Pending | ■ Heathy Dry Forest | Valley Grassy Forest | | |
| | ■ Regeneration Works Pending | ■ Lowland Forest | Water Body - Fresh | | |
| | | | Wet Forest | | |
| | | | <i>Other Layers</i> | | |
| | | | ■ Parks and Reserves [PARKRES] | | |

Scheduled logging of Diamond Python (*Morelia spilota spilota*) habitat

4. VicForests are currently logging within the distributional range of the Diamond Python, have logged within approximately 100m of one Diamond Python record in 2013 (in coupe 863-503-0007), and are planning to commence logging coupe 864-501-0005 – near the confluence of the Cann River and Tonghi Creek (the **Tonghi-Cann River coupe**) – which is within 800m of another relatively very recent record made in 2011.
5. The Code of Practice for Timber Production⁴ (the **Code**) through its Management Standards and Procedures⁵, and through the Planning Standards⁶, requires the following management actions to be undertaken for records of the Diamond Python:

“4. Biodiversity

4.3 Fauna – detection based zoning

4.3.1 Statewide

4.3.1.1 Apply the management actions outlined in Table 4 (Detection based FMZ rules for fauna) below for zoned rare or threatened fauna.

4.3.1.2 Implement FMZ amendments and reviews in accordance with Table 4 (Detection based FMZ rules for fauna) below for new verified rare or threatened fauna records and FMZ amendment requirements outlined in section 2.

Table 5 Detection based FMZ rules for fauna.⁷

| FMA | Common name | Scientific name | Zoning management actions | Management actions | Review |
|----------------|----------------|--------------------------------|--|--------------------|---|
| East Gippsland | Diamond Python | <i>Morelia spilota spilota</i> | Establish a SPZ of 100 ha of suitable habitat for each verified locality of this species. | | Review this strategy when 50 sites have been located. |

6. Inspection of the Forest Management Zoning Scheme (the **FMZ**) shows that no "SPZ of 100 ha of suitable habitat" for the Diamond Python record less than 800m from the Tonghi-Cann River coupe has been established.
7. VicForests' "roading" operations in preparation for logging at this coupe have already been undertaken and this coupe is listed as "harvest pending" on VicForests "timber Harvesting Safety Zone List" (<http://www.vicforests.com.au/timber-harvesting-safety-zones>, accessed 13/12/16) and coupe boundary tapes have been placed within this forest area.
8. As a result, the planned logging within the Tonghi-Cann River coupe is about to occur without the establishment of any mandatory responsive adaptive management zoning for the nearby Diamond Python record.
9. This information is displayed in the map of Figure 2. below.

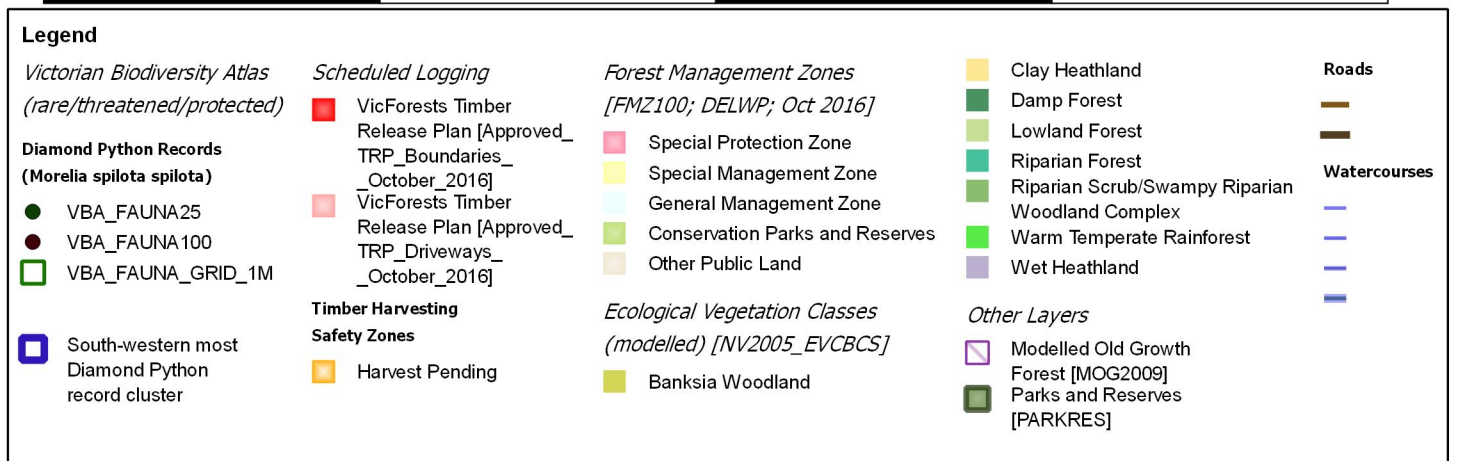
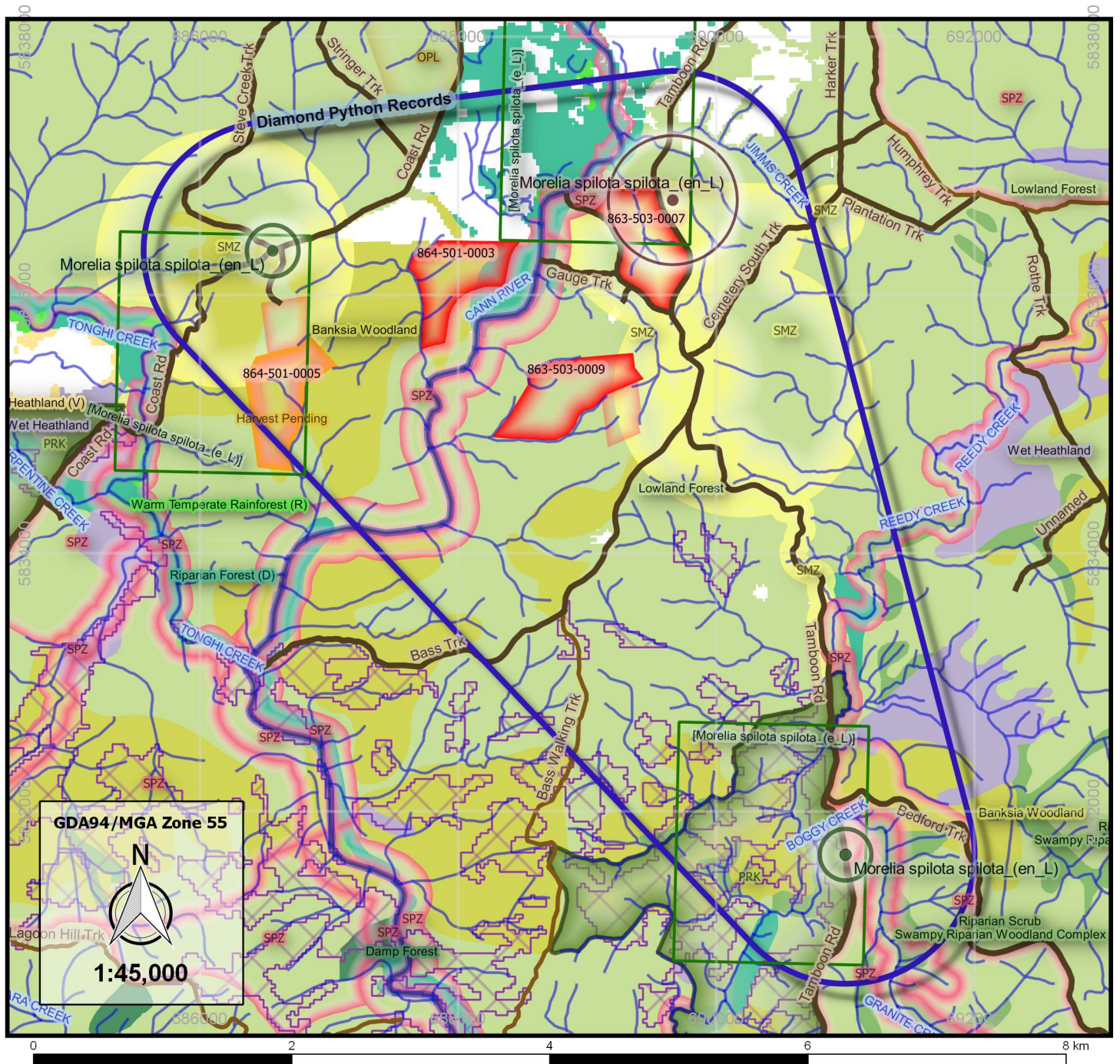
4 *Code of Practice for Timber Production 2014*, Department of Environment and Primary Industries, The State of Victoria, 2014

5 *Management Standards and Procedures for timber harvesting operations in Victoria's State forests 2014*", Department of Environment and Primary Industries, The State of Victoria, 2014,

6 *Planning Standards for timber harvesting operations in Victoria's State forests 2014, Appendix 5 to the Management Standards and Procedures for timber harvesting operations in Victoria's State forests 2014*, Department of Environment and Primary Industries, The State of Victoria, 2014

7 *Planning Standards*, "Table 4 Detection based FMZ rules for fauna", p. 45

Figure 2. South-western most cluster (global distribution) of Diamond Python (*Morelia spilota spilota*) records (showing the Tonghi-Cann River coupe and the absence of a 100ha "Special Protection Zone").



Biodiversity values and the lack of any pre-logging surveys for Diamond Python and other rare, threatened or protected biodiversity values

Summary of records regarding rare, threatened and/or protected species within or nearby to coupe 864-501-0005

10. The forest to be logged within the Tonghi-Cann River coupe has not been surveyed for the purposes of identifying the presence, ascertaining the current habitat use, or the ecological requirements, of the Diamond Python. Analysis of VicForests' published contracted survey results shows that no targeted pre-logging surveys for the Diamond Python or any other rare, threatened or protected species have been undertaken in this area. (viewed at: <http://www.vicforests.com.au/planning-1/protecting-biodiversity/targeted-species-surveys>.)
11. A basic desktop analysis of rare, threatened and/or protected species records within and surrounding the forest of the Tonghi-Cann River coupe, including analysis of sections of the Victorian Biodiversity Atlas (inc. VBA_FAUNA25-100, VBA_FLORA25-100 and VBA_FAUNA_GRID_1M) shows that the 61 rare, threatened and/or protected species listed in Table 1. on the following page have been recorded within 5km of the coupe.
12. This list includes 16 species which trigger mandatory management actions which must be undertaken following detection as set out in the Code and its incorporated documents. These species are: Glossy Black-Cockatoo (*Calyptorhynchus lathami lathami*), Spot-tailed Quoll (*Dasyurus maculatus maculatus*), Australian Hobby (*Falco longipennis*), Mountain Galaxias (*Galaxias olidus*), Coxs Gudgeon (*Gobiomorphus coxii*), White-bellied Sea-Eagle (*Haliaeetus leucogaster*), Blue Mountains Tree Frog (*Litoria citropa*), Diamond Python (*Morelia spilota spilota*), Powerful Owl (*Ninox strenua*), Yellow-bellied Glider (*Petaurus australis*), Australian Grayling (*Prototroctes maraena*), Common Brushtail Possum (*Trichosurus vulpecula*), Masked Owl (*Tyto novaehollandiae novaehollandiae*), Sooty Owl (*Tyto tenebricosa tenebricosa*), Leafless Tongue-orchid (*Cryptostylis hunteriana*) and King Greenhood (*Pterostylis baptistii*).



Table 1. Rare, threatened and/or protected species within 5km of the Tonghi-Cann River coupe 864-501-0005
(NB: This list of 61 species does not account for other species whose distributional range also overlaps coupe 864-501-0005)

| Fauna species within 5km of coupe 864-501-0005 (VBA_FAUNA25, 100 and GRID_1M) | | | | | |
|---|-------------------------------|----------|-----------------------|------------|------------------|
| SCI_NAME | COMM_NAME | FFG_DESC | VICADV_DES | EPBC_DESC | Code of Practice |
| <i>Biziura lobata</i> | Musk Duck | | Vulnerable | | |
| <i>Calamanthus pyrrhopygius</i> | Chestnut-rumped Heathwren | Listed | Vulnerable | | |
| <i>Calyptorhynchus lathami lathami</i> | Glossy Black-Cockatoo | Listed | Vulnerable | | Code of Practice |
| <i>Cinlosoma punctatum</i> | Spotted Quail-thrush | | Near threatened | | |
| <i>Dasyornis brachypterus brachypterus</i> | Eastern Bristlebird | Listed | Endangered | Endangered | |
| <i>Dasyurus maculatus maculatus</i> | Spot-tailed Quoll | Listed | Endangered | Endangered | Code of Practice |
| <i>Euastacus bidawalus</i> | East Gippsland Spiny Crayfish | | Vulnerable | | |
| <i>Falco longipennis</i> | Australian Hobby | | | | Code of Practice |
| <i>Galaxias olidus</i> | Mountain Galaxias | | | | Code of Practice |
| <i>Gallinago hardwickii</i> | Latham's Snipe | | Near threatened | | |
| <i>Gobiomorphus australis</i> | Striped Gudgeon | | Near threatened | | |
| <i>Gobiomorphus coxii</i> | Coxs Gudgeon | Listed | Endangered | | Code of Practice |
| <i>Haliaeetus leucogaster</i> | White-bellied Sea-Eagle | Listed | Vulnerable | | Code of Practice |
| <i>Hirundapus caudacutus</i> | White-throated Needletail | | Vulnerable | | |
| <i>Isoodon obesulus obesulus</i> | Southern Brown Bandicoot | Listed | Near threatened | Endangered | |
| <i>Litoria citropa</i> | Blue Mountains Tree Frog | | | | Code of Practice |
| <i>Morelia spilota spilota</i> | Diamond Python | Listed | Endangered | | Code of Practice |
| <i>Neophema pulchella</i> | Turquoise Parrot | Listed | Near threatened | | |
| <i>Ninox strenua</i> | Powerful Owl | Listed | Vulnerable | | Code of Practice |
| <i>Nycticorax caledonicus hillii</i> | Nankeen Night Heron | | Near threatened | | |
| <i>Petaurus australis</i> | Yellow-bellied Glider | | | | Code of Practice |
| <i>Phalacrocorax varius</i> | Pied Cormorant | | Near threatened | | |
| <i>Porzana pusilla palustris</i> | Baillon's Crane | Listed | Vulnerable | | |
| <i>Potorous tridactylus tridactylus</i> | Long-nosed Potoroo | Listed | Near threatened | Vulnerable | |
| <i>Protroctes maraena</i> | Australian Grayling | Listed | Vulnerable | Vulnerable | Code of Practice |
| <i>Pseudemoia rawlinsoni</i> | Glossy Grass Skink | | Vulnerable | | |
| <i>Pseudophryne dendyi</i> | Dendy's Toadlet | | Data deficient | | |
| <i>Pteropus poliocephalus</i> | Grey-headed Flying-fox | Listed | Vulnerable | Vulnerable | |
| <i>Stagonopleura guttata</i> | Diamond Firetail | Listed | Near threatened | | |
| <i>Trichosurus vulpecula</i> | Common Brushtail Possum | | | | Code of Practice |
| <i>Tyto novaehollandiae novaehollandiae</i> | Masked Owl | Listed | Endangered | | Code of Practice |
| <i>Tyto tenebricosa tenebricosa</i> | Sooty Owl | Listed | Vulnerable | | Code of Practice |
| <i>Uperoleia martini</i> | Martin's Toadlet | Listed | Critically endangered | | |
| <i>Varanus varius</i> | Lace Monitor | | Endangered | | |

| Flora species within 5km of coupe 864-501-0005 (VBA_FLORA25 and 100) | | | | | |
|--|--------------------------|----------|--------------|------------|------------------|
| SCI_NAME | COMM_NAME | FFG_DESC | VICADV_DES | EPBC_DESC | Code of Practice |
| <i>Austrostipa rudis subsp. australis</i> | Veined Spear-grass | | Rare | | |
| <i>Baeckea linifolia</i> | Swamp Baeckea | | Rare | | |
| <i>Caesia parviflora var. minor</i> | Pale Grass-lily | | Poorly known | | |
| <i>Caladenia aurantiaca</i> | Orange-tip Finger-orchid | | Rare | | |
| <i>Cassinia maritima</i> | Coast Cassinia | | Rare | | |
| <i>Corybas fordhamii</i> | Swamp Pelican-orchid | | Rare | | |
| <i>Cryptostylis hunteriana</i> | Leafless Tongue-orchid | Listed | Endangered | Vulnerable | Code of Practice |
| <i>Eucalyptus bosistoana</i> | Coast Grey-box | | Rare | | |
| <i>Eucalyptus globulus subsp. maidenii</i> | Maiden's Gum | | Rare | | |
| <i>Glossodia minor</i> | Small Wax-lip Orchid | | Rare | | |
| <i>Goodenia stelligera</i> | Spiked Goodenia | | Rare | | |
| <i>Gratiola pedunculata</i> | Stalked Brooklime | | Poorly known | | |
| <i>Grevillea neurophylla subsp. fluviatilis</i> | Granite Grevillea | | Rare | | |
| <i>Isolepis wakefieldiana</i> | Tufted Club-sedge | | Rare | | |
| <i>Lachnagrostis rudis subsp. rudis</i> | Rough Blow n-grass | | Rare | | |
| <i>Leptospermum trinervium</i> | Paperbark Tea-tree | | Rare | | |
| <i>Lobelia purpurascens</i> | Whiteroot | | Rare | | |
| <i>Persoonia levis</i> | Smooth Geebung | | Rare | | |
| <i>Prasophyllum aff. odoratum l</i> | Early Leek-orchid | | Rare | | |
| <i>Prasophyllum appendiculatum</i> | Tailed Leek-orchid | | Rare | | |
| <i>Pterostylis baptistii</i> | King Greenhood | Listed | Vulnerable | | Code of Practice |
| <i>Ripogonum album</i> | White Supplejack | | Rare | | |
| <i>Schoenus melanostachys</i> | Black Bog-sedge | | Rare | | |
| <i>Sowerbaea juncea</i> | Rush Lily | | Rare | | |
| <i>Stackhousia nuda</i> | Wiry Stackhousia | | Rare | | |
| <i>Tetrarrhena turfosa</i> | Smooth Rice-grass | | Rare | | |
| <i>Thelymitra X irregularis</i> | Crested Sun-orchid | | Rare | | |

13. During a preliminary site investigation of conservation values within the Tonghi-Cann River coupe on Saturday 19 November tree scars appearing to be from Yellow-bellied Glider sap feeding incisions (indicating the potential for the presence of the protected biodiversity conservation value: High densities of Yellow-bellied Gliders) were encountered. The following trees were found at approximately 55H 0686654 5835205 (GDA94 UTM):

Figure 3. Yellow-bellied Glider "sap feed trees" at ~55H 0686654 5835205 (GDA94 UTM)



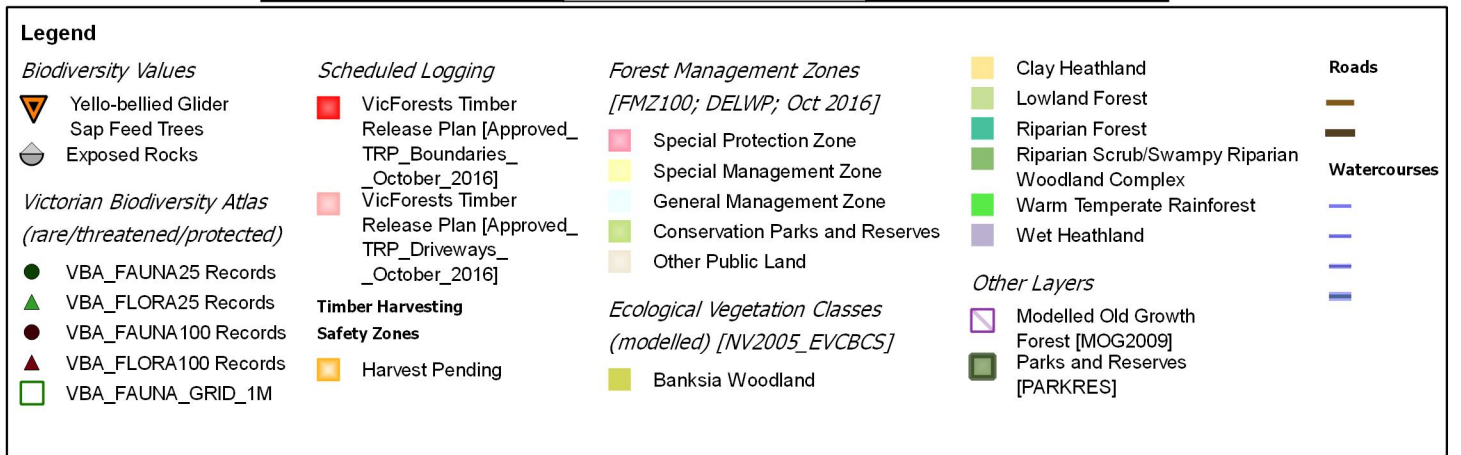
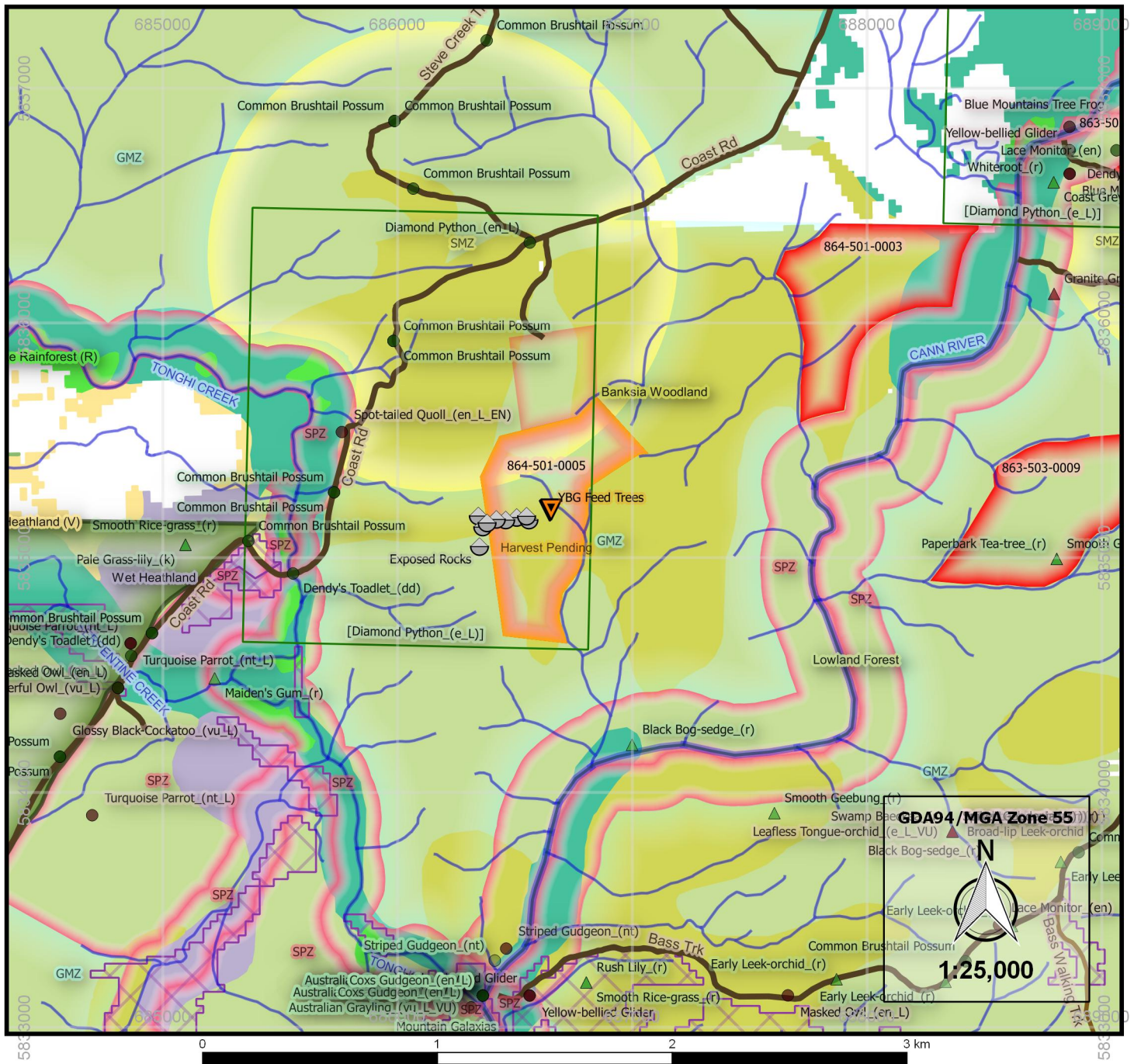
14. Also, a variety of habitats important for the conservation of Diamond Python's are present in the area including "rocky areas, woodlands, forest, scrub, and heathland"⁸ type habitats. The following is part of an extensive "rocky area" encountered within and adjacent to the Tonghi-Cann River coupe:

Figure 4. "Rocky areas" suitable for the Diamond Python



15. A portion of the biodiversity values listed above are displayed in the map of Figure 5. on the following page.

Figure 5. Biodiversity conservation values within and nearby to the Tonghi-Cann River coupe 864-501-0005



VicForests Failure to apply the Precautionary Principle in breach of 2.2.2.2 of the Code

16. As a result of VicForests having not undertaken any targeted threatened species surveys in the Tonghi-Cann River coupe, including for the Diamond Python, the planned logging within this coupe is about to occur without understanding the full extent of the threat of serious and/or irreversible damage posed by VicForests logging operations.
17. Logging in the Tonghi-Cann River coupe will breach VicForests legal obligations to comply with the precautionary principle including sections 2.2.2.2 and 2.2.2.4 of the *Code*:

*"2.2.2.2 The **precautionary principle** must be applied to the conservation of biodiversity values. The application of the precautionary principle will be consistent with relevant monitoring and research that has improved the understanding of the effects of forest management on forest ecology and conservation values. ...*

*2.2.2.4 During planning identify biodiversity values listed in the Management Standards and Procedures prior to roading, harvesting, **tending and regeneration**. Address risks to these values through management actions consistent with the Management Standards and Procedures such as appropriate location of **coupe infrastructure, buffers, exclusion areas**, modified harvest timing, modified silvicultural techniques or retention of specific structural attributes."*

18. *The Code* defines the precautionary principle as:

*"**'precautionary principle'** means when contemplating decisions that will affect the environment, careful evaluation of management options be undertaken to wherever practical avoid serious or irreversible damage to the environment; and to properly assess the risk-weighted consequences of various options. When dealing with threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."*

19. Logging in the Tonghi-Cann River coupe without conducting pre logging threatened species surveys constitutes a threat of serious or irreversible environmental damage and there is a lack of full scientific certainty relating to that damage.
20. The nearby presence of rare, threatened and/or protected species such as those listed above, the threat of serious or irreversible damage and the lack of scientific certainty relating to that damage trigger the pre-conditions for the application of the precautionary principle.
21. The principles upheld in the *Brown Mountain (EEG v VicForests)* Victorian Supreme Court judgement (VSC 8547) similarly apply to the circumstances discussed within this letter such that application of the precautionary principle requires the completion of targeted species surveys, including for the identified rare, threatened and/or protected species listed above prior to logging⁹.
22. VicForests failure to conduct pre logging targeted species surveys prior to the commencement of logging in the Tonghi-Cann River coupe will constitute (and has constituted as regards the planning and roading works already undertaken) a breach of 2.2.2.2 and 2.2.2.4 of *The Code* and Section 46 of the *Sustainable Forests (Timber) Act 2004* (Vic), and thus has and will continue to be unlawful.



Actions required to be taken to prevent further breaches of the Code

23. As the Victorian Government Minister (through the Secretary of the Department of Environment, Land Water and Planning (**DELWP**)) responsible for enforcing VicForests compliance with *the Code*, as stated in 1.2.6 of *the Code* (reproduced below), action must be taken immediately to prevent the breaches of *the Code* detailed above from occurring.

"1.2.6 Compliance on State forest

*The Code is a prescribed legislative instrument made and enforced under relevant law listed in the Conservation, Forests and Lands Act 1987. For the purposes of each relevant law the **Secretary** is an **authorised officer** and is therefore responsible for ensuring compliance with the Code on State forest. Compliance is also monitored by other authorised officers appointed by the Secretary pursuant to the Conservation, Forests and Lands Act 1987."*¹⁰

24. I urgently request that you do not allow logging to proceed in the area of the Diamond Python records displayed in the maps and discussed above in order to preserve actual or nearby habitat for the endangered and extremely rare Diamond Python (including by protecting the forest within the Tonghi-Cann River coupe) and that you ensure VicForests apply the precautionary principle at all times during their planning and operations.
25. These measures can be achieved in part by directing the Secretary of DELWP to issue a direction to VicForests to not commence or continue logging in the Tonghi-Cann River coupe.
26. At a minimum such a direction must require that no logging is undertaken within the Tonghi-Cann River coupe at least until appropriately designed and undertaken surveys for protected species (including the Diamond Python) have been undertaken and all appropriate responsive management actions have been fully implemented at least to the minimum standards required by the regulatory framework.
27. Indeed, logging in the Tonghi-Cann River coupe without conducting appropriately designed and undertaken surveys for threatened and protected species is or will be undertaken in breach of sections 2.2.2.2 to 2.2.2.4 of *the Code* and will be unlawful.
28. Please inform me of any decisions or actions yourself as the responsible Minister or DELWP will take to prevent unlawful logging or logging that will damage the environment in the Tonghi-Cann River coupe. As the Tonghi-Cann River coupe is planned to soon be logged this matter requires your urgent attention.
29. Thank you, I look forward to your response as soon as possible and to hearing that VicForests will be restrained from logging in the Tonghi-Cann River coupe and any coupes that have not been subject to appropriate threatened species surveys and where appropriate responsive management actions meeting at least the minimum standards required by the regulatory framework have not been implemented.
30. As the issues detailed above are continuing to occur in similar circumstances in many forest areas without appropriate management and enforcement, as evidenced in numerous prior communications to your office and/or DELWP, I request that we meet to discuss these issues in more detail with a view to ensuring all aspects of the regulatory framework governing logging operations in Victoria's public native forests are enforced without exception. Please contact me at the address below to arrange such a meeting.

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14 December 2016

¹⁰ *Code of Practice for Timber Production 2014*, The State of Victoria, Department of Environment and Primary Industries, 2014, p. 23