

**APPLICATION FOR EMERGENCY LISTING
MOUNT BAW BAW AND ESCARPMENTS:
A SITE OF NATURAL SIGNIFICANCE**

**BY LAWYERS FOR FORESTS INC AND
THE CENTRAL HIGHLANDS ALLIANCE INC**



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1. Introduction

- (a) Mount Baw Baw and escarpments (“**the Baw Baw area**”) has outstanding natural heritage values unique to any other place in Australia. It is home to a number of uncommon, rare and endangered species. Some of those species are endemic only to the Baw Baw area. The Baw Baw area is a site of national geological and botanical significance and is one of the only few sites of global zoological significance in Victoria.
- (b) The unique species within the Baw Baw area are under real and imminent threat. The Baw Baw area should be emergency listed under Section 324F of the *Environment Protection & Biodiversity Conservation Act* 1999 (Cth) (“**the EPBC Act**”).

2. The Baw Baw area

- (a) The boundaries of the Baw Baw area are set out in the map in **Annexure 1**.
- (b) For an area to be emergency listed, it must first satisfy Section 324F(1)(a) of the EPBC Act, that is, it must be a place wholly in the Australian jurisdiction. Subsection 5(5) of the EPBC Act defines “Australian jurisdiction” and paragraph (a) interprets it to include “Land... in... Australia”. The Baw Baw area is in the State of Victoria, Australia and so is a place entirely within the Australian jurisdiction.
- (c) It should be noted that the Baw Baw National Park is within the Baw Baw area, comprising less than half of it. The position of the Baw Baw National Park within the Baw Baw area is evident in the map in **Annexure 1**. The Baw Baw National Park was listed in the Register of the National Estate on 21 October 1980 (“**the already listed area**”).¹
- (d) This application sets out the reasons why the rest of the Baw Baw area must also be protected. It is noted that the specific heritage values identified in this application are different to the heritage values relied on to protect the already listed area. Section 324K of the EPBC Act can be interpreted to enable the Baw Baw area to be listed in its own right even if its boundaries overlap with those of the already listed area.
- (e) The EPBC Act does not expressly provide for an extension of the boundaries of the already listed area, unless Section 324K can be

¹ Place ID 4819 and file number 2/10/269/0007.

interpreted in this way. In any event, the government has the power to allow an extension of the boundaries of the already listed area to encompass the Baw Baw area.² A boundary extension of the already listed area and a variation to the heritage values (as enabled by Section 324N of the EPBC Act) to include the values set out in this application can achieve the necessary outcome, that is, the protection of the Baw Baw area.

- (f) Accordingly, this application is made:
- i. firstly, on the basis of an independent listing of the Baw Baw area; or
 - ii. alternately, on the basis of an extension of the boundaries of the already listed area and amendment to the heritage values therein,
- given the outstanding heritage values of the Baw Baw area that are identified in this document and that are under real and imminent threat.

3. National Heritage values

- (a) The second requirement that must be satisfied for the Baw Baw area to be emergency listed is that it must have one or more of the National Heritage values as defined in the EPBC Act.³ Section 324D of the EPBC Act defines the National Heritage values as follows:

“a place has a National Heritage value if and only if the place meets one of the criteria (the National Heritage criteria) prescribed by the regulations for the purposes of this section. The National Heritage value of the place is the place’s heritage value that causes the place to meet the criterion.”

- (b) The relevant regulations are the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth). Regulation 10.01A prescribes the National Heritage criteria for Section 324D of the EPBC Act. Multiple criteria under Regulation 10.01A apply to the Baw Baw area. One criteria that is of particular relevance to the Baw Baw area is set out under sub-paragraph 2(b) of Regulation 10.01A as follows:

“the place has outstanding heritage value to the nation because of the place’s possession of uncommon, rare or endangered aspects of Australia’s natural... history.”

² Refer to Section 33(3), *Acts Interpretation Act 1901* (Cth) which provides in summary when an Act confers a power to make an instrument, it also includes the power to amend or vary the instrument.

³ Section 324F(1)(a) of the EPBC Act.

This application proceeds on the basis that the Baw Baw area has outstanding heritage value because of its possession of uncommon, rare or endangered aspects of Australia's natural history.

4. Criterion 10.01A(2)(b): Uncommon, rare or endangered aspects of Australia's natural history

Fauna

- (a) The Baw Baw area possesses a variety of fauna that has existed throughout Australia's natural history that is now uncommon, rare or endangered. In 1982, the then Ministry of Conservation identified the Baw Baw area as a Site of Global Zoological Significance. The reasons for significance given by the Ministry of Conservation were:

*"..... on the basis of records of *Philoria frosti* (Baw Baw Frog), *Gymnobelideus leadbeateri* (Leadbeater's Possum), *Pseudomys fumeus* (Smoky Mouse), *Mastacomys fuscus* (Broad-toothed rat) and *Canis familiaris dingo* (Dingo). The first three of these species are endemic to Victoria, and the area encompasses the worldwide distribution of one species, the Baw Baw Frog. Each of these species has quite different habitat requirements, emphasizing the environmental diversity of the area. Each of the environments supporting these species not only contains excellent examples of faunal complements typically associated with them, but each also contains particular species that are significant in their own right".⁴*

The current Central Highlands Forest Management Plan recognises the Baw Baw area as a site of Global Zoological Significance.⁵

- (b) Of the highest significance is the Baw Baw Frog (*Philoria frosti*). This species is completely confined to the Baw Baw area. It does not inhabit any other place in the world. The map attached as **Annexure 2** sets out the global habitation of this species. It is listed under the IUCN red list as "critically endangered".⁶ It is listed as a threatened species under the EPBC Act and a Recovery Plan was made.⁷ It is listed as a threatened species under the *Flora and Fauna Guarantee Act 1988* (VIC) ("**the FFG Act**"). It therefore has the highest degree of protection afforded to any species of frog in Australia. The majority of

⁴ IM Mansergh, KC Norris, *Sites of Zoological Significance in Central Gippsland Report*, Ministry for Conservation, Victoria, Environmental Studies Division, 1982.

⁵ Department of Natural Resources & Environment, *Central Highlands Forest Management Plan*, Appendix G, May 1998.

⁶ www.iucnredlist.org.

⁷ G Hollis, *Recovery Plan for the Baw Baw Frog (Philoria frosti) 1997-2001*, Department of Natural Resources & Environment, 1997. It should be noted that the Recovery Plan expired in 2001 and another Recovery Plan has not been made.

the population of the species exists outside of the Baw Baw National Park (but still within the Baw Baw area),⁸ and so outside the already listed area.

- (c) Another species of outstanding significance in the Baw Baw area is the Leadbeater's possum. It is Victoria's faunal emblem. It inhabits the forests surrounding Mount Baw Baw including areas outside the Baw Baw National Park (but still within the Baw Baw area).⁹ The species is confined only to the forests of the Central Highlands in Victoria of which the Baw Baw Area is part. It was thought to be extinct for the first half of the 20th Century until it was rediscovered in 1961.¹⁰ The species is listed as "endangered" under the IUCN red list.¹¹ It is listed as a threatened species under the EPBC Act and a Recovery Plan was made.¹² It is listed as a threatened species under the FFG Act and as endangered under "The Advisory List of Threatened Vertebrate Fauna in Victoria 2003".¹³
- (d) The Smoky Mouse inhabits three distinct Victorian biogeographic regions: Greater Grampians, the Central Highlands (which comprises the Baw Baw area) and Victorian Alps. The Smoky Mouse does not inhabit any other place in the world.¹⁴ The Smoky Mouse is listed as "endangered" at the national level under the EPBC Act. It is also listed as a threatened species under the FFG Act and is considered endangered in Victoria according to "The Advisory List of Threatened Vertebrate Fauna in Victoria 2003".¹⁵
- (e) There are more uncommon, rare or endangered species of fauna in the Baw Baw area including the spotted tree frog (listed as "critically endangered"),¹⁶ sooty owl¹⁷ and powerful owl.¹⁸

⁸ G Hollis, *Ecology and Conservation Biology of the Baw Baw Frog Philora frosti (Anura; Myobatrachidae): Distribution, Abundance, Autoecology and Demography*, PhD Thesis, Department of Zoology, University of Melbourne, January 2004, pp 21-23.

⁹ The Central Highlands Alliance Inc, *Mount Baw Baw: an Investigation on Logging within Sites of Natural Significance*, 2006, p 92.

¹⁰ D Lindenmayer, H Possingham, *Modelling the inter-relationships between habitat patchiness, dispersal capability and metapopulation persistence of the endangered species, Leadbeater's Possum, in south-eastern Australia*, *Landscape Ecology*, 11(2), 1996, pp 79-105.

¹¹ www.iucnredlist.org.

¹² Malcolm Macfarlane, Jill Smith & Kim Lowe, *Leadbeater's Possum (Gymnobelideus leadbeateri) Recovery Plan*, Department of Natural Resources & Environment, 1997.

¹³ Department of Sustainability & Environment, *The Advisory List of Threatened Vertebrate Fauna in Victoria – 2003*, 2003, p 7.

¹⁴ Department of Sustainability & Environment, *Action Statement: Flora and Fauna Guarantee Act 1998*, No. 196, 2004, p 1.

¹⁵ DSE, *op cit*, n 13.

¹⁶ www.iucnredlist.org. It is also listed as a threatened species under the FFG Act.

¹⁷ Listed as a threatened species under the FFG Act.

¹⁸ Listed as a threatened species under the FFG Act.

Flora

- (f) The Baw Baw area holds flora that has existed throughout Australia's history that is now uncommon, rare or endangered. In 1984, the Baw Baw area was determined to be a site of National Botanical Significance by the then Department of Conservation, Forests and Lands.¹⁹ This determination was based on the significant variety and types of flora species in the Baw Baw area.
- (g) The vegetation communities of the Baw Baw area include:
 - i. over 400 native vascular flora species. 45 of these are rare or threatened, one of which is endemic to the Baw Baw Plateau within the Baw Baw area (*Chionogentias bawbawensis* or Baw Baw Snow-gentian);
 - ii. over 70 mosses and 41 liverworts, one of which is listed under the FFG Act; and
 - iii. a forest tree form of Tingaringy Gum (*Eucalyptus glaucescens*) recorded on the southern slopes of Mount Erica within the Baw Baw area which is of considerable genetic interest.²⁰
- (h) The vegetation communities that are listed under the FFG Act are the:
 - i. Alpine Bog Community;
 - ii. Montane Fen Community;
 - iii. Bog (Fen) Community;
 - iv. Cool Temperate Rainforest Community; and
 - v. Cool Temperate Rainforest Community occurring in alpine and sub-alpine vegetation (which is a very rare occurrence).²¹
- (i) Several species of flora found in the Baw Baw area are yet to be named.²²

Geology & Geomorphology

- (j) In 1981, the Baw Baw area was named a site of Geological and Geomorphological significance by the then Ministry of Conservation.²³
- (k) The Baw Baw area comprises forms of resistant igneous rock composed of Upper Devonian granodiorite that were intruded into the surrounding Devonian sedimentary rock.²⁴ Weathering and erosion

¹⁹ P Gullan, G Earl, S Forbes, R Barley, N Walsh, *Sites of Botanical Significance in Central Gippsland*, Department of Conservation, Forests and Lands, 1984.

²⁰ TCHA, *op cit*, n 9, pp 19 & 62.

²¹ Schedule 2, FFG Act.

²² Parks Victoria, *Baw Baw National Park Management Plan*, July 2005, p 6.

²³ N Rosengren, M McRae-Williams, S Kraemers, *Sites of Geological and Geomorphological Significance in Central Gippsland*, Ministry of Conservation, Victoria, 1981.

²⁴ Hollis, *op cit*, n 8, pp 26-27.

above the granodiorite mass has contributed to the Baw Baw area being classified as this site of national significance. The Ministry of Conservation explained that these rock features are unique because:

“[t]he Australian mainland is poorly endowed with Alpine high plains and the Baw Baw Plateau is a distinctive feature of the Alpine Environment. It exhibits a combination of features which are only duplicated at one other site, Mount Buffalo, on the Australian Mainland.”²⁵

Conclusion as to Criterion 10.01A(2)(b)

- (l) The Baw Baw area visibly demonstrates uncommon, rare or endangered aspects of Australia’s natural history in the form of rare and threatened fauna and flora species, and geology and geomorphology. The Baw Baw area clearly satisfies criteria 10.01A(2)(b) of the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth), and so possesses Natural Heritage values as described by the EPBC Act.

5. Values are under threat

- (a) The third requirement that must be satisfied for the Baw Baw area to be emergency listed is that any of the National Heritage values set out above are under threat.²⁶
- (b) Much of the Baw Baw area is scheduled for logging – the threat is real and imminent. The logging of the Baw Baw area threatens its National Heritage values.

The threat of logging is real and imminent

- (c) There are 10 logging coupes that have been in an experimental plan by the Victorian Department of Sustainability and Environment (“DSE”) to log Baw Baw Frog habitat in the Baw Baw area. The DSE approved these coupes for logging about 2 years ago. On 1 December 2004, logging commenced in 5 of these coupes. On about 4 December 2004, the logging stopped before the coupes were finished. The applicants have been informed that this was because the Federal Government requested that the logging of these coupes be delayed.
- (d) The applicants have recently been informed that the state body that has conducted logging of the Baw Baw area since 2004 in place of the

²⁵ Rosengren et al, *op cit*, n 23.

²⁶ Section 324F(1)(b) of the EPBC Act.

DSE (that is, Vicforests), aimed to log the "experimental" coupes in December 2006. The applicants have also recently been informed that the "experiment" might not proceed at all. If the "experiment" does not proceed in December 2006 or if it does not proceed at all, the coupes listed within the "experiment" remain available for logging.

- (e) The applicants were recently provided with a report prepared in 1993 by a group of scientists retained by the then Department of Conservation and Natural Resources ("**the Report**").²⁷ The Report was referred to in Hansard.²⁸ The Report was requested from the DSE under the *Freedom of Information Act 1982* (Vic). The complete version of the Report was eventually released in June 2006. The complete version of the Report has not previously been released to the public.²⁹
- (f) The Report confirms the outstanding significance of the Baw Baw area and the existence of uncommon, rare and endangered species in the Baw Baw area. The Report introduces for the first time acute scientific documentation that any logging of the Baw Baw area would be a real and serious threat to the uncommon, rare and endangered species in the Baw Baw area.
- (g) Since being in possession of the Report, the applicants have obtained from the DSE copies of plans for the logging of areas within the Baw Baw area. The applicants, through their legal representatives, have requested copies of other plans from Vicforests for the logging of areas within the Baw Baw area. The DSE advised that the plans relating to logging undertaken by Vicforests couldn't be released under freedom of information, but that Vicforests must be contacted independently. Although Vicforests agreed to provide them and although the applicants' legal representatives have been consistently pursuing the production of the documents, at the date of this application they have still not been released.
- (h) The plans that were obtained from the DSE reveal that logging has been taking place within direct proximity of a number of observed Baw Baw Frog populations in the Baw Baw area.³⁰

²⁷ J Davies, R Carter, M Drummond, G Hollis, C Pascoe, R Wallis, K Lester, *Flora and Fauna of the Eastern and Western Tyers Forest Blocks and Adjacent South-Eastern Slopes of Baw Baw National Park, Central Gippsland, Victoria*, Department of Conservation & Natural Resources, 1994, attached as appendix 2 to TCHA, *op cit*, n 9, p 167.

²⁸ Official Committee Hansard Senate, *Rural and Regional Affairs and Transport Legislation Committee - Reference: Regional Forest Agreements Bill 1998*, 1 February 1999.

²⁹ TCHA, *op cit*, n 9, p 55.

³⁰ Coupe ID 483-501-0033 and 483-501-0034-34, the coupe plans of which are attached as appendix 4 to TCHA, *op cit*, n 9, p225; see also TCHA, *op cit*, n 9, p 84.

- (i) Further logging is planned in the Baw Baw area in addition to the experimental logging of Baw Baw frog habitat. All of the locations intended for logging are set out in documents titled “Timber Release Plans”. The relevant parts of the Timber Release Plans that show the currently intended logging in the Baw Baw area are set out in the map attached as **Annexure 3**.

Logging is a threat to the uncommon, rare and endangered aspects

- (j) The Baw Baw frog is under threat from logging. The species has recently experienced a massive population decline and is extremely sensitive to logging and other forms of environmental stress. The “loss, degradation or modification of habitat is... the most documented cause of amphibian decline”.³¹ In 2004 it was found that its population count has decreased by 98%.³²
- (k) The Leadbeater’s Possum requires hollow-bearing trees to survive. Clearfell logging poses a serious threat to the survival of the species through the loss of hollow bearing trees. As most logged sites around the Baw Baw area are clearfelled, the forest structure has been undergoing dramatic change rendering the landscape unsuitable for the Leadbeater’s Possum to inhabit.³³ The Report found that:

“Clearfelled forests will be prevented from ever developing the structural characteristics of old-growth forests, resulting in a long term decline in some important habitat components, particularly the numbers of hollow bearing trees and large fallen logs.”³⁴

The Leadbeater’s Possum population trend is in decline. The last count in 2006 stands at approximately 2,500 individuals.³⁵

- (l) The Smoky Mouse is a ridge-dependant species. Roads and tracks associated with logging are often constructed along ridgelines in dry forest. In some areas within the Baw Baw area there are few substantial ridges that do not have roads or tracks constructed on them. This is a threat to the Smoky Mouse and the population is in decline. Clear-fell logging, and the associated soil disturbance and regeneration burns, destroy Smoky Mouse habitat.³⁶
- (m) The Report found that forests regenerating from clearfelling within the Baw Baw area contained a generally drier assemblage of plant

³¹ Hollis, *op cit*, n 8, p 4.

³² Hollis, *op cit*, n 8, p 37.

³³ TCHA, *op cit*, n 9, pp 92-97.

³⁴ Davies et al, *op cit*, n 27.

³⁵ www.iucnredlist.org.

³⁶ DSE, *op cit*, n 14, p 4.

species than older forests in the same community.³⁷ Naturally, logging has a negative impact on flora and so is a threat to the floral values.

- (n) In 1995, the then Department of Natural Resources and Environment began its largest and most complex infrastructure project, the development of the South Face Road as a logging road in the Baw Baw area. The development has continued to date, with, for example, a bridge developed along the road in recent months.³⁸ The construction of the road has involved considerable rock blasting of the site of National Geological and Geomorphological Significance.³⁹ The applicants have been informed that the construction of the road is continuing now and so the threat is current and ongoing.

6. Conclusion

- (a) The Baw Baw area must be emergency listed as a National Heritage place. It has only recently become apparent that this matter demands more urgent attention due to the release of the Report, which concludes that the Baw Baw area is a site of outstanding and unrivalled natural significance that is irretrievably damaged by logging.
- (b) Additionally, Vicforests' aim to proceed with the "experiment" to log the last remaining Baw Baw frog habitat in December 2006 has contributed to the need to act now to protect this place from threat.
- (c) The applicants are of the view that the report published by TCHA in 2006 and referenced herein (see footnote 9) should be read in conjunction with this application. That report can be viewed online at <http://web.mac.com/elevenbutterflies/iWeb/Baw%20Baw%20Report/Baw%20Baw%20Report.html>.
- (d) The applicants would be pleased to make available in PDF on CD Rom all the documents referenced herein, including the report published by TCHA. Similarly, if any further materials or hard copy versions of documents are required the applicants would be pleased to respond on request.
- (e) Please contact President of Lawyers for Forests Vanessa Bleyer on 0412 58 68 48, vanessab@lawyersforforests.asn.au or PO Box 550 Collins Street West Melbourne 8008.

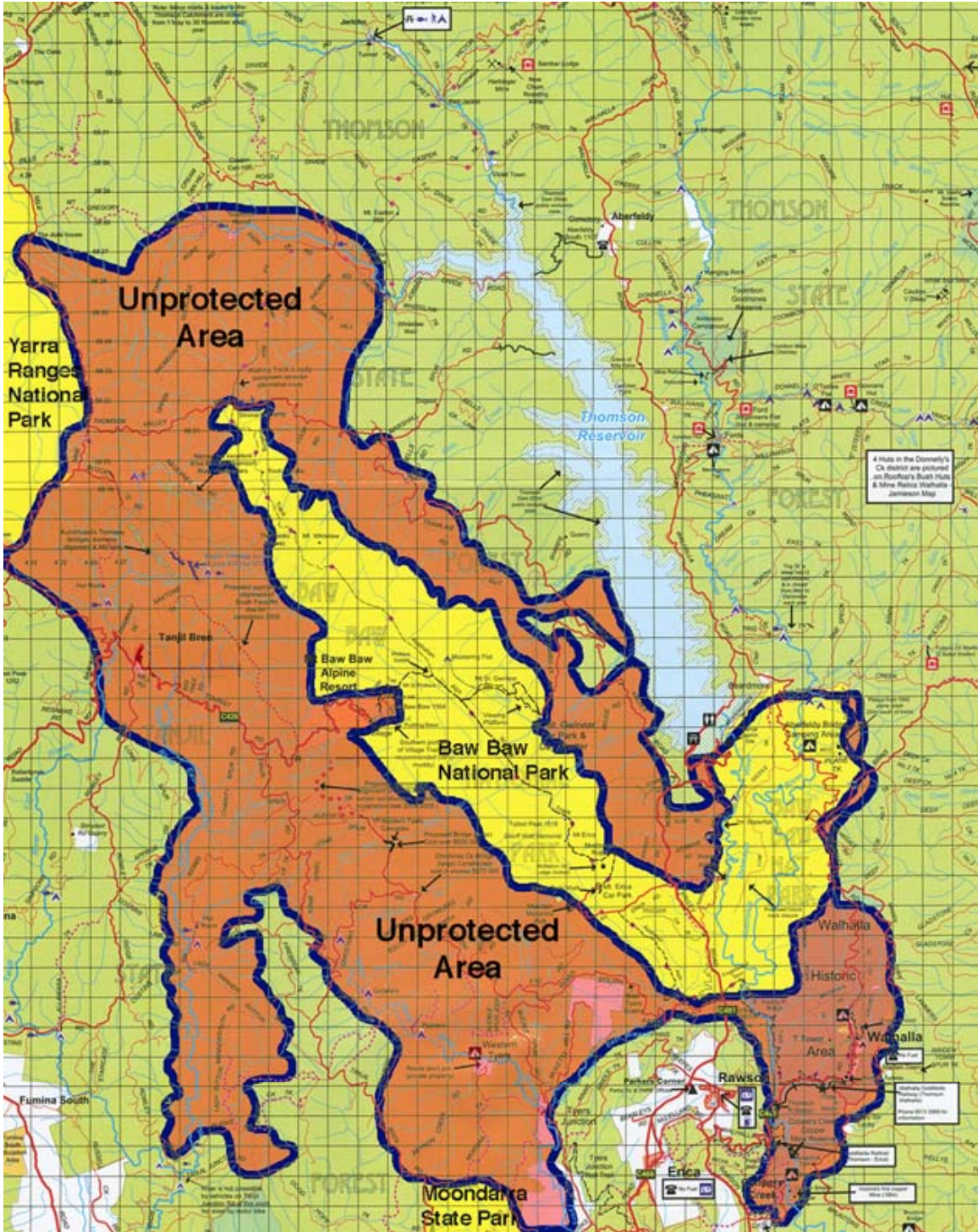
³⁷ Davies et al, *op cit*, n 27.

³⁸ Environment Protection Authority, *Tyers River Catchment – Findings and Recommendations*, EPA Publication 782, July 2001, p 18.

³⁹ N Rosengren, *Assessment of Impacts Associated With Quarrying Granitic Rock For Road Building - Christmas Creek And Growlers Creek Catchment, Gippsland*, 2006, attached as appendix 10 at TCHA, *op cit*, n 9, p 238.

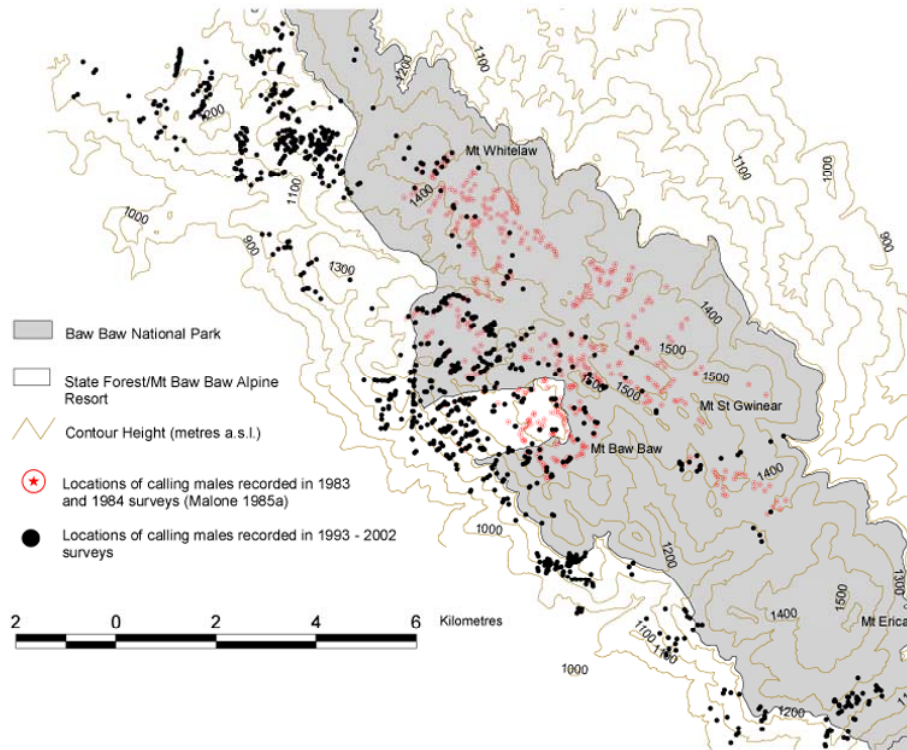
ANNEXURE 1

MAP OF THE BAW BAW AREA



ANNEXURE 2

GLOBAL HABITATION OF THE BAW BAW FROG



Source: Hollis 2004



ANNEXURE 3

CURRENTLY INTENDED LOGGING IN THE BAW BAW AREA

The white dots indicate distribution of Baw Baw Frog as sourced from Annexure 2

