

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST

No. 8547 of 2009

BETWEEN:

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

AND

VICFORESTS

Defendant

**AFFIDAVIT OF CAMERON MACDONALD**

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I, **CAMERON MACDONALD**, of Level 7, 473 Bourke Street, Melbourne, in the State of Victoria, Director,  
make oath and say:

1. I am duly authorised to make this affidavit on behalf of VicForests. I make this affidavit from my own knowledge unless otherwise indicated.
2. I have sworn three affidavits in this proceeding dated 31 August 2009 (**first MacDonald affidavit**), 2 September 2009 (**second MacDonald affidavit**), and 14 September 2009 (**third**



**MacDonald affidavit**). The last exhibit to the third MacDonald affidavit was numbered "**CM-19**" and accordingly the first exhibit to this affidavit will be numbered "**CM-20**".

**I Qualifications, Experience and Roles at VicForests**

*A. Tertiary and professional qualifications*

3. In 1989 I graduated from the University of Melbourne with a Bachelor of Forest Science with Honours.
4. In 1995 I completed a three-year Graduate Conversion Course in Accounting at the University of Tasmania.
5. In 2000 I became a Certified Practising Accountant.
6. In 2006 I graduated from the Melbourne Business School with a Master of Business Administration.

*B. Experience in forest science before joining VicForests*

7. From 1990 to 2001 I worked at North Forest Products (**NFP**) which was a 100%-owned subsidiary of Rio Tinto Limited, before it was sold to Gunns Limited in May 2001.
8. From 1990 to 1995 I worked in a variety of field-based roles covering resource inventory and forest operations including roading, harvesting and plantation establishment.
9. From 1995 to 1998 my title was 'Resource Manager – North Forests Triabunna.' In that role I:
  - (a) conducted a feasibility study with NFP's largest Japanese customer, Nippon Paper Industries, to examine the potential for establishing a joint venture tree farm program in south-east Tasmania;
  - (b) established a 1,000 hectare per annum eucalypt tree farm program in south-east Tasmania; and
  - (c) led a team of five field-based foresters.
10. From 1998 to 1999 my title was "Finance and Administration Manager – North Forests Burnie". In that role I managed the provision of finance, administration and information technology (IT) services for NFP's operations in north-west Tasmania.
11. From 1999 – 2000 my title was "Manager – Finance Projects". This role was focussed on representing NFP on the North Ltd Shared Services Project. This project aimed to implement a common resource planning system across the North group (such as accounts payable, human

 2

resources services, IT and materials procurement). The project was discontinued when Rio Tinto took over NFP.

12. From 2000 – 2001 I was the Financial Controller reporting to the Chief Executive Officer with responsibility for managing the finance, legal and IT functions for the company. In this role I assisted Rio Tinto in the sale of NFP to Gunns Ltd for \$335 million.
13. From 2002 until May 2004 I was a director of Australian Forest Resources Pty Ltd. I established this company with a colleague from NFP to explore opportunities for the export of plantation hardwood chips to the Japanese pulp and paper industry. In this role I provided financial and commercial advice to organisations operating within the forestry industry.

C. Roles and responsibilities at VicForests

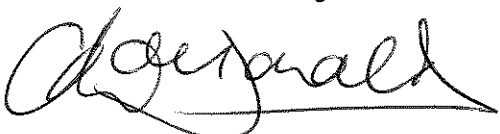
14. VicForests commenced trading on 1 August 2004. In paragraphs 3 – 6 of the first MacDonald affidavit I exhibited and summarised the relevant Establishing Order. Now produced and shown to me and marked "CM-20" is a copy of the Victorian Government policy statement on forests titled *Our Forests Our Future* and dated February 2002.

15. Further information about VicForests is contained in its 2009 annual report and its *Statement of Corporate Intent 2009/10 to 2011/12*.

Now produced and shown to me and marked "CM-21" is a copy of the VicForests 2009 annual report.

Now produced and shown to me and marked "CM-22" is a copy of the VicForests *Statement of Corporate Intent 2009/10 to 2011/12*.

16. I joined VicForests in May 2004, which was prior to it commencing business trading. I have been a member of the senior management team since the establishment of VicForests.
17. From 2004 – 2006 my title was "Chief Finance and Marketing Officer". In that role I had responsibility for the finance, procurement and IT functions of VicForests. I led a team of twelve staff. Amongst other things, I:
  - (a) negotiated a change to the National Tax Equivalent Regime with the Australian Tax Office to enable VicForests to claim a tax deduction on the standing timber vested in VicForests by the Department of Sustainability and Environment (**the DSE**); and
  - (b) prepared a strategic marketing plan for VicForests.
18. From 2006 – 2008 I was the "Director – Operations and Delivery". In that role I was responsible for ensuring that log products were delivered within specification to customers and under budget. I managed a team of 110 staff across eastern Victoria.

<sup>3</sup>

19. Since August 2008 I have been the "Director – Strategy and Corporate Affairs". I report to David Pollard who is the Chief Executive Officer of VicForests. In this role I lead a team of eleven staff with responsibility for defining VicForests' corporate plan on an annual basis, confirming the Allocation Order with the DSE, and using this to develop long-term plans, exploring business development opportunities, and liaising with stakeholders.
20. The current structure of VicForests and a summary of the responsibilities of the division which I lead are contained in slides I have extracted from a PowerPoint presentation entitled *VicForests Overview July 2009*. Now produced and shown to me and marked "CM-23" is an extract from that PowerPoint presentation.

## II Relationship between VicForests and the DSE

21. My team serves as VicForests' principal interface with the DSE.
22. I refer to the VicForests' 2009 annual report (exhibit "CM-21") referred to at paragraph 15 above. I note for convenience that VicForests' 2009 annual report summarises the role of VicForests in the following way (at page 2):

*"VicForests was established as an outcome of the Victorian Government's Our Forests Our Future policy. We are responsible for the sustainable harvest and sale of native forest timbers from the public forest estate in eastern Victoria. As a State-owned enterprise, VicForests is an autonomous commercial entity administered by an independent Board of Directors."*

23. Now produced and shown to me and marked "CM-24" is a copy of the DSE's 2009 annual report. I note for convenience that in the introduction to the annual report, the DSE describes its role and purpose in the following way:

*DSE is Victoria's lead environmental policy-maker, playing a key role in supporting the Victorian Government's priority of achieving environmental sustainability. This is achieved through a wide range of programs that reflect the diverse, but inter-connected, responsibilities of DSE. These include:*

- ensuring a safe, reliable and sustainable supply of water*
- protecting communities and the environment through fire management*
- enhancing the values of Victoria's parks and forests*
- investing in improved land and catchment management*
- protecting biodiversity and the associated ecosystem services*
- encouraging sustainable practices in homes, businesses and communities*
- providing quality property administration services and information.*



*DSE's core purpose is to set the standard for managing the environment, drawing on DSE's capabilities in policy leadership and innovation; knowledge, information and data sets; and managing relationships with other agencies and the Victorian community. These capabilities depend on DSE's core strength – the quality and commitment of its people.*

24. On 8 April 2009 the Victorian Minister for Agriculture announced the release of the Timber Industry Strategy public consultation draft (**the draft TIS**), which addresses a range of issues to take forest management and the timber industry forward. The draft TIS has been developed by the Department of Primary Industries.
25. Appendix one to the draft TIS summarises the functions of respective Victorian Government agencies in administering Victoria's timber industry, as introduced by the *Our Forests Our Future* policy. For convenience, I note that it relevantly states:

Government Agency	Responsible minister/board	Responsibilities
VicForests	VicForests Board	<ul style="list-style-type: none"> <li>• Implements government policy</li> <li>• Prepares timber release plan</li> <li>• Timber harvesting and sales</li> <li>• Deliverer of sustainable forest management</li> </ul>
Department of Sustainability and Environment	Minister for Environment and Climate Change	<ul style="list-style-type: none"> <li>• Public land-use determination</li> <li>• Public land manager (State forests including timber production areas)</li> <li>• Environmental policy (biodiversity and conservation)</li> <li>• Establishes sustainable forest management framework</li> <li>• Prepares Allocation Order for signoff by Minister for Environment and Climate Change</li> <li>• Environmental regulation (Code of Practice for Timber Production)</li> <li>• Monitoring and reporting on public native forest estate</li> </ul>
Environment Protection Authority	Minister for Environment and Climate Change	<ul style="list-style-type: none"> <li>• Audit of compliance with Code of Practice for Timber Production on public land</li> </ul>

26. Now produced and shown to me and marked "**CM-25**" is appendix one to the draft TIS.




27. I am responsible for liaising with the DSE on behalf of VicForests concerning DSE reviews of:
- (a) the Allocation Order (exhibit "CM-3" to the first MacDonald affidavit);
  - (b) action statements;
  - (c) codes of practice; and
  - (d) management procedures.
28. I am a member of an informal group known as the "Project Control Board" (**the PCB**) that is currently overseeing the review of the first five-year period of the Allocation Order. The other members of the PCB are Lee Miezi and Mike Sutton, both from the DSE, and Ross Potter, who is the Manager – Resources at VicForests.
29. The PCB enables VicForests to explain to the DSE the future resource requirements of VicForests and its customers, with a view to ensuring that DSE considers VicForests' commitments in making a new Allocation Order.
30. To assist the DSE in its review of the Allocation Order, the DSE and VicForests have jointly developed a process for estimating a 15-year outlook for sustainable levels of D+ sawlog. That process is known as the "Joint Sustainable Harvest Level (**JoSHL**) Project". The JoSHL project forms the basis of the JoSHL statement that was jointly published by VicForests and the DSE in May 2008. Now produced and shown to me and marked "CM-26" is a copy of the JoSHL statement.
31. My team is also responsible for consultation with the DSE concerning its review or issuing of action statements prepared under the *Flora and Fauna Guarantee Act 1988* (Vic).

### III Events Related to the Brown Mountain Forestry Coupes

#### A. Correspondence relating to agreed protection measures for key threatened species

32. In July 2008 the DSE wrote to VicForests concerning agreed protection measures for key threatened species. On a date I cannot presently remember, I received a copy of this letter. Now produced and shown to me and marked "CM-27" is a copy of the letter dated 8 July 2008 from the DSE to VicForests.
33. For convenience, I note that the letter relevantly states:

"Dear Dr Pollard,

Thank you for your letter of 29 May 2008 regarding the work of the Department of Sustainability and Environment (DSE) is undertaking with VicForests to minimise impacts



*on timber availability arising from the preparation or review of Action Statements to protect key threatened species in Victoria.*

*As agreed at our meeting on 10 June 2008, further work has been undertaken to ensure that our respective organisations have a common understanding of the proposed protection measures and of the potential impacts (positive or negative) of those measures on timber availability.*

*I am now pleased to advise that agreement on all outstanding matters has been achieved.*

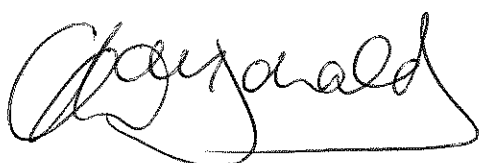
*The agreed position is as follows:*

*...*

**Long-footed Potoroo**

- *A new reserve system (a 'Core Protected Area') will be established in East Gippsland and North East Forest Management Areas (FMAs) to replace the current system of Special Management Areas.*
- *In Gippsland FMA, the Core Protected Area will comprise existing reserves under the National Parks Act 1975, existing SPZ and the proposed new and expanded conservation reserves specified in Victoria's National Parks and Biodiversity Policy (2006).*
- *In the North East Forest Management [sic], the Core Protected Area will comprise existing reserves under the National Parks Act 1975, existing SPZ and approximately 510 hectares of GMZ (to be protected as per Attachment 2).*
- *A Special Management Zone (SMZ) will be established around detected Long-footed Potoroo sites outside of the Core Protected Areas. Prescriptions to be applied are provided in Attachment 3.*
- *The revised protection measures result in a gain of 1,210 hectares of available and merchantable forest in East Gippsland FMA for timber harvesting and a loss of 510 hectares of merchantable and available forest in North East FMA from timber harvesting."*

34. On or about 18 July 2008 I received a copy of a letter dated 18 July 2008 from Dr Paul Smith, Director, Biodiversity Policy and Programs at the DSE, addressed to David Pollard, Chief Executive Officer, VicForests. In that letter Dr Smith sought comment from VicForests on draft action statements, including a draft action statement for the Long-footed Potoroo. Now produced and shown to me and marked "CM-28" is a copy of the letter from the DSE to VicForests dated 18 July 2008 with enclosed draft action statement for the Long-footed Potoroo.



35. VicForests responded to that letter by a letter dated 9 September 2008. I reviewed this letter prior to it being sent. Now produced and shown to me and marked "CM-29" is a copy of VicForests' response dated 9 September 2008.
36. For convenience, the VicForests response relevantly states:

*"Dear Dr Smith*

***Draft Flora and Fauna Guarantee Action Statements***

*I refer to your letter dated 18 July 2008 regarding the Draft Action Statements for Tall Astelia, Barred Galaxias, Long-footed Potoroo and Leadbeater's Possum.*

*After consideration of the draft Action Statements, VicForests would like to provide the following comments:*

*...*

***Long-footed Potoroo***

*The results of DSE's research into the effects of timber harvesting on the Long-footed Potoroo (Chick et al, 2005) concluded that there was no observable relationship between forest age class and the presence of Long-footed Potoroo and that there was no discernable short-term impact on the studied population. Therefore, VicForests would support further research into the impacts of timber harvesting on the Potoroo – refer to Action 9, page 8.*

*VicForests' estimates the current commercial value of mixed species forest in East Gippsland to be about \$11,000/ha. This does not include any multiplier effects. Every 100 ha of forest reserved for the Potoroo represents a potential financial loss of about \$1.1million to VicForests. Given the value of this forest to VicForests, the industry dependent on this resource, and to the Victorian community in general, further research needs to be undertaken to determine whether further reservation within SMZs is required, and whether a review of existing reserves is appropriate."*

37. There is no similar correspondence concerning the action statements for the Spot-tailed Quoll, the Orbost Spiny Cray, the Sooty Owl and the Powerful Owl as these action statements pre-dated the existence of VicForests.

***B. Arboreal mammals, Long-Footed Potoroo and Orbost Spiny Crayfish in the Brown Mountain area***

38. On 8 January 2009 I was carbon copied into an email from Wayne Long, Manager, Operational Planning at VicForests for the East Gippsland Region, to Barry Vaughan, Regional Manager at VicForests for the East Gippsland Region, and Mick Theobald, Manager, Operations at VicForests for the East Gippsland Region, concerning an alleged detection of the Orbost Spiny





Crayfish in Brown Mountain Creek by Environment East Gippsland (EEG). Now produced and shown to me and marked "CM-30" is a copy of this email.

39. The crayfish was alleged to have been detected in the stream near the eastern boundary of coupe numbered 840-502-0015 (**Coupe 15**), as marked by a black dot on page 3 of the exhibit. That map also shows an undisturbed buffer of approximately 100 metres on each bank of Brown Mountain creek for one kilometre upstream and downstream of the detection site.
40. For convenience, I note that the DSE suggested in its email to VicForests that pending its confirmation that the detection of the crayfish was legitimate, an interim prescription should be applied so that logging should not come closer than 100 metres to Brown Mountain Creek.
41. I was subsequently informed, by an email from Mick Theobald dated 13 January 2009, that the crayfish in question had been incorrectly identified by EEG. Now produced and shown to me and marked "CM-31" is a copy of the email. For convenience I set out the email below:

*"Morning Cam*

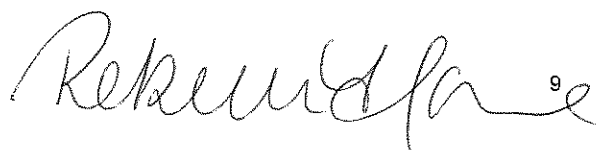
*Please note that the crayfish in question was incorrectly identified. It has been professionally identified as a Euastacus bidwalus or Bidwalus Spiny Crayfish. This species whilst still restricted in its range attracts no prescriptive amendments.*

*Jill will be informed by Mick Bramwell (DSE) regarding the incorrect id.*

*regards*

*Mick"*

42. On 27 January 2008 I received a phone call from Lee Miezis, Director, Forests at the DSE telling me that he had received some information about gliders detected in the Brown Mountain area from EEG.
43. As a result of that conversation I rang Barry Vaughan and told him that EEG had provided the DSE with a survey that indicated elevated levels of arboreal mammals in the Brown Mountain area, and that the DSE needed to confirm the detections.
44. After I spoke with Barry, I rang up Lee and told him that VicForests would not be commencing harvesting in Coupe 15 and coupe numbered 840-502-0019 (**Coupe 19**) until the DSE had had an opportunity to conduct its own surveys in the Brown Mountain area.
45. On 28 January 2009 I received an email from Lee Miezis that forwarded on an email from Jill Redwood to himself attaching a survey report titled "Nocturnal surveys for arboreal mammals and large forest owls from Brown Mountain, East Gippsland" (**the Bilney report**). Now produced and shown to me and marked "CM-32" is a copy of this email.



46. For convenience I note that, insofar as Ms Redwood's email to the DSE concerned the Orbost Spiny Crayfish, it states:

*"I also understand that an email confirming that the most recent crayfish find on the weekend was a definite Orbost Spiny Crayfish, has been forwarded to you by Jo Edwards. This included detailed photographs of the specimen. We hope that you can start the process for having this specimen verified by carrying out your own surveys. It is extremely unfortunate that bulldozing has already occurred along the eastern tributary of Brown Mountain Creek very close to the stream where this crayfish was found. We would hope that further work will be halted immediately and restoration of the damage can be carried out to allow this scar to recover. Sassafras and tree ferns have already been ripped out and shattered along the creek's edge well within the 100 metre buffer which is needed to protect this species.*

*I understand the specimen that was found was photographed well and returned to the same site.*

*Could you please let me know as soon as possible when you will be able to start the process of confirmation and what this will involve."*

47. For convenience I note that in this email correspondence Lee Miezis wrote to Brooke Colbert, Environment Adviser, Minister for Environment, Climate Change and Innovation, at 5.05 pm on 27 January 2009 in the following terms:

*"I have organised for our people to conduct survey's [sic] this week to confirm sightings. No harvesting in two coupes planned this week.*

*VF advises they will work through process with TWS before deciding whether or not to progress harvesting of other Brown Mountain coupes."*

48. The reference in Lee Miezis' email to Brooke Colbert about VicForests working through process with TWS, is a reference to discussions with The Wilderness Society about the composition of the Old Growth Reserves that had not then been finalised under the 2006 Victorian Australian Labor Party (ALP) election policy, *Victoria's National Parks and Biodiversity*.

49. On 30 January 2009 I met with Ross Potter, Manager, Resources at VicForests, and Lachlan Spencer, Manager, Tactical Planning at VicForests. Barry Vaughan joined us by telephone. The purpose of this meeting was to determine how VicForests would participate in the surveys that the DSE had foreshadowed it would undertake in the Brown Mountain area. Barry said words to the effect:

*"I want to go along and see how the survey is conducted so I am comfortable that the methodology is sound."*



Lachlan Spencer said words to the effect:

*"I can get the NSW methodology for spotlighting."*

50. Barry Vaughan accompanied the survey team on 5 February 2009 (the other survey nights were 28 January 2009 and 12 March 2009) (**the DSE survey**). On 29 January 2009 Barry sent an email to VicForests staff informing them of the Bilney report and the fact that the DSE was conducting a survey in the Brown Mountain area. Now produced and shown to me and marked "CM-33" is a copy of this email.
51. On 7 February the Black Saturday bushfires occurred in parts of north-eastern Victoria.
52. On 15 February 2009 I received an email from Lee Miezis updating me on the progress of the survey work on Brown Mountain and suggesting that VicForests might like to engage the Arthur Rylah Institute to conduct the Long-footed Potoroo survey work. I was later informed by an email from Wayne Long dated 17 February 2009 that the DSE had decided to conduct the Long-Footed Potoroo survey itself using infra-red survey cameras. Now produced and shown to me and marked "CM-34" is a copy of this email correspondence.

C. Streamside Buffer and Modified Habitat Tree Prescriptions

53. The results of the surveys that were conducted by the DSE were not published until August 2009 (contained in a report forming exhibit "CM-8" to the first MacDonald affidavit (**the DSE Brown Mountain report**)).
54. Both Barry Vaughan and Lee Miezis kept me informed on a rolling basis of the DSE survey results, so by late March 2009 I knew that the DSE survey results indicated that on one of the survey nights (12 March 2009) the numbers of Greater Gliders and Yellow-bellied Gliders exceeded the conservation guidelines contained in part 3.4 of the East Gippsland Forest Management Plan (**the East Gippsland FMP**).
55. The East Gippsland FMP (without appendices) is exhibit "VEB-11" to Vanessa Bleyer's affidavit sworn on 24 August 2009. For convenience I set out below the conservation guidelines relevant to arboreal mammals:

**Arboreal mammals.** For each of the following occurrences, approximately 100 ha of suitable habitat will be included in the SPZ:

\* resident Koala populations.

\* Greater Glider and Common Brushtail Possum - <2 individuals per ha, [sic: this should read > 2 per ha] >10 per km, or >15 per hour of spotlighting.

\* Yellow-bellied Glider - >0.2 per ha, >5 per km, or >7 per hour of spotlighting.

\* Eastern Pygmy Possum - >5 per standard pitfall line over 5 days.



*\* substantial populations of the above species that are isolated or in unusual habitat.*

**Rich mammal sites.** *Well-documented sites that are particularly rich in mammal species will be included in the SPZ or SMZ wherever practical.*

56. For convenience, I note that on page 7 of the DSE Brown Mountain report it states that 11 Greater Gliders were detected per kilometre, and 7 Yellow-bellied Gliders were detected per kilometre on 12 March 2008.
57. As a result of this, I understood that the DSE would need to make a decision as to whether a Special Protection Zone (**SPZ**) would be declared, and that VicForests couldn't harvest in this area until the DSE had determined this.
58. For convenience I set out below the conclusions in the DSE Brown Mountain report:

*The survey program produced the following key results:*

- 1. Sufficient Greater Glider and Yellow-bellied Gliders were detected to achieve the thresholds for high density population of these species as stipulated in the "Conservation Guideline – Arboreal Mammals" within the East Gippsland Forest Management Plan.*
- 2. No Long-footed Potoroos were detected.*
- 3. No Orbost Spiny Crayfish were detected.*

*Spotlight surveys were conservative estimates of the numbers of animals actually present. The consistent detection of high numbers of Greater Gliders and Yellow-bellied Gliders confirms that the site supports a high density population.*

*Given the relatively short amount of time available for the surveys of Long-footed Potoroo and the presence of nearby records and suitable habitat, it is possible that a more intensive and longer survey may record the species at the site.*

*Further survey may also detect Orbost Spiny [sic] Crayfish, however, the habitat was considered to be sub-optimal for the species.*

59. I also note, for convenience, that on page 5 of the DSE Brown Mountain report it states:

*Environment East Gippsland reported the collection of an Orbost Spiny Crayfish on 6 January 2009. The specimen linked to this report was identified by DSE on 13/1/09 as a Bidawal Spiny Crayfish (Euastacus bidwalus).*

*Environment East Gippsland reported record of 2<sup>nd</sup> suspected Orbost Spiny Crayfish specimen on 10<sup>th</sup> January. EEG was to provide photographs to DSE and return specimen to stream. DSE did not receive photographs.*

*DSE received advice from EEG on 27 January 2009 that a 3<sup>rd</sup> Orbost Spiny Crayfish specimen had been located. Photographs of the specimen were provided to DSE,*



*however, the photos were not adequate to accurately determine the identity of the species.*

60. Brown Mountain is an elevated area, and as such the months of April to September are generally not suited to harvesting operations due to extended periods of wet weather and the increased likelihood of snowfall. It is VicForests' practice not to plan harvesting during a time when extended periods of wet weather are likely.
61. By late March 2009 I knew that, based on VicForests' practice, harvesting would not be planned to commence in the Brown Mountain area until the winter rainfalls showed signs of abating. For this reason I was not actively following up the DSE at this stage to find out whether it had determined that an SPZ or any other prescriptions were necessary in the Brown Mountain area.
62. In early June 2009 (on a date I cannot presently recall) Lee Miezis telephoned me and told me that, given that the DSE survey had detected arboreal mammals in numbers which exceeded the conservation guidelines in the East Gippsland FMP, the DSE was considering whether it would declare an SPZ. Lee asked me whether VicForests would put forward any modifications to the harvesting prescriptions for Coupe 15 and Coupe 19 in recognition of the elevated levels of arboreal mammals that were detected.
63. Following this conversation I rang Barry Vaughan and relayed to him the discussion I had had with Lee Miezis. I asked Barry to consider what modifications might be possible or necessary.
64. On 16 and 18 June 2009 I was carbon-copied into the following emails concerning additional prescriptions for Coupe 15 and Coupe 19:
- (a) an email from Barry Vaughan to Lee Miezis dated 16 June 2009 sent at 1.52 pm;
  - (b) an email from Lee Miezis to Barry Vaughan dated 18 June 2009 sent at 11:09 am; and
  - (c) an email from Barry Vaughan to Lee Miezis dated 18 June 2009 sent at 4.17pm.

Now produced and shown to me and marked "**CM-35**" is a copy of this email correspondence.

65. For convenience I set out the emails below:

**16 June 2009 at 1.52pm**

"Lee,

*Cameron MacDonald has asked me to consider what habitat retention strategies, above the normal forest code and management practices exclusions, VicForests would implement at 840-502-0015. Given that the arboreal mammal population appeared to be more concentrated around the lower slopes and stream side, VicForests will in response to this request, extend the stream side buffer from 20 to 100 m. This action is also consistent with the management plan for the spiny crayfish, even though no confirmed records exist for this site.*



Regards,

Barry Vaughan"

**18 June 2009 at 11.09am**

"Thanks Barry –

*A couple of other issues I spoke to Cameron about:*

1. *Additional habitat tree retention (all V-notch trees or something similar)*
2. *DSE working with VicForests on site to identify habitat trees for protection.*

*Can you please consider these and get back to me ASAP.*

Lee"

**18 June 2009 at 4.17pm**

"Lee,

*I'm happy with your second suggestion. This may result in the additional habitat trees being retained, however I would rather leave this up to the judgment of the people marking the habitat trees rather than impose an additional standard.*

Regards,

Barry Vaughan"

66. For convenience, the reference in Barry Vaughan's initial email to Lee Mieziis to extending the stream side buffer from 20 metres to 100 metres is a reference to the requirement in the Code of Practice for Timber Production 2007 (exhibit "**CM-10**" to the first MacDonald affidavit) (**Code of Practice**) that a minimum 20 metre buffer strip be applied to streams (see Table 2 on page 19).
67. Some time in the first week of August 2009, on a date I cannot presently recall, Lee Mieziis telephoned me and told me that the Minister (for Environment and Climate Change) would be making an announcement that the moratorium on harvesting in Brown Mountain would be lifted on the basis that VicForests would implement the stream-side buffer and put in place modified habitat tree prescriptions.
68. On 21 August 2009 the Minister for Environment and Climate Change issued a media release titled "Permanent Protection for Brown Mountain Area". A copy of that release is exhibit "**CM-9**" to the first MacDonald affidavit.



69. For convenience I note that by his media release the Minister announced 400 hectares of new protected area at Brown Mountain and in regards to the Brown Mountain coupes stated:

*"[A]n area containing a number of contentious timber harvesting coupes around Brown Mountain Creek, to the east of Brown Mountain, would remain available to harvesting as they did not meet the standard of old growth warranting inclusion in the reserve.*

*He said VicForests would be allowed to recommence timber harvesting at Brown Mountain under modified conditions designed to provide greater protection to the area.*

*Mr Jennings said the significant additional habitat protection measures, including extra wide 100 metre streamside buffers and the protection of hollow-baring habitat trees identified by biodiversity officers, would be put in place at Brown Mountain Creek area even though no threatened species were found during the fauna surveys of the area.*

*"Biodiversity experts conducted a series of surveys in the area to determine if any threatened species were present," he said.*

*"The surveys conducted by DSE staff included specific surveys for the Long-footed Potoroo and Orbost Spiny Crayfish. They found no threatened species, despite claims to the contrary."*

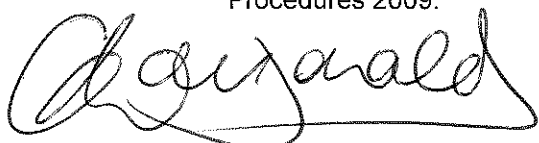
*Mr Jennings said the gliders' presence triggered a DSE review to determine the need for the creation of a Special Protection Zone to protect the species' habitat.*

*This review was required, under the East Gippsland Forest Management Plan, to consider whether adequate protection is already provided to the gliders' habitat within the existing reserve system.*

*"In this case DSE found that suitable habitat for the gliders was already adequately protected and that creating a Special Protection Zone was not required," Mr Jennings said.*

*"I am confident that the extra streamside buffers, which represent a five-fold increase in the usual buffer width will provide significant protection to the populations identified by the surveys as the majority of animals were found within 100 metres of the creek."*

70. On 30 September 2009 Kim Anderson of the DSE emailed me a draft copy of the Management Procedures for Timber Harvesting Operations and Associated Activities in Victoria's State Forests 2007 (**Management Procedures 2009**). Now produced and shown to me and marked "**CM-36**" is a copy of this email.
71. The Management Procedures 2009 were finalised and issued on 12 October 2009 with a commencement date of 19 October 2009: the sections that specifically concern the Brown Mountain coupes did not change from the draft I had been sent on 30 September 2009 to the final version. Now produced and shown to me and marked "**CM-37**" is a copy of the Management Procedures 2009.



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72. The Management Procedures 2009 apply to:

- (a) all timber harvesting, roading and regeneration activities in Victoria's State forests; and
- (b) timber harvesting in forest parks.

73. The Management Procedures contain the requirements for the stream-side buffer and modified habitat tree prescriptions relevant to the Brown Mountain coupes. These requirements were not in the 2007 version of the Management Procedures. For convenience, I note that section 1.4.2(g) reads:

" ...

- (g) *In the East Gippsland FMA, a 100m buffer applies along Brown Mountain Creek (in the area bounded by 655004 and 5873083 in the south-western corner and 657978 and 5876371 in the north eastern corner (GDA1994 and coordinate system VICGRID))."*

74. For convenience, I note that section 1.4.5.3(d) reads:

" ...

- (d) *In coupes adjacent to Brown Mountain Creek (in the area bounded by 655004 and 5873083 in the south-western corner and 657978 and 5876371 in the north eastern corner (GDA1994 and coordinate system VICGRID)):*
  - i). DSE staff with appropriate expertise in biodiversity management will guide the identification of hollow bearing habitat trees. This will be done in consultation with VicForests and the harvesting contractor(s);*
  - ii). all trees with a DBHOB greater than 250cm will be retained where it is safe to do so;*
  - iii). where present in sufficient numbers and it is safe to do so, at least 5 hollow bearing habitat trees per ha will be retained. Trees greater than 250cm may count towards this retention level;*
  - iv). where more than 6 retained hollow bearing habitat trees are present in a concentrated area (less than one quarter of a ha) then harvesting machinery should minimise traffic in that area and other trees may be harvested; and*
  - v). harvesting debris and other fuels are to be removed from within 20m of the base of retained hollow bearing habitat trees or from around groups of retained hollow bearing habitat trees to reduce the impact of regeneration burning where it is safe to do so."*





D. Long-footed Potoroo SMZ

75. On 26 August 2009 (the day after VicForests was served with the writ in this proceeding) Lee Miezis forwarded to me an email from Andrew Lincoln to Stephen Henry at the DSE. Attached to the email was:

- (a) a report titled *Report on remote camera survey of Potorous longipes – Brown Mountain*; and
- (b) video footage of approximately five seconds.

Now produced and shown to me and marked "CM-38" is a copy of this email together with its attachments.

76. After receiving this email I rang Larissa Murray who was at that time a Forester – Operational Planning for VicForests at Orbost. I asked Larissa to design a draft Special Management Zone (SMZ) that would comply with the Long-footed Potoroo action statement (exhibit "VEB-13" to Vanessa Bleyer's affidavit sworn on 24 August 2009) assuming that the detection was legitimate.

77. Later that day Larissa emailed me a nominal Long-footed Potoroo SMZ mapped on Brown Mountain. Now produced and shown to me and marked "CM-39" is a copy of this email together with the attached map.

78. Either later that evening, or on 27 August 2009, I had a telephone conversation with Lee Miezis. I told Lee that in my opinion the 100 metre stream-side buffer that had already been agreed to for Coupe 15 and Coupe 19 would also satisfy the 50 hectare Long-footed Potoroo Retained Habitat requirement in the appendix to the Long-footed Potoroo action statement. Lee said to me words to the effect:

*"I have been doing similar analysis and that [referring to my suggestion] would appear to be appropriate. I will need to circulate that proposal within BES (Biodiversity and Ecosystem Services) to get sign-off."*

79. On 8 September 2009 Lee Miezis sent me an email attaching a map of an alternative option for a Long-footed Potoroo SMZs in the event one was required at Brown Mountain creek (**the alternative retained habitat proposal**). Now produced and shown to me and marked "CM-40" is a copy of this email together with its attachment.

80. For convenience I note that by this stage there were two different proposals that had been raised regarding the creation of retained habitat within the proposed Long-footed Potoroo SMZ. The first proposal was a linear area covered by the 100 metre stream-side buffer. The alternative retained habitat proposal included 90 metre stream-side buffers for streams within Coupe 15 in addition to a shorter linear area covered by the 100 metre stream-side buffer.



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81. The map of the alternative retained habitat proposal emailed to me does not have the boundaries of Coupe 15 marked on it. For the purpose of preparing this affidavit I asked my staff to prepare a version of the alternative retained habitat proposal map that shows the approximate boundaries of Coupe 15. Now produced and shown to me and marked "CM-41" is a copy of this map.
82. After I received the alternative retained habitat proposal I telephoned Lee and told him to forward the email he had sent to me, to Lachlan Spencer. I then rang Lachlan and asked him to review the second option that Lee Miezis was going to send him.
83. Later that day I was carbon copied into an email from Lachlan Spencer to Lee Miezis commenting on the alternative retained habitat proposal. Now produced and shown to me and marked "CM-42" is a copy of this email. For convenience I set out the contents of that email below:

*"Lee,*

*Have had a look at alternate version - two key points*

*1. Not sure why it doesn't utilise existing park to the north at all in the Special Management Zone, yet includes extensive areas of mid to late 90's regrowth to the south.*

*2. Proposed LFP retained habitat as mapped also includes large areas of 1990's harvesting which I am sure would not be viewed well. LFP retained habitat 90 m stream side buffers also extend well up the slopes beyond where the permanent streams extends - this appears contrary to the intent of the action statement prescription or remaining on the lower slopes.*

*Speaking with Cameron he suggested that I have a look at the first option you had and provide comment on that - and any proposed additions VicForests may have.*

*It would appear to me that there is a capacity to make a FMZ that is larger than 150 ha by incorporating existing park, and then focusing the LFP retained habitat in the gullies (100m buffer) and park areas.*

*Can you forward me option one as well?*

*thanks*

*Lachy"*

84. On 9 September 2009 I was carbon copied into an email from Lachlan Spencer to Lee Miezis that in part commented on a map sent by Claire Collier to Lachlan Spencer. Now produced and shown to me and marked "CM-43" is the email correspondence.



Now produced and shown to me and marked "CM-44" is the map attached to Claire Collier's email.

Now produced and shown to me and marked "CM-45" is the map attached to Lachlan Spencer's email in response.

85. For convenience I set out the contents of Lachlan Spencer's email to Lee Mieziis below:

"Lee,

*Thankyou for the updated map. I think that the general approach of where the SMZ and Retained habitat are located is good however I do not believe that it adheres to the action statement for the following reasons:*

*1. The action statement prescription states the: Within each SMZ at least one third will be protected from timber harvesting and roading. On the Map provided the Long Footed Retained Potoroo Habitat is not within the hatched SMZ area.*

*2. When the Long Footed Potoroo Retained Habitat is included in the SMZ - the SMZ is then 220 ha (169 + 51ha). One third of this area (73.3 ha) would therefore be required to be designated Long Footed Potoroo Retained Habitat. On the Map provided the Long Footed Potoroo Retained Habitat is 51 ha.*

*3. The proposed Long Footed Retained Habitat contains 1990's regrowth. This is unlikely to be an issue for the Potoroos, however considering public perception (and the abundant area to the north inside the Gap Reserve) I would suggest that recent harvesting not be included in the Long Footed Potoroo Retained Habitat area.*

*The attached map has been prepared to highlight the above issues. It also provides an alternative which removes logging history from the Long Footed Potoroo Retained Habitat, and an increase in the size of the retained habitat.*

*Any questions give me a call  
Lachy"*

86. To summarise the position as at this date (9 September 2009) both VicForests and the DSE had a linear retained habitat proposal constituted by 100 metre stream-side buffers along the eastern boundary of Coupe 15 and the western boundary of Coupe 19 and that extended to the north and south of Coupe 15's boundary. The DSE had also provided the alternative core retained habitat proposal which included a 100 metre stream-side buffer along the eastern boundary of Coupe 15 and western boundary of Coupe 19 (although this did not extend as far north or south as the first



proposal) together with 90 metre stream-side buffers along the streams forming the northern and southern boundaries of Coupe 15.

87. Later that day, I was carbon copied an email from Lachlan Spencer sent at 3.52 pm. Now produced and shown to me and marked "CM-46" is a copy of this email together with its attached map. For convenience I set out the email below:

*"Lee,*

*Following our discussion on the phone I have amended the map which we prepared to match what you requested.*

*The attachd [sic] map should now meet all requirements in excess.*

*Lachy"*

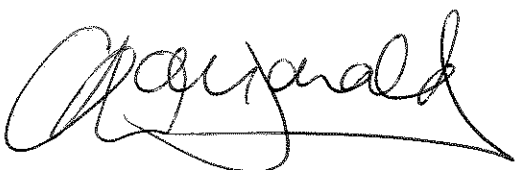
88. For convenience I note that the changes implemented on the map attached to Lachlan's email were that the Long-footed Potoroo SMZ western boundary had been moved to the ridge-line, and that the retained habitat area had been extended along the stream south of Coupe 15's boundary.
89. On 16 September 2009 Lee Miezis sent an email with an attachment to myself and Lachlan Spencer concerning the draft Long-footed Potoroo SMZ. Now produced and shown to me and marked "CM-47" is a copy of this email and attachment. For convenience I set it out below:

*"Cam / lachy -*

*BES [Biodiversity and Ecosystem Services] has recommended another option for LFP protection for consideration. It is denoted Option 1 on this map. the 150ha area remains as per the previous version I sent Lachy.*

*I have played around with 150m and 100m off creek. I think Option 2 works best (48ha) retained habitat - but want to hear your thoughts before I go back to BES and discuss."*

90. On the map attached to Lee's email, there were proposed versions of a Long-footed Potoroo retained habitat, but I had difficulty interpreting the map that Lee had sent and I asked Lee whether we could meet to discuss.
91. On 21 September 2009 I attended a meeting at the DSE offices on Nicholson Street. Also present was Dr Paul Smith, of the DSE, Natasha McLean, of the DSE, Lee Miezis, Ross Potter and Lachlan Spencer. At this meeting I said that the action statement does not express any preference for the shape of the retained habitat. I asked whether the retained habitat could be situated along the lower stream-side gullies as opposed to continuing up the ridgeline to the western boundary of Coupe 15.

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Lachlan Spencer said words to the effect:

*"As all mapping has been done to date in Melbourne, there is no evidence that the mapped gullies continue to the west as suggested. To the contrary the logging history suggests that they do not extend even to the road. This needs to be confirmed in the field."*

Lee Miezis said words to the effect:

*"It would be feasible to include areas along the gullies in the vicinity of Brown Mountain creek rather than have the retained habitat extend to the western boundary of the coupe. The best way to facilitate this would be to have a field visit with a representative of both the DSE and VicForests."*

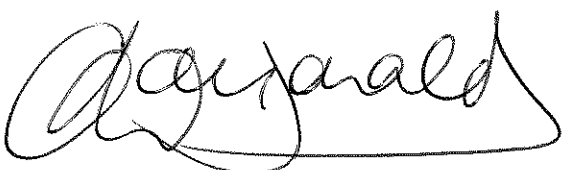
I then said words to the effect that:

*"We will contact Barry Vaughan to brief him on this discussion and to nominate a staff member for the visit. We'll let you (looking at Natasha McLean) know."*

92. On 28 September 2009 I was carbon copied into an email from Lachlan Spencer to Barry Vaughan and others forwarding correspondence between VicForests and the DSE concerning the field visit to Brown Mountain for the purpose of the Long-footed Potoroo SMZ. As a result of this correspondence I was aware that the field visit wouldn't occur until at least the first week of October 2009. Now produced and shown to me and marked "CM-48" is a true copy of this email.
93. As at the date of swearing this affidavit the field visit to Brown Mountain has not occurred.
94. In the event that the DSE decides to declare a Long-footed Potoroo SMZ (including retained habitat where harvesting is not allowed) VicForests will modify the harvesting boundary in the coupe plans for Coupe 15 and Coupe 19 to accommodate this prescription.

E. Reports commissioned by EEG concerning Brown Mountain

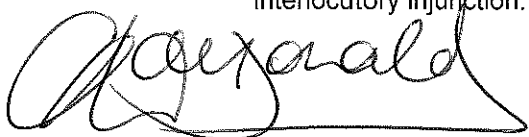
95. In late March 2009, I received a letter dated 27 March 2009 from Lee Miezis that enclosed four survey reports commissioned by EEG. The enclosed reports included those listed in subparagraphs 84(b) – (d) of the statement of claim. Now produced and shown to me and marked "CM-49" is a copy of this letter together with attachments.
96. I handed Lee Miezis' letter (with attachments) to Ross Potter and asked him to review the reports, determine VicForests' course of action and draft a response to Jill Redwood.
97. Insofar as Coupe 15 and Coupe 19 were concerned, in my view it was only the Bilney report that was relevant because the other reports concerned areas that were not in the immediate vicinity of the Brown Mountain coupes.



98. Ross Potter and I discussed the reports, and Ross told me that there was no data in the reports that triggered any requirements under relevant action statements and the Plan. I also looked at the reports and did not see any detections of endangered species that required any further action by VicForests.
99. I responded to these survey reports on behalf of VicForests in a letter to Jill Redwood as the coordinator of EEG dated 15 April 2009. Now produced and shown to me and marked "CM-50" is a copy of this letter. For convenience I set out the penultimate paragraph of this letter below:

*"As DSE is responsible for the overall management of State forest, including the creation or amendment of forest zoning, any decision regarding the creation of new SPZs as a result of survey findings rests with DSE. In this case, VicForests will, however, be arguing very strongly that there is no basis for creation of new SPZs in these areas due to the very large system of dedicated reserves nearby, reserves that contain significant areas of habitat similar to that found in the areas you surveyed. VicForests will also argue that the Plan does not mandate the creation of additional SPZs, and that if an SPZ is created, the RFA requires that an equivalent area must be made available to the industry."*

100. I explain in paragraphs 105 to 113 below the large system of dedicated reserves near Brown Mountain and further old growth reserves that are proposed.
101. On or about 6 May 2009 I received a copy of a letter EEG had sent to Ministers Jennings and Lenders dated 23 April 2009 that commented on my letter to EEG. Now produced and shown to me and marked "CM-51" is a copy of EEG's letter dated 23 April 2009. I recognise the handwriting on this copy as Ross Potter's.
102. On or about 28 August 2009 VicForests was provided with a copy of the report described in paragraph 85 of the statement of claim (**the Meredith report**). This was the first time VicForests had received this report.
103. I gave a copy of the Meredith report to Ross Potter and asked him to consider the report in light of the proposed harvesting in Brown Mountain. After Ross had reviewed this report he spoke to me and told me that the Meredith report was a desktop study that did not contain any new data beyond that already available to VicForests and the DSE, nor did it consider the modified harvesting prescriptions agreed to for Coupe 15 and Coupe 19. As a result of this, I did not and do not consider that the Meredith report requires VicForests to introduce any further prescriptions to the proposed harvesting in the Brown Mountain area additional to the stream-side buffer and the modified habitat tree prescriptions.
104. By this stage no harvesting was scheduled to commence in the Brown Mountain coupes as this proceeding had commenced and a hearing had been set to determine EEG's application for an interlocutory injunction.



#### IV Old Growth Reserves in East Gippsland

105. As noted in paragraph 48 above, in 2006 the ALP released an election policy titled *Victoria's National Parks and Biodiversity*. The policy is available for download from the url [www.alpvictoria.com.au](http://www.alpvictoria.com.au). Now produced and shown to me and marked "CM-52" is copy of the ALP policy titled *Victoria's National Parks and Biodiversity*.
106. For convenience I note that the first three election commitments on page 1 of the policy relate to the East Gippsland Forest Management Area (**East Gippsland FMA**). I reproduce these below:

*Immediately protect the Goolengook Block and the last significant stands of Victoria's old growth forests currently available for logging under the National Parks Act. In total this will add almost 33,500 hectares of forest to the National Parks and reserve system.*

*Create the Great Victorian Alpine National Park by adding a 5000 hectare section of State Forest currently available for logging to link the Errinundra National Park to the Snowy River and Alpine National Parks and pursue World Heritage Listing of a Great Alpine National Park in partnership with the ACT and NSW.*

*Immediately add 2,500 hectares of icon State Forest in East Gippsland currently available for logging to the National Parks and reserve system.*

107. I was one of the employees of VicForests that was consulted by the Industry Transition Taskforce for the purpose of designing the reserves contemplated by the ALP policy.
108. The Industry Transition Taskforce was established by the Minister for Environment and Climate Change and the Minister for Agriculture in July 2007 to consult with timber industries and communities about the reserves contained in the ALP policy.
109. As part of the consultation process I was provided with a map by the DSE that shows proposed boundaries for old growth reserves in the East Gippsland FMA. Now produced and shown to me and marked "CM-53" is a copy of this map. For convenience I have marked on exhibit "CM-53" the Brown Mountain area.
110. To assist the Court I produce two other maps of scale 1:100,000 and 1:25,000 respectively that show the proposed old growth reserves.

Now produced and shown to me and marked "CM-54" is a map of the Orbost District with scale 1:100,000.

Now produced and shown to me and marked "CM-55" is a map of the Brown Mountain area with scale 1:25,000.



111. The proposed Goongerah North Icon Area and Alstergrens Icon Reserve are not available for harvesting and are in the process of being declared National Parks. Similarly, the existing Gap Scenic Reserve and Errinundra National Park are unavailable for harvesting.
112. As at the date of swearing this affidavit, the legislation concerning the proposed old growth reserves is before the Victorian Parliament.

**V Coupe 26 and Coupe 27**

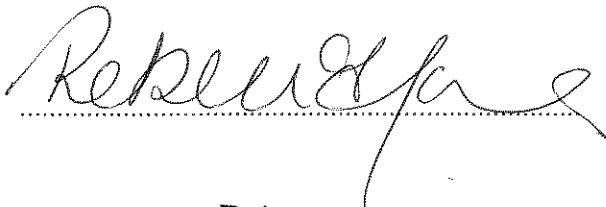
113. As at the date of filing this affidavit VicForests has not planned to harvest coupes numbered 840-502-0026 and 840-502-0027 in the foreseeable future.

SWORN at MELBOURNE

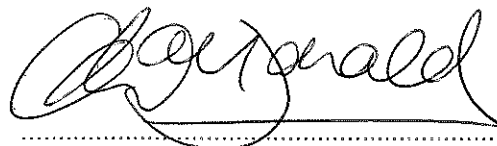
on

27 November 2009

Before me:



Rebecca Veronica Howe  
Level 21, 570 Bourke Street, Melbourne  
An Australian Legal Practitioner  
(within the meaning of the  
Legal Profession Act 2004)



Cameron MacDonald