

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

No. 8547 of 2009

BETWEEN

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

and

VICFORESTS

Defendant

SECOND AFFIDAVIT OF LACHLAN RAYMOND SPENCER

Date Sworn: 25 February 2010

Filed on behalf of the Defendant

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I, **LACHLAN RAYMOND SPENCER** of Level 7, 473 Bourke Street, Melbourne in the State of Victoria, make oath and say as follows:

1. I am the Tactical Planning Manager of VicForests, the Defendant in this proceeding, and am duly authorised to swear this affidavit on its behalf. I make this affidavit from my own knowledge unless otherwise indicated.
2. I have sworn one other affidavit in this proceeding dated 27 November 2009 (**the first Spencer Affidavit**). The last exhibit to the first Spencer Affidavit was numbered "**LRS-52**", accordingly, the first exhibit in this affidavit will be numbered "**LRS-53**".
 - I. **Overlay reports**
3. I refer to paragraphs 62 to 66 of the first Spencer Affidavit and to the documents exhibited as "**LRS-24**", "**LRS-25**", "**LRS-26**" and "**LRS-27**". The purpose of this affidavit is to clarify those matters to which I depose to at paragraphs 62 – 66 of the first Spencer Affidavit.
4. As set out in paragraphs 26 – 27 of the first Spencer Affidavit, I have been involved in conducting coupe inventories for about 13 years and I am familiar with the information gathered during Coupe Inventories.



I have also used Geographic Information System (**GIS**) spatial software programs for about 13 years and I recognise the information and data extracted from GIS that I refer to in this affidavit.

5. The information and data gathered during Coupe Inventories and information and data produced by GIS is:

- (a) kept in hard copy coupe files maintained by VicForests for each coupe (**Coupe Files**); and
- (b) entered into the Coupe Information System (**CIS**). CIS is dealt with in detail in paragraphs 28(b) and 70 of the first Spencer Affidavit.

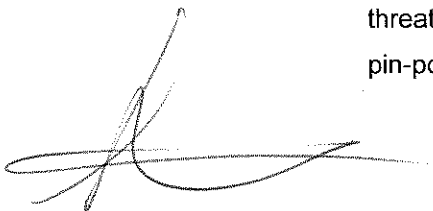
6. Coupe Files and CIS form part of the records kept by VicForests in the course of, and for the purpose of, conducting its business.

A. Coupe 15

7. The Overlay Report for Coupe 15 is exhibited as "**LRS-24**" to the first Spencer Affidavit.

8. In addition to the matters to which I depose at paragraph 63 of the first Spencer affidavit, for convenience I note the Overlay Report for Coupe 15 also identifies:

- (a) part of Coupe 15 contains areas of reserve which were included as part of the Victorian Australian Labor Party 2006 election policy entitled "*Victoria's National Parks and Biodiversity*" (**ALP Old Growth Reserve**). Now produced and shown to me and marked "**LRS-53**" is a true copy of the Victorian Australian Labor Party 2006 election policy entitled "*Victoria's National Parks and Biodiversity*". At paragraph 104 of the first Spencer Affidavit I depose to how the presence of the ALP Old Growth Reserve in Coupe 15 is dealt with by the Department of Sustainability and Environment (**DSE**) and VicForests;
- (b) old growth forest may be present in Coupe 15 as such areas are mapped using remotely sensed data and are only indicative;
- (c) the presence of threatened flora in Coupe 15, being the presence of Forest Geebung (*Persoonia silvatica*) recorded in 1986. For convenience I note that at the time the Coupe Overlay report for Coupe 15 was prepared, the Tactical Planning Group used data provided by DSE which was only able to indicate the potential presence of a threatened flora or fauna record on a 1 km x 1 km basis (**1 km Block Data**). The data did not specify where within the 1 km x 1 km block the record occurred. This required VicForests to liaise with DSE to obtain this information. On or about 20 May 2009, the threatened flora and fauna data was updated so that VicForests could determine the pin-point location of the threatened flora or fauna in relation to the coupe. Now

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produced and shown to me and marked "LRS-54" is a true copy of a screen shot from GIS indicating the threatened flora record in relation to Coupe 15. For convenience I note that the pin-point location of the Forest Geebung is outside the boundaries of Coupe 15; and

(d) Proposed Long-footed Potoroo Special Management Area (**SMA**) within Coupe 15. In relation to the Proposed Long-footed Potoroo SMA, I say as follows:

(i) Now produced and shown to me and marked "LRS-55" is a true copy of a screen shot from GIS indicating the location of the proposed Long-footed Potoroo SMA;

(ii) In 2009, Long-footed Potoroo SMAs were replaced by Long-footed Potoroo Core Protected Areas as described at page 8 of the Action Statement for the Long-footed Potoroo dated August 2009. Now produced and shown to me and marked "LRS-56" is a true copy of the Action Statement for the Long-footed Potoroo dated August 2009;

(iii) In 2009, the Long-footed Potoroo Core Protected Areas adjacent to Coupe 15 were included in the new boundaries of ALP Old Growth Reserve;

(iv) At the time the Overlay Report for Coupe 15 was generated, the proposed boundaries for the ALP Old Growth Reserve had been provided to VicForests by DSE, although they were yet to be finalised. Accordingly, the approval of Coupe 15 for inclusion in the 2009 TRP was conditional upon finalisation of the ALP Old Growth Reserve boundary.

B. Coupe 19

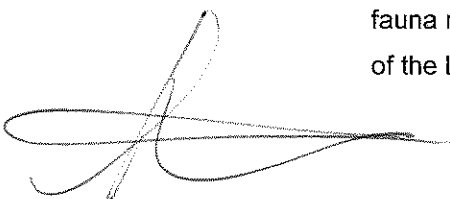
9. The Overlay Report for Coupe 19 is exhibited as "LRS-25" to the first Spencer Affidavit.

10. In addition to the matters to which I depose at paragraph 64 of the first Spencer Affidavit, for convenience I note the Overlay Report for Coupe 19 also identifies:

(a) part of the ALP Old Growth Reserve is within 500 m of Coupe 19;

(b) old growth forest may be present in Coupe 19 as such areas are mapped using remotely sensed data and are only indicative;

(c) the presence of threatened fauna within 500 m of Coupe 19, being the presence of Lace Goanna (*Varanus varius*) recorded in 2000. Now produced and shown to me and marked "LRS-57" is a true copy of a screen shot from GIS indicating the threatened fauna record in relation to Coupe 19. For convenience I note that the pin-point location of the Lace Goanna is outside the boundary of Coupe 19;

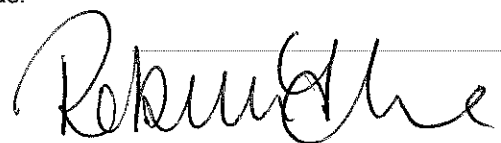
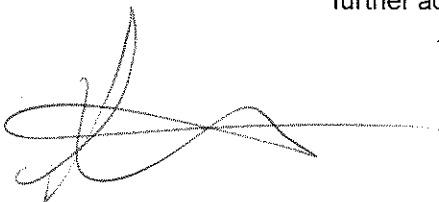


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- (d) the presence of threatened flora in Coupe 19, being the presence of Forest Geebung recorded in 1986. At the time the Coupe Overlay report was prepared for Coupe 19, the Tactical Planning Team used the 1 km Block Data referred to in paragraph 8(c) above. Now produced and shown to me and marked "LRS-58" is a true copy of a screen shot from GIS indicating the threatened flora record in relation to Coupe 19. For convenience I note that the pin-point location of the Forest Geebung is outside the boundary of Coupe 19; and
- (e) the presence of threatened flora within 500 m of Coupe 19, being the presence of Errinundra Shining Gum (*Eucalyptus denticulata*). Now produced and shown to me and marked "LRS-59" is a true copy of a screen shot from GIS indicating the threatened fauna record in relation to Coupe 19. For convenience I note that the pin-point location of the Errinundra Shining Gum is outside the boundary of Coupe 19.

C. Coupe 26

- 11. The Overlay Report for Coupe 26 is exhibited as "LRS-26" to the first Spencer Affidavit.
- 12. In addition to the matters to which I depose at paragraph 65 of the first Spencer Affidavit, for convenience I note the Overlay Report for Coupe 26 also identifies:
 - (a) part of the ALP Old Growth Reserve is within 500 m of Coupe 26;
 - (b) old growth forest may be present in Coupe 26 as such areas are mapped using remotely sensed data and are only indicative;
 - (c) the presence of threatened fauna within 500 m of Coupe 26, being the presence of a Diamond Dove (*Geopelia cuneata*) recorded in 1999. Now produced and shown to me and marked "LRS-60" is a true copy of a screen shot from GIS indicating the threatened fauna record in relation to Coupe 26. For convenience I note that the pin-point location of the Diamond Dove is outside the boundary of Coupe 26. I also note that the reference at paragraph 65(b) in the first Spencer Affidavit contains a typographical error and should have referred to a threatened fauna record within 500 m of Coupe 26;
 - (d) the presence of threatened flora within 500 m of Coupe 26, being the presence of Forest Geebung recorded in 1986. Now produced and shown to me and marked "LRS-61" is a true copy of a screen shot from GIS indicating the threatened flora record in relation to Coupe 26. For convenience I note that the pin-point location of Forest Geebung is outside the boundary of Coupe 26; and
 - (e) the presence of an apiary site buffer in Coupe 26. In relation to that apiary site, no further action is required by VicForests as:



- (i) Paragraph 1.4 of the Gippsland Forest Apiary Plan 2004 (**Apiary Plan**) provides that each apiary site has a 1 km radius buffer. Now produced and shown to me and marked "LRS-62" is a true copy of the Apiary Plan;
- (ii) Now produced and shown to me and marked "LRS-63" is a true copy of a screen shot from GIS indicating the apiary site in relation to Coupe 26. For convenience I note that the box present on that document indicates that the apiary site is designated Zone 5;
- (iii) For convenience I note that page 7 of the Apiary Plan provides as follows:

"Apiary Zone 5

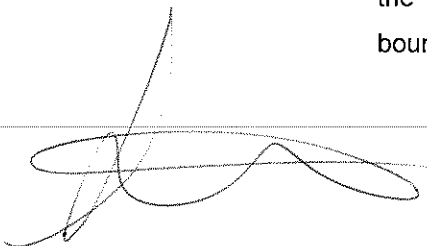
Apiary Zone 5 (AZ5) is the remainder of the forest estate where temporary bee sites may be permitted in accordance with the appropriate policy, but the presence of the site shall not restrict other forest management practices in any way.

Prescription

Temporary Bee sites may be permitted."

D. Coupe 27

- 13. The Overlay Report for Coupe 27 is exhibited as "LRS-27" to the first Spencer Affidavit.
- 14. In addition to the matters to which I depose at paragraph 66 of the first Spencer Affidavit, for convenience I note the Overlay Report for Coupe 27 also identifies:
 - (a) part of the ALP Old Growth Reserve is within 500 m of Coupe 27;
 - (b) old growth forest may be present in Coupe 26 as such areas are mapped using remotely sensed data and are only indicative;
 - (c) the presence of threatened flora in Coupe 27, being the presence of Forest Geebung recorded in 1986. Now produced and shown to me and marked "LRS-64" is a true copy of a screen shot from GIS indicating the threatened flora record in relation to Coupe 27. For convenience I note that the pin-point location of Forest Geebung is on the boundary of Coupe 27. In relation to the presence of Forest Geebung on the boundary of Coupe 27, I also note the following:



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- (i) GIS informs the Tactical Planning that Forest Geebung is a rare but not threatened species;
 - (ii) I refer to the East Gippsland Forest Management Plan (**East Gippsland FMP**) which is exhibit "LRS-8" to the first Spencer Affidavit. Appendix H of the East Gippsland FMP does not designate Forest Geebung as a rare or threatened species that requires special action by VicForests.
- (d) the presence of threatened flora in Coupe 27, being the presence of Errinundra Shining Gum recorded in 1986. For convenience I note that neither the East Gippsland FMP or the Amended East Gippsland FMP (which is exhibit "LRS-9" to the first Spencer Affidavit) stipulate that an action has to be taken by VicForests with respect to the Errinundra Shining Gum. There is no Action Statement for the Errinundra Shining Gum.
- (e) the presence of threatened flora within 500 m of Coupe 27, being the presence of Errinundra Shining Gum recorded in 1986. I refer to the document exhibited to this affidavit as "LRS-64". For convenience I note that the pin-point location of Errinundra Shining Gum is outside the boundary of Coupe 27;
- (f) Long-footed Potoroo SMA within 500 m of Coupe 27. As the Long-footed Potoroo SMA is outside the coupe boundary, the Long-footed Potoroo SMA will not be affected by timber harvesting of Coupe 27.

II. Other matters

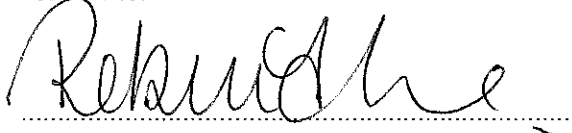
15. I refer to sub-paragraph 40(e) of the first Spencer Affidavit. The second sentence of that sub-paragraph contains two typographical errors. Each reference to "flora" in the second sentence of sub-paragraph 40(e) should be read as a reference to "fauna".

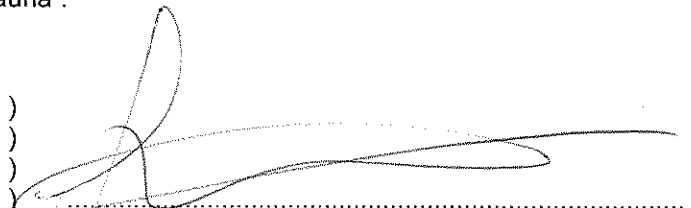
SWORN at MELBOURNE

on

25 February 2010

Before me:





Lachlan Raymond Spencer

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