

1 HIS HONOUR: Yes.

2 MS MORTIMER: If Your Honour pleases. Your Honour, may I
3 deal with the matter Your Honour raised with us on
4 Friday about the location for final addresses. Your
5 Honour, it's agreed between us at the Bar table that it
6 would be most appropriate for those to be in Melbourne.

7 HIS HONOUR: Yes.

8 MS MORTIMER: And certainly for my client's part it may be
9 that a video link to Bairnsdale should be considered,
10 but I have to be frank and say that my client's not
11 confident about how many people would attend if the
12 court were to go to that trouble.

13 HIS HONOUR: Yes, I see.

14 MS MORTIMER: So we don't press that, Your Honour, in that
15 sense.

16 HIS HONOUR: Well, I think it can be made available. If
17 no one turns up, then it won't be kept running for the
18 whole of the addresses. But I think at least it could
19 on the first day be made available, and maybe we can
20 even put it in the law list on that basis. I don't
21 think there is a great difficulty about that, it's just
22 that the court staff won't leave it running if no one's
23 there.

24 MS MORTIMER: No, and I accept nor should they, Your Honour.

25 HIS HONOUR: Yes, yes.

26 MS MORTIMER: And my instructions are, Your Honour, that
27 Bairnsdale would be more appropriate in the sense it's
28 closer to where certainly a lot of the people for whom
29 my client represents.

30 HIS HONOUR: Yes.

31 MS MORTIMER: So, Your Honour, that's the position in

1 relation to submissions. May I move to something
2 else, Your Honour.

3 HIS HONOUR: Yes.

4 MS MORTIMER: And that is the matters that need to be dealt
5 with to close the plaintiff's case.

6 There's one further affidavit, Your Honour, and I
7 hand up a copy of that. It's an affidavit of David
8 John Treasure, together with exhibits. I actually
9 hand up a working copy too for Your Honour.

10 HIS HONOUR: Yes.

11 MS MORTIMER: Now, Your Honour, Mr Treasure is a local land
12 surveyor and simply gives some evidence about plotting
13 some GPS coordinates on maps that are otherwise in
14 evidence from coordinates that are already in evidence.

15 HIS HONOUR: Thank you.

16 MS MORTIMER: And he was not required for cross-examination,
17 Your Honour. So if I might tender that affidavit.

18 HIS HONOUR: Yes, thank you.

19

20 #EXHIBIT 46 - Affidavit of Mr Treasure.

21

22 MS MORTIMER: Now, Your Honour, a few other matters in terms
23 of matters to be marked as exhibits. May I ask Your
24 Honour to mark the photo board as an exhibit.

25 HIS HONOUR: The?

26 MS MORTIMER: Photo board.

27 HIS HONOUR: Yes.

28

29 #EXHIBIT 47 - Photo board.

30

31 MS MORTIMER: Now, Your Honour, we thought, Your Honour, it

1 would be of assistance, and our learned friends as I
2 understand it have no objection if we were to actually
3 tender in evidence two Vicmaps which are quite detailed
4 road maps that place in a context a lot more of the
5 parts that we are talking about, so that for example,
6 Your Honour, a lot of the evidence will talk about a
7 road and the roads are not very visible on a lot of the
8 maps we are dealing with. So we thought it might
9 assist to locate the areas we are talking about to
10 actually tender two road maps.

11 HIS HONOUR: Yes.

12 MS MORTIMER: We do that, if Your Honour pleases.

13

14 #EXHIBIT 48 - Two topographical road maps.

15

16 MS MORTIMER: And the reason, Your Honour, we have needed two
17 is that Your Honour will see one is Bendoc and one is
18 Ellery, and Brown Mountain appears at the south of
19 Bendoc and the north of Ellery, so it's almost in the
20 middle of the two.

21 HIS HONOUR: Yes. I think more accurately whether they
22 should be called topographical road maps.

23 MS MORTIMER: Yes, if Your Honour pleases.

24 HIS HONOUR: Yes, I follow. So the top of Ellery has
25 Legges Road - the top of Ellery in fact contains the
26 coupes that are in question.

27 MS MORTIMER: It does, Your Honour.

28 HIS HONOUR: But then the next map contains other country
29 that's been the subject of evidence.

30 MS MORTIMER: Yes, that's immediately above it, that's so,
31 Your Honour.

1 HIS HONOUR: Yes, I see. Thank you, that's quite helpful.

2 MS MORTIMER: Now, Your Honour, the next document I propose
3 to tender is a copy of the inter-governmental agreement
4 on the environment. I tender that, if Your Honour
5 pleases.

6 HIS HONOUR: Yes.

7

8 #EXHIBIT 49 - Inter-governmental Agreement on the
9 Environment.

10 HIS HONOUR: Yes.

11 MS MORTIMER: And, Your Honour, the second public document is
12 the National Forest Policy Statement 1992, 2nd Edition
13 1995. I tender that, if Your Honour pleases.

14

15 #EXHIBIT 50 - National Forest Policy Statement 00/12/1992,
16 2nd Edition 00/00/1995.

17 MS MORTIMER: Now, Your Honour, the final matter is that
18 there was a map that I handed up during my opening that
19 looks like this.

20 HIS HONOUR: Yes.

21 MS MORTIMER: And I don't believe, Your Honour, it's actually
22 been tendered. And if it hasn't, it should be.

23 HIS HONOUR: Yes. It's certainly been the subject of some
24 evidence.

25 MS MORTIMER: It's been well used, Your Honour, so far.

26

27 #EXHIBIT 51 - Defendant's summary map.

28

29 MS MORTIMER: Yes, Your Honour, it's entitled "Brown Mountain
30 land status and harvesting history"; if that would be -
31 - -

1 HIS HONOUR: Land status and harvesting history, yes.

2 MS MORTIMER: If Your Honour pleases. My learned junior has
3 some agreed changes to the transcript, and once that is
4 done, Your Honour, that completes the evidence on
5 behalf of the plaintiff.

6 HIS HONOUR: Yes.

7 MS KNOWLES: Page 368, on line 22, the evidence was that it
8 forms a whole within a patch, "hole", rather than
9 "whole". Line 22. That an area of logged reserve
10 within a reserve is a hole.

11 HIS HONOUR: Yes.

12 MS KNOWLES: Page 370 line 13, after discussion with the
13 learned counsel for VicForests we agree that line 13
14 the "(indistinct)" should be "less suitable for
15 harvesting".

16 HIS HONOUR: Yes.

17 MS KNOWLES: Page 400 line 9, "improve the habitat pre
18 prescriptions" should be "tree prescriptions".

19 HIS HONOUR: Yes.

20 MS KNOWLES: And also with agreement page 615, in the evidence
21 of Dr Belcher, line 9, should read "I have stated that
22 it would form a corridor" rather than "I haven't
23 stated", and it's in reference to his report.

24 HIS HONOUR: Yes.

25 MS KNOWLES: And finally page 644, line 20, it was the
26 transcript from Friday.

27 HIS HONOUR: Afternoon?

28 MS KNOWLES: Yes.

29 HIS HONOUR: Yes.

30 MS KNOWLES: If I could just provide the reference.

31 HIS HONOUR: Yes, I don't seem to have that in this volume,

1 but you give it to me anyway.

2 MS KNOWLES: If Your Honour pleases, I can hand up a copy
3 alternatively.

4 HIS HONOUR: Just - - -

5 MS KNOWLES: Line 20 provides "inspects such as moths" and it
6 should be "insects".

7 HIS HONOUR: Yes.

8 MS KNOWLES: If Your Honour pleases.

9 HIS HONOUR: Thank you. Mr Waller?

10 MR WALLER: If Your Honour pleases, I don't propose to say
11 anything, really, by way of opening unless Your Honour
12 wanted me to.

13 HIS HONOUR: No.

14 MR WALLER: Just to outline to Your Honour the witnesses to
15 be called and the order of the witnesses, we have
16 informed our learned friends of this. The first
17 witness will be Mr Lachlan Spencer, and it's possible
18 that his evidence may go over to tomorrow as well.
19 The next witness will be Mr Cameron MacDonald. Then
20 it's intended to call Gary Squires to effectively
21 verify on oath that which he said on the view.

22 HIS HONOUR: Yes.

23 MR WALLER: To be followed then by Lee Miezis, and in respect
24 of Mr Miezis we have provided our learned friends with
25 a witness statement of Mr Miezis, and the documents
26 referred to in that witness statement. I don't
27 believe Your Honour has received that, and if it's
28 convenient I can provide a copy to Your Honour now.

29 HIS HONOUR: Yes.

30 MR WALLER: So Mr Miezis will be giving evidence, it's
31 anticipated on Wednesday this week.

1 HIS HONOUR: Yes.

2 MR WALLER: And Professor Ferguson will give evidence on
3 Thursday this week.

4 HIS HONOUR: Yes.

5 MR WALLER: There is one additional witness, and that will be
6 Mr Jonathan Kramersh, one of my instructing solicitors,
7 who has sworn an affidavit yesterday, and I can hand to
8 Your Honour a copy of that. I can file the original
9 in court. We have only provided that to our learned
10 friends yesterday, and Your Honour the purpose of that
11 affidavit is to deal with what we apprehend following
12 the evidence that was heard thus far may be a
13 submission that Your Honour should draw a Jones v.
14 Dunkel type inference from VicForests' failure to call
15 DSE witnesses to give expert evidence.

16 Your Honour has heard reference made already to
17 people such as Stephen Henry and Natasha McLean among
18 others, and the purpose of Mr Kramersh's affidavit is
19 to explain why it is that VicForests has not been in a
20 position to call expert evidence from within the DSE
21 and to make it plain that those witnesses cannot in any
22 event be described as being within VicForests' camp, to
23 pick up the language that often applies in relation to
24 the Jones v. Dunkel inference.

25 As I say, that affidavit's been provided to our
26 learned friends yesterday and we don't expect that they
27 are in a position to inform us immediately whether they
28 want Mr Kramersh to attend for cross-examination. But
29 if he is not required to attend then we would simply
30 read that affidavit at a convenient time, and if he is
31 required to attend for cross-examination then we would

1 anticipate that he would be called on Thursday.

2 HIS HONOUR: All right.

3 MR WALLER: So, Your Honour, if I could hand to Your Honour
4 the original affidavit of Mr Kramersh and the exhibits
5 to it, and we can provide Your Honour also with a
6 working copy.

7 HIS HONOUR: Yes.

8 MR WALLER: So, Your Honour, the first witness then to be
9 called on behalf of the defendant is Mr Lachlan
10 Spencer, and Mr Redd will lead evidence from
11 Mr Spencer.

12 HIS HONOUR: Yes.

13 MR REDD: Your Honour, I should note before Mr Spencer comes
14 to the witness box there has been an objection to
15 paragraph 68 of Mr Spencer's affidavit sworn on 27
16 November 2009, and as a result of that we are not
17 pressing that paragraph. However, the documents
18 produced in that paragraph are not objected to, it's
19 just the commentary, as it were, contained in paragraph
20 68 that is not pressed.

21 HIS HONOUR: Yes.

22 MR REDD: So, Your Honour, there are two affidavits of
23 Mr Lachlan Spencer, and if he could be called.

24 HIS HONOUR: Yes. Mr Redd, I have the affidavit of 27
25 November to hand.

26 MR REDD: Yes. Does Your Honour have one also of 25
27 February this year, entitled "Second affidavit of
28 Lachlan Spencer"?

29 HIS HONOUR: I don't immediately, but I will have in a
30 moment.

31 MR REDD: Yes, as Your Honour pleases.

1 HIS HONOUR: Perhaps if Mr Spencer can be sworn first.

2 <LACHLAN RAYMOND SPENCER, sworn and examined:

3 HIS HONOUR: Mr Spencer, just make sure that you are

4 comfortable there. It's a bit tight. Yes, Mr Redd.

5 MR REDD: Mr Spencer, is your full name Lachlan Raymond

6 Spencer?---Yes, it is.

7 And are you the tactical planning manager at

8 VicForests?---Yes, I am.

9 And is your work address, level 7, 473 Bourke Street in

10 Melbourne?---Yes, it is.

11 Mr Spencer, have you sworn two affidavits in this proceeding,

12 one dated 27 November 2009 and the second dated 25

13 February 2010?---Yes, I have.

14 And is there a correction you need to make to your second

15 affidavit, being the one sworn on 25 February

16 2010?---The second affidavit which makes some

17 corrections to the first has an error identified on the

18 weekend on 12C.

19 Yes. Have you got a copy of those before you? I can get

20 some handed up?---No.

21 We will hand you a copy of those two affidavits so you can

22 have them before you.

23 HIS HONOUR: Mr Redd, I can't locate the second affidavit,

24 so - - -

25 MR REDD: Okay, Your Honour, we will hand up a copy to Your

26 Honour as well. I think, Your Honour, your other

27 associate now has a copy of the second affidavit which

28 will just be handed up.

29 HIS HONOUR: Yes, thank you.

30 MR REDD: Now, Mr Spencer, you mentioned a correction to

31 paragraph 12C of your second affidavit, and what is the

1 correction you would like to make to that
2 paragraph?---In the first line where it reads "500
3 metres of" should be removed, so that it would read
4 "within coupe 26".

5 Yes. And, Mr Spencer, with that amendment being made to
6 that affidavit, when those two affidavits are read
7 together, is that a true and accurate account of the
8 evidence you wish to give in this proceeding?---Yes, it
9 is.

10 Your Honour, do you wish to have those affidavits tendered
11 per se or - - -

12 HIS HONOUR: I think we have been tendering the affidavits.
13 Whether we strictly needed to, we will keep doing it, I
14 think.

15 MR REDD: Yes, all right, Your Honour. So I tender those
16 two affidavits, and as I think Mr Spencer explained,
17 they need to be read together because the second
18 affidavit clarifies some aspects of the first.

19 HIS HONOUR: Yes.

20

21 #EXHIBIT K - Two affidavits of Lachlan Raymond Spencer.

22

23 MR REDD: If the witness could please be handed a copy of
24 Exhibit number 7, which is the photos from the view.
25 We can hand up a copy if that's easier. We have got a
26 spare copy here.

27 HIS HONOUR: Yes.

28 MR REDD: Mr Spencer, you have been handed some photos to
29 that are in evidence of the view that was conducted on
30 3 March 2010. Now, were you on that view?---Yes, I
31 was.

1 If you could turn, please, to the photo numbered 39?---Yes.
2 Could you please describe to His Honour what it is that you
3 see there?---What I see there is a depression in the
4 landscape that is the head of well above lower down the
5 slope where it formed into a drainage line and then ran
6 into the lower creek. I think it's incorrect to be
7 described as a drainage line at that point in the
8 landscape.

9 Yes, thank you. You can put that folder away. Now, we
10 will hand up to Your Honour and also to the witness a
11 spiral bound collection of slides, a copy of which has
12 already been provided to our learned friends.

13 HIS HONOUR: Yes.

14 MR REDD: Now, Mr Spencer, is this a collection of slides
15 that you have prepared for the purpose of understanding
16 the evidence you have given in your affidavit sworn on
17 27 November 2009?---Yes, it is.

18 Now, Your Honour, what I intend to do is take Mr Spencer to
19 some but not all of these slides because it's quite
20 comprehensive, but Your Honour will note that on the
21 right-hand page of nearly all of these slides there's a
22 reference to a paragraph number, and that should be
23 understood as a reference to the paragraph number of
24 Mr Spencer's first affidavit.

25 HIS HONOUR: Yes.

26 MR REDD: So, Mr Spencer, if you could turn to slide number
27 3, you see the slides have numbers in the bottom
28 right-hand corner. Could you explain, please, to His
29 Honour what that slide is?---What this slide represents
30 is a screen shot from the computer when we had the
31 ArcView Geographic Information System program open.

1 The elements of the screen for that particular
2 proprietary program of interest are down the left where
3 we see three collections of boxes, the bottom two
4 coloured. They are what we call "shapefiles". They
5 represent spatial data. In this form we see that
6 there is - the top one is the East Gippsland FMA, by
7 having a tick on it means that it's showing in the
8 screen portion where the map-like section is. Below
9 that there are two further data sets which you will see
10 are multiple colours which explain the legend of what's
11 in the map. And we note also that the sequence that
12 the data sets are placed on the left is the sequence
13 that they are layered upon each other in the map.

14 And you described that program as called ArcView, I think, is
15 that right?---This particular - yes.

16 And is that the program, the same program you describe in
17 paragraph 37 of your affidavit sworn on 27 November
18 2009?---As described in the affidavit, there are three
19 programs created by the same company ESRI, that there
20 is ArcView, ArcGIS and Arcinfo that form the same
21 function with slightly different reasons for using each
22 one. But for all intents and purposes, yes, it is the
23 same.

24 Yes. Mr Spencer, if you could just please turn now to slide
25 numbered 11. Could you please describe to His Honour
26 what that slide demonstrates?---As described with the
27 initial slide, we look to the left pane to see what
28 layers or shapefiles are being viewed on this slide,
29 and we can see that the darker black line around the
30 edge is the East Gippsland FMA or forest management
31 area. The lighter black lines represent the

1 boundaries of the forest blocks; the forest blocks
2 being administrative units which the forest is divided
3 for the purpose of understanding where you are, and for
4 orientating yourself with regards to finer plans and
5 what not. You may also note the shapes of the blocks
6 are irregular because they follow landscape features
7 such as streams and ridges.

8 Yes?---The highlighted block in the middle, being the
9 Brodribb block, is the block that contains Brown
10 Mountain.

11 Yes. And if you could just turn to the following page,
12 slide number 12, and explain to His Honour what we
13 there see?---We can see that within the GIS program you
14 can zoom in, and we note that in the top right-hand
15 corner of that pane there's a scale that says 1 to
16 85,000, so much closer in. And we are looking at the
17 Brodribb block blown up to its extent with, as we can
18 see on the left, there's a number of layers of interest
19 here is the East Gippsland interim new parks layer
20 which is overlaid over the forest management zoning
21 layer to show the zoning within the Brodribb block.

22 And could you just point out, if you wouldn't mind holding
23 the map up and pointing out where the Brown Mountain
24 area is on that map?---So to the northern portion of
25 the map.

26 Yes?---The triangular like shape of green.

27 If you could turn now to slide 14, please, Mr Spencer.

28 Would you please describe to the court what that slide
29 is showing?---We note on this slide, if we look at the
30 scale in the right, we have zoomed in slightly more to
31 just that portion of the general management zone of the

1 Brodribb block, and what it's showing here is, as we
2 can see on the left, the last log, 25, which is the
3 logging history, layer created at 1 to 25,000, and it's
4 called "last log" because it shows the last event on a
5 particular area if multiple events have occurred.

6 Now, given that this slide is just showing the logging
7 history it's a bit more difficult to ascertain
8 precisely where the Brown Mountain area is, so perhaps
9 if you could just hold the map up again to your chest
10 and point out to His Honour the general vicinity - and
11 also to counsel, I should say - the general vicinity of
12 Brown Mountain on that slide?---So the four coupes in
13 question are within - below where the 1993, '94
14 harvesting has occurred in that central portion, and to
15 the north, in that section here and here.

16 Yes. If you could turn now, please, to - - -

17 HIS HONOUR: So what's the date of this view? This slide
18 was taken - - -?---This slide has the update for not
19 the previous year, so the harvesting within coupe 20 is
20 not shown on this map as yet.

21 Yes, but what - - -?---So everything up until - - -

22 When I look at this, is there a date on it that shows me when
23 it was extracted from the system or not?---No.

24 No, I see.

25 MR REDD: Are you able to explain approximately to His Honour
26 when the data, or when these slides were extracted from
27 the system and created for the purpose of this
28 presentation?---These slides were created following the
29 completion of the second affidavit. If we can check
30 what date that was. So following - the week following
31 the 25th February 2010.

1 Yes. If you could turn now, please, to slide numbered 16.
2 If you could explain there to the court what this slide
3 demonstrates?---This slide demonstrates the way in
4 which using the geographic information system we can
5 bring together information, spatial information of a
6 number of sources. In this case we look at - on the
7 left and we see that there's the VM hydrology, which is
8 the streams. VM roads, which is the road network.
9 VM contours, which are the contoured information for
10 the landscape. We see there's a layer called BM_TRP,
11 which is the four Brown Mountain coupes in question.
12 The block shape is not ticked so we don't see those
13 lines, the horizontal black lines on pink with the
14 interim shapes which were the new reserves created in
15 2009. We see the logging history again overlaid over
16 the forest management zoning. So we get a good
17 picture of the location of Brown Mountain.

18 And again on that map, is that using the same logging history
19 data as the slide we just took the court to
20 then?---Yes, it is.

21 So in other words on that map we don't have coupe 20 marked
22 as having been logged?---The official logging history
23 from last year is yet to be verified and therefore it's
24 not within the official layer of this - - -

25 Yes. If you could just turn to the following slide, please,
26 slide number 17, and if you could describe to the court
27 what that slide is showing, please?---We note again for
28 this slide we have zoomed in to just one of the coupes,
29 in this instance coupe 15. And the main layer we are
30 viewing is the FE East Gippsland 2007 layer, which is
31 the full extent layer which describes where the forest

1 models have deemed that the allocated strata or broadly
2 forest types are located across the landscape. We see
3 from this map the colours are aligning to on the left
4 where it says FE East Gippsland, and the stratas as
5 described.

6 Could you explain to His Honour why it is that within the
7 boundary of coupe 15 as marked on that slide there are
8 some red colour, meaning unallocated?---When the
9 boundaries are created, they are created to align with
10 the broad geographic features, and they are created as
11 a gross boundary. There may be limitations within
12 that gross boundary that restrict harvesting which may
13 be unallocated forest. Similarly buffers and what
14 not. In this case also the full extent layer is
15 created from forest modelling, and inherently can have
16 a number of errors at the very fine scale which we are
17 looking at here. We note on the southern boundary
18 where it's red and unallocated, it is unallocated due
19 to it being recent harvesting. That would need to be
20 field-verified, the location of the actual boundary.

21 If you could turn now to slide number 20, please, Mr Spencer.
22 And could you explain to the court what we see on slide
23 20?---What we see on slide 20 is again the general
24 landscape information of the roads, contours and
25 hydrology, the forest management zoning, and the four
26 coupes within the Brown Mountain area. What this
27 slide is depicting is the work that has been done and
28 that the tactical planning team for which I manage
29 create gross boundaries or coupes that warrant further
30 inspection for inclusion on a timber release plan, and
31 these would be those gross boundaries.

1 Yes. And just to the following slide, please, slide number
2 21.

3 HIS HONOUR: And the buffer that's shown there is the 20
4 metre buffer, is that right?---That's correct.

5 MR REDD: And slide 21, please, Mr Spencer?---Slide 21 shows
6 the inclusion of the additional reserves from 2009, and
7 highlights that the gross boundaries were excluded
8 outside those reserve boundaries at the time of them
9 being created.

10 And if I could take you now to slide 23 and following. And
11 it might for the convenience of counsel and the court
12 be useful to have before you the coupe overlay report
13 which is in two places, one of which is in the agreed
14 book. That report is at volume two page 641. It's
15 also exhibited as Exhibit 24 to Mr Spencer's first
16 affidavit.

17 HIS HONOUR: Yes.

18 MR REDD: Now, Mr Spencer, if you could turn to page 24, and
19 please explain what we see here - slide 24, I should
20 say?---Slide 24 is the beginning of a sequence that
21 describes the process known as the overlay analysis.
22 What we are looking at here is the main point of
23 interest is the box in the middle of the map section.
24 Yes?---Which describes that you select - it's requiring you
25 to select a theme to analyse, and what the overlay
26 process does is takes the shape of that theme, in this
27 case it's the coupe shape, and identifies where that
28 shape intersects with a number of data sets defined
29 within the process.

30 So turning then to the following slide, slide 25, what is it
31 you see on that?---After hitting okay on the previous

1 slide, this is the output we receive, which describes
2 down the first column there's a description of the
3 layer or data set that was checked against. There's a
4 value which was received for "did that occur within the
5 coupe shape?" Where the value is a point, it shows
6 you a distance from the coupe that that value occurred,
7 or where that value was an area or a polygon shape, as
8 we call them, it will show you how much of that value
9 occurred within the coupe.

10 And, Mr Spencer, if you could just look at Exhibit 24 of your
11 affidavit, do you have that before you?---I do.

12 So is slide 25 a sort of screen view of part of what is
13 Exhibit 24 of your affidavit?---Slide 25 is - the
14 output at the time of planning is slide 24; slide 25
15 was the same process done more recently.

16 So if you could turn to - sorry, I just might clarify.

17 Exhibit 24?---Yes.

18 When you look at that compared to slide 25, is slide 25
19 showing part of, or the screen view of Exhibit
20 24?---That's correct. Slide 25 is only the first
21 portion for way of example of output, it's not the full
22 report.

23 All right. If you could turn, please, to slide 27. What
24 is it that we see there on slide 27?---Slide 27 is
25 depicting what is shown on the overlay report. If we
26 run down the overlay report we can see in the second
27 column it has "ends" or "no", "no hit", or "yes" for a
28 "yes". That was apparent when the report was run.
29 We notice that the water supply catchment within 500
30 metres there is a "yes" value.

31 Yes?---To identify what that "yes" value means we can look at

1 this slide and we can see that on the left-hand side at
2 the top there's a shape called PWSC 100, which is
3 prescribed water catchments captured at 1 to 100,000
4 scale. Within the map section of the slide we see an
5 "identify result". The "identify result" is achieved
6 by clicking on the area of interest, which in this case
7 was that prescribed water catchment, and we can see
8 that it is the Brodribb River, Orbost, and it's a
9 proclaimed catchment.

10 Yes. And if you can turn to slide 28.

11 HIS HONOUR: That seems to generate a special management
12 zone, is that right?---No.

13 Why is it coloured yellow?---Sorry, yes. Sorry for the
14 confusion. When I created these slides I was - I
15 highlighted which coupe was relating to the overlay,
16 and the yellow doesn't relate to the left. And you
17 will notice that the FMZs aren't attached. ArcView,
18 when it highlights a coupe - highlights a feature turns
19 it yellow as a default.

20 I understand, thank you.

21 MR REDD: Apologies about that, Your Honour. If you could
22 turn to slide 28, and if you could explain what it is
23 that we are looking at on slide 28?---Further down the
24 overlay report we note that there was a hit for ALP
25 reserve within coupe, and also ALP reserve within 500
26 metres. We note on the slide here that as we have
27 seen previously the horizontally hatched pink is the
28 East Gippsland Interim New Parks Version 2, which is
29 the layer for the reserves that were created in 2009.
30 We note from the map that it would appear that the new
31 parks are completely outside the coupe, though as is

1 often the case with mapping there is a fine slither at
2 the portion where both of them meet at the road, and
3 it's due to the way - the scale at which the mapping
4 was captured, and that's why it's covered in both
5 within 500 metres and within coupe.

6 Yes. And if you could turn to slide 29, please, and explain
7 to the court what data is shown on that
8 slide?---Further down the overlay report we see that
9 there's modelled old growth within coupe. Slide 29
10 demonstrates, if we see on the left there's MOG 2003,
11 which is the modelled old growth layer that was created
12 in 2003. It demonstrates that this layer extends
13 across the landscape where a modelling project was done
14 remote - remotely using remote sensing to identify
15 areas of potential and likely old growth within the
16 landscape.

17 And who conducted that modelling project?---That was done by
18 the DSE.

19 Could you turn to the following slide, slide 30, please?

20 Could you explain to the court what slide 30
21 demonstrates?---On slide 30 we note that on the left
22 the layer that is ticked is the THFLO 100, which is a
23 threatened flora layer captured at 1 to 100,000. We
24 notice in the overlay report that it says "threatened
25 flora in coupe". At the time the overlay was done for
26 planning, the threatened flora information was provided
27 to VicForests in a one kilometre by one kilometre
28 square, which is the darkly hatched black square.
29 Subsequently, and in more recent times, that
30 information has been provided to us in point form, and
31 that's where the green circle and cross demonstrates

1 that that siting is outside the coupe.

2 And what is that flora record, its common name?---If we look
3 at the identify results box within the map section of
4 the screen, we can come down and see where it says
5 "ex-common name", it's the forest geebung.

6 And for the convenience of the court, I should note that on
7 that slide we have referenced it as 63(ii). It's also
8 referred to in paragraph 8C of the second affidavit.
9 Mr Spencer, if you could please turn to slide 31 and
10 explain to His Honour what that slide shows?---We note
11 within overlay there's a hit for threatened flora
12 within 500 metres of the coupe boundary. Similarly as
13 before, the dark shaded box illustrates the style that
14 the data was provided when the planning was done for
15 this coupe. However, the more accurate location is
16 delineated by the circle and the cross. We see from
17 the identified result that that is a siting or a locale
18 for Errinundra shining gum.

19 Yes. And if you could turn to slide 32, please. And for
20 the convenience of the court, this slide should also be
21 referenced as paragraph 8D of the second affidavit.
22 Mr Spencer, what does slide 32 show?---If we look on
23 the left we can see the main layer with the pink
24 hatching is denoted as LFP_SMA_draft layer January
25 2008. The LFP_SMA is the long footed potoroo special
26 management area draft. It was prior to the release of
27 the most recent action statement, the long footed
28 potoroo protection across the landscape included the
29 protection of special management areas. You will note
30 that the special management area covers a portion of
31 the coupe. At the time of planning this coupe both

1 the previous method of the special management areas was
2 still in force, though the new reserves were the new
3 method that we will come to was also provided in a
4 draft form.

5 And when you say "the new method", what are you referring to
6 there?---The special management areas were replaced by
7 the core protection zone outlined in the 2009 action
8 statement which in the sense of Brown Mountain was
9 incorporated within the new reserve system, which is as
10 we have seen west - - -

11 Yes. If you could turn to slide 33 - - -

12 HIS HONOUR: What does the individual location shown on
13 slide 32 record?---Those locations are, as we see on
14 the left at the top, "threatened flora" - sorry,
15 "threatened fauna 100 points." From this particular
16 map we can't ascertain what those points are, though
17 there is another map that we have produced that does.

18 Yes.

19 MR REDD: Yes, if you could turn to slide 33, please,
20 Mr Spencer, and explain what slide 33 shows?---Slide 33
21 shows that - another layer that we checked in the
22 overlay report is sensitive ridge lines within the East
23 Gippsland forest management area, which we can see at
24 the top to the left of the shape for old (indistinct).
25 We note on the map there are certain ridges with green
26 lines, these are designated by DSE as sensitive view
27 ridges in terms of views from particular points, and
28 this map notes that none of those are within the coupe.
29 And slide 34, please?---Slide 34 shows the point on the
30 overlay which says that there are inventory plots,
31 inventory plots within 500 metres of the coupe. We

1 note that the yellow circles with the cross are the
2 plot RC 25, and we note that the plot nearest the coupe
3 is delineated in the "identify result" box.

4 What is an inventory plot?---Inventory plots are where the
5 DSE's research branch or growth modellers or the like
6 have been to the forest and measured the trees for some
7 experiment or on-going trial that they are running in
8 regard to forest growth or forest inventory, or maybe
9 for other purposes. We note in "identify results"
10 that there's a contact person which would need to be
11 contacted to get the full details of what the inventory
12 was for at that point.

13 Yes. And finally insofar as coupe 15 is concerned, if you
14 could turn to slide 35 and explain to the court what it
15 is we see there?---Slide 35, similarly to the inventory
16 plots, there are different research programs going on
17 within the forest. This layer identifies the pink
18 vertical hatching over white in the north-east corner
19 of the coupes, which is a research area. You will see
20 that it's delineated as a research poly, which means
21 it's a shape which is why it's not recorded as an
22 inventory plot, the research polygons are over an area
23 of forest as opposed to a distinct point or a small
24 shape.

25 And who is it that is conducting the research the subject of
26 those polygons?---It's either - it's the DSE or
27 something approved by DSE, we would have to contact the
28 DSE to - - -

29 Yes. Now, Your Honour, we have replicated that process with
30 each of the coupes so far as the overlay reports are
31 concerned, but what I thought I would do now is just

1 take Mr Spencer to the threatened fauna records for the
2 balance of the coupes.

3 HIS HONOUR: Yes.

4 MR REDD: But we have to complete - there's still slides for
5 the coupe overlays. So for coupe 19, the overlay
6 report is not in the agreed book, but it is Exhibit 25
7 to Mr Spencer's affidavit. So if Your Honour has that
8 handy. Now, Mr Spencer, could you turn please to
9 slide 41. And, Mr Spencer, have you got Exhibit 25 to
10 your affidavit before you?---I do.

11 Yes. Your Honour will note if we go to the second page of
12 that exhibit of the coupe overlay report for 19, about
13 a third of the way down there's an entry "threatened
14 fauna within 500 metres, why".

15 HIS HONOUR: Yes.

16
17 MR REDD: And now, Mr Spencer, could you please explain to
18 the court what slide 41 shows?---We note on the overlay
19 report it says that there's a threatened fauna record
20 497 metres from the edge of the coupe - - -

21 Just pausing there, sorry, Mr Spencer. How is it that you
22 can say it's 497 metres from the coupe?---In the second
23 column from the right, on the overlay report, as
24 described for - it delineates the distance if it's a
25 point.

26 Yes. And sorry, go on?---Again, the yellow coupe is yellow
27 only to identify that this is in respect to coupe 19.
28 We see the data was provided at the point again in this
29 kilometre by kilometre square, though the point that
30 that kilometre by kilometre square referred to has been
31 highlighted with an arrow. From the "identify result"

1 box we see that it's a record for a lace goanna, and
2 it's some distance from the coupe.

3 And if you would turn now to slide 53 - sorry, before we go
4 to slide 53, if you note on the coupe overlay report,
5 the second page, I just took His Honour to threatened
6 fauna within 500 metres which said why, and you
7 explained the 497 metre distance. Do you see two
8 lines down from that - I'm sorry, that's the flora
9 record. If we could move now on to slide 53, which is
10 part of the coupe 26 coupe overlay report. Now, the
11 overlay report for coupe 26 is Exhibit 26 to
12 Mr Spencer's affidavit, and this one is also in the
13 agreed book. It's in volume 2 of the agreed book at
14 page 707. Mr Spencer, could you explain to the
15 court what slide 53 is demonstrating?---We see on the
16 overlay report that it identifies that there's a
17 threatened fauna record within the coupe. If we look
18 at the slide 53, we note again the kilometre by
19 kilometre square, and the portion of that square
20 intersects with the yellow coupe being coupe 26. The
21 record also shows - the map also shows that when
22 provided the point data, which is more accurate,
23 there's a - to the north in the centre of the square is
24 the circle with the cross which is the actual record
25 which was for a diamond dove, and it's well outside the
26 coupe.

27 And for the convenience of the court, we have put this down
28 as paragraph 65 in Mr Spencer's first affidavit. This
29 is also explained in subparagraphs 12C and D of the
30 second affidavit. Mr Spencer, on that slide I note
31 that there are, although they are not within the square

1 box, there are two other records, it looks like, to the
2 west of coupe 26. Do you know what those records
3 refer to?---Yes. We see in the overlay report again
4 there was threatened fauna within 500 metres, those two
5 records, I can't delineate the north or the south, but
6 I know of the two I believe the north is the powerful
7 owl and the south is a brown treecreeper, which is
8 another bird. That is displayed in the - in another
9 map we produced, where all of those points were
10 identified.

11 Yes, Your Honour will note those two records that Mr Spencer
12 has just described there are also noted on map 14 of
13 the agreed maps. That's the map titled "Threatened
14 fauna records".

15 HIS HONOUR: Yes.

16 MR REDD: Now, Mr Spencer, if you could turn, please, to
17 slide 64 and following. That's slide itself is just
18 titled "Coupe information system". Is that the system
19 abbreviated as CIS as described in paragraph 70 of your
20 first affidavit?---Yes.

21 And if we could just go through a few of these slides and you
22 could explain to the court what it is we are looking
23 at. So if we turn to page 65, what does this
24 demonstrate?---The coupe information system is an
25 on-line database that's managed by VicForests to
26 contain all the information relevant to active
27 harvesting coupes and regenerating coupes. What we
28 are looking at at slide 65 is essentially the first
29 pane we would go to for the benefit - because we don't
30 have the system here - which is essentially the search
31 page where you enter the coupe name or the coupe number

1 and it will look up the database and find you the
2 relevant coupe.

3 And turning the page to slide 66, what is it that slide 66
4 shows us?---Slide 66 shows that once you have arrived
5 at the particular coupe, in this case coupe 15, it
6 shows that every activity through the sequence or life
7 cycle of the harvesting coupe is recorded under
8 different activity types, drilled down below each
9 activity type are a number of sub activities which
10 record all things from, as we can see from the list,
11 the coupe details, it's allocating it a name, mapping
12 the boundary, reconnaissance or field assessment down
13 to harvesting activities, site preparation, seed
14 establishment, stocking surveys and the final stage is
15 completion, which is undertaken by DSE.

16 And if you could turn to slide 67, please. What does slide
17 67 demonstrate?---Within the reconnaissance section
18 there are two subsections which VicForests use, one
19 being merchantability which relates to physical
20 characteristics of the coupe and the forest volume.
21 The second section is management issues, which relates
22 to every issue that's identified during the overlay
23 process or during field assessment is entered into the
24 coupe information system, and the key components within
25 that are, we note at the top, that it demonstrates
26 where this feature was identified, either by the
27 overlay and/or within the field. The further
28 information or comments box provides a broad
29 description of what the element is. This is
30 describing the presence of threatened flora within 500
31 metres of the coupe. The second box, which is how the

1 value will be managed box is what VicForests will do,
2 and once approved on a TRP must do, to manage the above
3 feature.

4 You mentioned in that answer about the merchantability. By
5 that - does that give you an estimate of the timber
6 volume of a coupe?---It does.

7 Do you know what the estimates are for the four coupes in
8 this proceeding?---Not offhand, no.

9 If you could turn to page 68.

10 HIS HONOUR: What happens during the field check, who does
11 it?---The field assessment is undertaken by tactical
12 planning foresters from VicForests, and the field
13 assessment is about identifying and verifying
14 information obtained through the overlay from the
15 management plans, from action statements and making any
16 other observations of the area planned to be harvested
17 to ensure that we are complying with the management
18 plans and what not. Also within the field assessment
19 a lot of operational practicalities are assessed.

20 MR REDD: Your Honour, just for your convenience, there is in
21 paragraph 73-79 inclusive of Mr Spencer's first
22 affidavit, there's a section on field assessment there
23 as well. Mr Spencer, if you could turn to slide 68
24 and explain to the court what that slide is
25 showing?---Similar to the previous slide, we see on
26 this slide that there was a feature identified on the
27 overlay, therefore it's been identified as present.
28 This being a research site, field inspection was
29 undertaken and it verified that it was present. And
30 we see how it was managed. If field inspection had
31 shown that it wasn't in fact present or it was in a

1 location other than what was delineated on the GIS, you
2 may make a different comment on how we would manage it.
3 Yes.

4 HIS HONOUR: Where are we now?

5 MR REDD: We are on slide 68, Your Honour.

6 HIS HONOUR: Yes, I see.

7 MR REDD: And Your Honour will note from the bottom left-hand
8 corner of these slides, you will see the correct number
9 there, and we have only included coupe 15 just to
10 demonstrate the process.

11 HIS HONOUR: Well, there was no field assessment for coupe
12 15, is that right, because it had been assessed back in
13 2006; is that right?---That's correct.

14 MR REDD: Mr Spencer, if you could turn to slide 69, and
15 explain to His Honour what this slide shows,
16 please?---Slide 69 demonstrates a portion of the
17 management issues section for coupe 15 showing how the
18 catalogue of issues check are listed, what the value
19 was, how it's displayed as being identified by the
20 overlay or by the field, and where their comments and
21 actions are listed as an example of how this is done
22 for all their values.

23 And if I could just clarify with you, note the following
24 slides numbered 70, 71 and 72, are they all the balance
25 of that management issue - - -?---Yes, they are. And
26 you will note some are on two pages.

27 And you will note on slide 69 it states there "Activity
28 status complete and forest officer Ella Ross"?---Yes.
29 Does Ella Ross report to you?---No, Ella Ross reports to the
30 senior forester, tactical planning, who reports to me.
31 And what does the date there signify?---The activities can be

1 undertaken over a period of time, and are only - are
2 locked by the system so they can't be changed once they
3 are delineated as complete. We see here that the
4 activity status for this activity is complete, and the
5 undertaking date is the date that it was completed.

6 Pan if you could turn to slide 70, you will note there's some
7 - there's an entry against the, following "other
8 biodiversity issues". Could you explain to His Honour
9 what that entry means?---The entry states that there's
10 threatened flora within 500 metres of the coupe, being
11 persoonia silvatica, was detected in the old growth in
12 the overlay by mistake. It's not listed in the form
13 for a guarantee, and it's VicForests' understanding
14 that there's no further action required. However, to
15 confirm in this case VicForests has committed to ask
16 DSE to provide comment and clarification.

17 Yes. Could you turn now to slide 73, please.

18 HIS HONOUR: Just out of interest, what is a giant tree, as
19 used in this definition?---There is actually - there
20 is one giant tree, it's in Powelltown, and it's - - -
21 The Ada River Tree?---Yes, that's correct.

22 That's it?---Yes.

23 The whole layer contains one tree. I see. How are they
24 defined?---It's the one Ada River Tree. It's the
25 large ash tree. I don't think there's a broad
26 characterisation, it's just a requirement. There are
27 special requirements to protect that particular tree.

28 Yes?---And there are no other trees at this stage with that
29 requirement.

30 Yes.

31 MR REDD: Mr Spencer, if you could turn then to slide 73, and

1 tell His Honour what this screen is showing?---From the
2 previous slides we have seen that VicForests enter
3 information into the coupe reconnaissance management
4 issues section. The coupe plans are created by the
5 coupe information system directly out of that
6 information, and it is that information which DSE has
7 approved. This ensures that the information that was
8 approved by DSE is placed on the coupe plan. What we
9 see here is a screen shot of what you can view what the
10 draft coupe plan would look like at any time, though
11 the actual physical coupe plan is not created until
12 prior to harvest. What we are looking at here is the
13 first page of what the coupe plan would look like if it
14 was printed out, but obviously for these coupes that
15 haven't been harvested or commenced, the coupe plan
16 hasn't been created.

17 Finally, Mr Spencer, if you could turn to slide 74, and
18 explain to His Honour what is shown on this
19 slide?---Slide 74 again is a screen shot of how the
20 coupe plan would print out. This is delineating the
21 management actions and DSE approvals page, which
22 essentially is from the management actions of the
23 reconnaissance. What prints on this page is the -
24 how the value will be managed as approved by the
25 Department of Sustainability during the timber release
26 plan approval.

27 Yes. I tender those slides, Your Honour.

28

29 #EXHIBIT L - Supporting slides produced by Mr Spencer.

30

31 MR REDD: And, Your Honour, that's the evidence-in-chief for

1 this witness.

2 HIS HONOUR: Mr Spencer, at page 74 you see under

3 "biodiversity issues checked", it says "Identified by

4 overlay as not present", that's other biodiversity

5 issues, "identified during field check as present.

6 How the value will be managed, DSE to provide comment."

7 What does that mean?---What that means is some values

8 that don't have defined rules by the DSE, and DSE have

9 raised issue with wanting to create a rule or inspect

10 the site, that they indicate that they will not approve

11 the coupe until that comment is provided, and taking

12 into account that approval can be some years before the

13 actual harvesting occurs, it might be due to

14 seasonality or timing or logistics. So prior to

15 harvest a comment would need to be provided from DSE

16 and approved by the local staff to allow us to say

17 that's been confirmed and we can harvest or additional

18 prescription provided by them.

19 But where in the preceding slides do I see what was

20 identified during the field check as present?---When we

21 went before to the slide regarding the other management

22 issues.

23 Yes?---Where it was the Silvatica - - -

24

25 MR REDD: Is that slide 70, Mr Spencer, or - - -?---Yes.

26 HIS HONOUR: I see. That's what it's about?---That's

27 correct.

28 All right. So the label "identified by a field check" means

29 in fact that it was detected using the overlay?---No,

30 the label - if it has "not present from the overlay"

31 but "present for the field check", that's indicating

1 that it was located in the field, though it wasn't
2 indicated on the overlay. There may be features in the
3 GIS that are not present, yet they are observed in the
4 field by the field staff.

5 Yes. Well, if I look at page 70, which is where there's a
6 list of the management issues, and I see something is
7 listed as present on the field check and not present
8 identified by overlay, then the further information
9 seems to reflect the overlay outside the coupe?---Yes,
10 that's correct. But the "present" and "not present"
11 doesn't appear to be consistent.

12 Yes, all right. Yes.

13 MR REDD: Your Honour, I have no further questions.

14 <CROSS-EXAMINED BY MR NIALL:

15 Mr Spencer, can I take it from your first affidavit that you
16 have no qualifications in zoology?---No.

17 And you have no qualifications in ecology?---No.

18 And you have no professional experience in either Zoology or
19 ecology, do you?---No.

20 And you have no qualifications or experience in respect of
21 any of the species that are on the photo board
22 there?---Other than field identification, no.

23 Or any other threatened species in Victoria?---No.

24 What's your understanding of - that a species is threatened
25 for the purposes of the Flora and Fauna Guarantee Act,
26 Mr Spencer?---Off the cuff I can't provide - - -

27 Are you familiar with the advisory list of threatened
28 vertebrate fauna in Victoria published by the
29 Department of Sustainability and Environment?---The
30 listed?

31 The advisory list?---Yes.

1 Does your knowledge extend simply to the fact that there is a
2 list?---Yes.

3 You are not familiar with the classifications that are
4 employed by the Department of Sustainability in
5 maintaining that list?---Not off the top of my head,
6 no.

7 So you don't know what - for the purposes of that list it
8 means for a species of fauna to be endangered?---Not
9 off the top of my head, no.

10 Now, you know, don't you, that action statements are
11 published under the Flora and Fauna Guarantee
12 Act?---Yes, I do.

13 What's your understanding of the purpose of action
14 statements, Mr Spencer?---Action statements are
15 species-specific state-wide documents for listed
16 species to outline recovery programs and in relation to
17 VicForests prescriptions.

18 And they apply to processes which threaten species,
19 correct?---I believe so.

20 And as you have just said to His Honour, one of the purposes
21 is to recover the species, is that right?---It's my
22 understanding.

23 So an action statement is not about maintaining a status quo,
24 is it, Mr Spencer?---I am unsure of the fine wording.

25 But you do have an understanding that their purpose is to try
26 and recover the species to levels that existed in the
27 past?---I don't know, I have no idea if that's the
28 case.

29 Well, what do you understand by "recovery" in the context of
30 which you have just used it?---I understand action
31 statements are to manage within the context of the

1 current status of different species. Some may well be
2 for recovery, but I don't know if that's a blanket for
3 all.

4 You know they only apply to threatened species, don't
5 you?---My understanding is they apply to listed
6 species, yes.

7 And listed species are listed as threatened, aren't
8 they?---There's a number characterisations.

9 And you know, don't you, that action statements are binding
10 on VicForests?---Yes, they are.

11 But it's not part of your function, is it, to ensure that
12 VicForests complies with action statements?---I'm
13 sorry, I don't understand.

14 Well, are you the person responsible within VicForests to
15 ensure that it complies with action
16 statements?---There's a number of levels when we comply
17 with action statements. I am responsible for ensuring
18 our planning complies with action statements.

19 And who else is responsible in VicForests for ensuring
20 compliance with action statements?---I think we all
21 are.

22 But your role is in relation to planning, is it?---That's
23 correct.

24 HIS HONOUR: And that would include the field check stage,
25 presumably, as you have described it, is that
26 right?---That's correct.

27 And what about after that, is that sort of the end of your
28 function after you have gone to that point, or is there
29 an on-going planning function?---The planning function
30 that I am responsible for ends at the creation of the
31 coupe plan.

1 The coupe plan?---The coupe plan.

2 Yes?---My only other involvement in the later stages is the
3 development of our systems, in how we manage certain
4 aspects of requirements which may relate.

5 Yes. So does that mean that after the creation of the coupe
6 plan, if someone went on to the site and in the course
7 of operations discovered a nest of a square tailed kite
8 or something else that was significant, they wouldn't
9 report back to you, that would be dealt with
10 elsewhere?---No, that's not - they would report back to
11 the planning section to ascertain what plan to go
12 forward. So if an issue was identified by operations,
13 they would come back to planning if those - who work
14 with that area to devise the plan.

15 I see. So your job is up to the creation of the coupe plan,
16 but if there's some new material circumstance
17 identified on the ground, the matter would come back to
18 your department, is that right?---Where appropriate,
19 yes.

20 Yes, where it raised a planning issue?---That's correct.
21 Like the creation of a new buffer, for instance?---Or the
22 creation of a special management zone or something
23 similar.

24 Yes, thank you. Yes, Mr Niall.

25 MR NIALL: Thank you, Your Honour. In relation to that
26 creation of the coupe plan, that's part of the TRP
27 process, is it?---No.

28 It comes after the TRP process?---The finalisation of a coupe
29 plan is after the TRP, yes.

30 But the - well, when does the coupe plan process start?---It
31 starts at the commencement of the TRP process.

1 So it's part of the TRP process, is it not?---A part of the
2 coupe planning process is a part of the TRP process,
3 yes.

4 Now, I just want to understand this. In paragraph 18 and 19
5 you refer to the creation of the timber release plan.
6 Could you have a copy of your affidavit there,
7 Mr Spencer? The first affidavit?---Yes, I have it
8 here.

9 And you say in paragraph 18 that "VicForests must prepare a
10 TRP in respect of areas to which an allocation order
11 applies"?---Yes.

12 So the starting point is that an allocation order is made
13 which is defined by area of species, correct?---By
14 strata and area.

15 And the strata includes species?---Yes, but not just species,
16 it's combinations of species, and some species may need
17 multiple strata.

18 All right. And from that or out of that allocation order
19 VicForests commence a process of identifying the timber
20 that it wants logged, correct?---The areas which it
21 wants to harvest, yes.

22 And that's the TRP process, and how it starts,
23 correct?---Correct.

24 So the TRP process starts in VicForests, and its purpose is
25 to identify the timber that it wants to harvest out of
26 the allocation order?---That's correct.

27 And an essential part of that process is the preparation of
28 coupe plans, is it not?---It may be an issue of
29 terminology, but that's not technically correct, no.

30 Well, what's incorrect about it?---The actual coupe plan is a
31 document that's created at the end of the process from

1 information that's compiled during the preparation of
2 the TRP. You don't actually create what we would call
3 a coupe plan until harvesting is about to commence.
4 We do enter information into the coupe information
5 system which will end up on the coupe plan, but the
6 actual document, the coupe plan, is not created until
7 the commencement of harvesting.

8 But there's a significant overlap between the data, isn't
9 there, between the coupe plan and what's in the
10 TRP?---What's - again it's terminology. The timber
11 release plan in itself is just a list of coupes. The
12 management actions as we have outlined before must be
13 placed on the coupe plan, yes. So information
14 prepared for the approval of TRP ends up within a coupe
15 plan through the coupe information system.

16 And you identify the first part of the TRP process which
17 VicForests engages in as the coupe inventory, and you
18 deal with that starting at paragraph 26,
19 correct?---Yes.

20 And you say over in paragraph 30 that the coupe inventory has
21 five stages, A to E, correct?---That's correct.

22 Now, the coupe inventory, as its name suggests, is a process
23 by which VicForests identify the stock that it wants to
24 harvest, correct?---A part of the process is that.

25 Well, it's an essential part of the process as far as
26 VicForests is concerned, isn't it?---It's a critical
27 outcome, yes.

28 Well, it's the critical outcome, isn't it, working out which
29 parts of the forest it can log?---If that's how you are
30 referring to inventory, yes. The important part is to
31 determine which part and how we can harvest.

1 Now, you said in paragraph 30 the five stages of the coupe
2 inventory, and I just want to ask you some questions
3 about where they actually occur. Now, coupling up
4 where the proposed coupe areas are defined using
5 electronic desktop data, that's a desktop
6 analysis?---That's correct.

7 And it's done in Melbourne?---No, that's not correct.
8 Where is it done?---It's done in regional offices.
9 And where is the Gippsland FMA coupling up process
10 done?---It's done - within East Gippsland FMA there is
11 an office in Orbost and an office in Cann River, and
12 also an office in Bendoc.

13 And they report up to you?---Through the senior forester,
14 tactical planning, yes.

15 So the coupling up process is a desktop process which is done
16 at the regional level, is that correct?---That's
17 correct.

18 Now, the second process, desktop assessment, again that's an
19 electronic computer driven process?---It's the computer
20 process plus a review of documents and plans and action
21 statements, so yes, it's a desktop process.

22 Done in the office?---That's correct.

23 And then there's a field assessment?---That's correct.
24 And that's done, as the name suggests, out in the
25 field?---Yes.

26 And that's done by forestry officers?---By tactical planning
27 foresters.

28 Yes. And they are people with experience in forestry, I
29 take it?---That's correct.

30 Some of those field assessments are done by contract
31 workers?---That's correct.

1 And again the contract worker are foresters, are they
2 not?---That's correct.
3 That is, no participation by ecologists or zoologists in the
4 field assessment, is there?---No, there is not.
5 And then that data is then fed back to the office, and
6 completion, that's a desktop process?---Completion is
7 entry at the desk, yes.
8 And quality assurance, you refer to a peer review, that's
9 done in the office as well, I take it?---That's
10 correct.
11 So it would be fair to say that overwhelmingly the coupe
12 inventory process is a computer driven desktop process,
13 do you agree with that?---The data used in the desktop
14 phases of the process have been collected in the field
15 by a variety of sources. So the VicForests phase of
16 the desktop assessment, yes, is done in the office
17 reaching upon the data of the field assessment of a
18 variety of sources outside VicForests.
19 And it relies on data that's been obtained over a number of
20 years?---Yes.
21 And some of it is modelled data?---Yes.
22 And you understand by that I mean that it's generated by a
23 computer or an operator on the expectation of what is
24 there rather than what actually is there?---Some
25 modelled data may be created that way and others
26 otherwise.
27 Some of it is modelled and some of it actually involves field
28 data, correct?---That's correct.
29 Now, the data sets that are used for the purpose of this
30 process in a desktop analysis, they come from two
31 sources, do they not? On the one hand there are

1 VicForests data sets, and there are also DSE data sets
2 that are used, correct?---There's - in combination with
3 some other sources they are the main sources.
4 What are the other sources?---The Vicmap data, it's the
5 landscape data, the hydrology, the roads - but yes.
6 In paragraph 38 you refer to a data sharing agreement, which
7 is Exhibit LRS 14. Can I ask you to go to LRS 14,
8 please, Mr Spencer?---Yes.
9 Now, DSE and VicForests have agreed to share computer data,
10 is that right?---Not so - I mean share at a cost, yes.
11 And the data is expressed as shapefiles, as you described to
12 His Honour, is that right?---Predominantly, yes.
13 And is there a similar sharing agreement for professional
14 services such as ecology and zoology?---Not under my
15 understanding.
16 Are there any formal arrangements between VicForests and DSE
17 about using each other's professional staff for their
18 functions and duties?---There's arrangements for a
19 variety - primarily fire.
20 Primarily fire? There's no arrangement in relation to
21 sharing of resources relating to ecology and zoology,
22 is there?---No, not that I know of.
23 Now, in paragraph 39 you refer to the spatial data sets
24 provided by DSE, and - - -?---Yes.
25 Now, you refer in 39 to the data sets provided by DSE, and
26 the first one is the forest management zoning and the
27 second one is biodiversity including endangered and
28 threatened species reports. It's the case, is it not,
29 that to the extent that VicForests relies on data
30 concerning biodiversity and endangered and threatened
31 species, that all comes from DSE?---Yes, that's true.

1 It doesn't produce any of its own data on biodiversity for
2 the purposes of its function, including the desktop
3 analysis that we have been speaking about, does
4 it?---No.

5 Now, there's a reference in paragraph 39 to logging history
6 in a spatial data set, and that comes from DSE, does
7 it?---VicForests collect logging history each year
8 provided to DSE, as we are required to, and the formal
9 layer of logging history is maintained by DSE as it
10 covers years and harvesting that is not VicForests.

11 By "not VicForests" do you mean before VicForests or other
12 areas?---Before VicForests and also other areas.

13 And is it the case that once an area is declared a park, a
14 national park or state park or reserve where no logging
15 can occur, the logging history comes off the data
16 set?---No, that's not true. That's my understanding.

17 You say that the logging history includes all logging, do
18 you?---Yes.

19 How far back?---Off the top of my head I don't know the
20 exact, but it goes well back into the '50s and '60s.

21 Nothing before the '50s and '60s?---I couldn't confirm one
22 way or the other.

23 All right. Now, at paragraph 40 you refer to some of the
24 primary data sets used by VicForests in its TRP
25 process, and over in paragraph E you refer to THFAU
26 100, and that's threatened fauna, isn't it?---Yes.

27 And VicForests doesn't in any way verify those records, does
28 it?---No.

29 And you know that some of those records are modelled
30 records?---I don't know that in relation to threatened
31 fauna, no.

1 Do you know that some of the records extend back many
2 years?---Yes.

3 And it's likely, is it not, that some of those are out of
4 date?---I couldn't say one way or the other.

5 Does VicForests do any process to ensure that the fauna
6 database is maintained and up to date?---No.

7 Does it do anything to ensure that the fauna database
8 accurately records where the threatened species
9 actually are?---No.

10 Now, I want to ask you some questions about coupling up, which
11 I think you say is the first process in the coupe
12 inventory. Now, is the position this, that VicForests
13 obtains a data set of the forest management
14 classifications from DSE, and then identifies within
15 that what's general management zone, special management
16 zone and special protected zone?---I am not sure I
17 understand the question. The data set identifies
18 where the special management zone, general management
19 zone and special protection zones are.

20 And if they are not on that data set then VicForests proceeds
21 on the basis that there's no protection in relation to
22 that - - -?---The data set provided by DSE is the
23 zoning at the time, yes.

24 And it assumes, I take it, that if it's not on the FMZ 100,
25 and it's recorded as general management zone, that area
26 is available for logging?---Unless there's other
27 interim directions from DSE regarding that area, yes.

28 Could Mr Spencer be shown the agreed bundle of maps,
29 please?---Thanks.

30 Now, if you go to the map on page 7 of that, Mr Spencer, that
31 records the FMZ management zones for the area

1 surrounding the Brodribb FMA, correct?---The Brodribb
2 forest block.

3 The forest block within the Gippsland FMA?---That's correct.
4 And if you identify - if you look at that map you will see -
5 and this is pre November 2009?---Yes.

6 So it doesn't include what's been called in this case the ALP
7 reserves, correct?---By a number of names, yes.

8 And you will see in block 502 that - - - ?---Compartment 502,
9 yes.

10 502, that there is some special protection zone, a small band
11 right in the middle, and then some in the southern
12 corner, is that correct?---In the south, yes.

13 And then there's some conservation park and reserves up on
14 the northern part of the block?---The scenic reserve,
15 yes.

16 I beg your pardon?---Known as the scenic reserve, yes.

17 That is the gap scenic reserve?---As I understand, yes.

18 That goes over the top. And apart from those bits which I
19 have just identified, VicForests would regard the rest
20 of the area as available for logging and under GMZ
21 without any prescriptions?---If this were the only
22 information available, yes, that could be considered
23 available to harvest.

24 Well, this is the only information in relation to forestry
25 management zones, isn't it?---These are the - this
26 layer shows the forest management zones that have been
27 gazetted or enacted at any one time. There are other
28 layers that may be considered which may be proposals
29 for amendments to that zoning. Just looking at this
30 layer of only the forest management zoning, it's
31 correct that that would be general management zone.

1 Right. And so it would be considered by VicForests as
2 available for logging?---Unless affected by other
3 prescriptions and restrictions, yes.

4 Now, if you go to paragraph 46 of your affidavit - - -

5 HIS HONOUR: Well, if I compare that map, that is at page 7
6 of the agreed maps, with your slide 32, I thought slide
7 32 indicated that before November 2009 there was a
8 management zone coming down into coupe 15, is that
9 right or wrong? What have I misunderstood there?---You
10 understand correctly, that there is a proposed
11 management zone, in this case a special management area
12 for potoroo, though the DSE often takes some time
13 between proposing an area and implementing it. In
14 this case this shows, as we can see on the left,
15 LFP_SMA draft that the draft layer was provided to us
16 even though it wasn't incorporated into the forest
17 management zone, we were excluded from that area, and
18 that - and I guess ultimately it was incorporated into
19 the new reserve which was the completion of that
20 process of which this was the draft.

21 All right. So is that an example of what I understood you
22 to be saying to Mr Niall a moment ago that although map
23 7 shows the forest management zones as they were before
24 November 2009, there might be some other draft zones or
25 draft areas which you had to take into
26 account?---That's correct. The DSE implement a raft
27 of interim when considering their management actions
28 which VicForests must not enter or can't harvest until
29 they are finalised one way or the other.

30 Yes. So there might be interim or draft controls not
31 reflected in map 7, is that right?---That's correct.

1 Yes, I understand. Yes, Mr Niall.

2 MR NIALL: Well, in relation to that, Mr Spencer, do you know
3 when the - if you have got map 32 in front of you, or
4 slide 32 I should say?---Yes, I do.

5 As I understand it, the LFP special management area which is
6 shaded in pink is responsive to two sightings of
7 potoroo which are recorded almost in the centre of that
8 zone, is that correct?

9 HIS HONOUR: It looks like there's another one up the top
10 too.

11 MR NIALL: I think the evidence will show that it's not a
12 potoroo up the top, Your Honour.

13 HIS HONOUR: Yes, thank you.

14 MR NIALL: I will just focus - - - ?---I am not personally
15 involved in the creation of that special management
16 area, and I would only be assuming if I answered.

17 Well, I suggest to you that the species, the potoroo species
18 were identified in 2001, does that jog your
19 memory?---Without the information in front of me, I
20 would have to take your word.

21 And it appears from over there on page 32 on the scale, that
22 VicForests was provided with a draft layer at least at
23 12 January 2008?---Yes, that's correct. That's what
24 it appears.

25 So is it the case that - - -

26 HIS HONOUR: Where do I see, that Mr Niall?

27 MR NIALL: Over on the right-hand column in the legend, Your
28 Honour will see on map 32, Your Honour will see the
29 ticked box is LFP_SMA draft layer RP 12 January 2008
30 SHP, about point 4 on the page.

31 HIS HONOUR: Yes.

1 MR NIALL: It's the fifth ticked box.

2 HIS HONOUR: Yes.

3 MR NIALL: So are we to take it from that that DSE provided a
4 draft SMA in January 2008?---Yes.

5 And did they impose a prescription in relation to that?---My
6 understanding was harvested and it was excluded.

7 What was harvested?---That if the draft SMA was implemented,
8 that harvesting would be excluded.

9 No, my question was did DSE put in an interim protection
10 measure in January 2008?---Yes, that harvesting would
11 be excluded.

12 So from January 2008, on an interim basis at least,
13 harvesting was prohibited within that pink patch on
14 page 32, correct?---Yes.

15 And that pink patch takes on a bit over a third of coupe 15,
16 does it not?---Yes.

17 So from January 2008 harvesting of that portion of coupe 15
18 was prohibited, is that right?---Yes, harvesting at
19 that time would have been prohibited, yes.

20 And that's not recorded on page 17 of your map of the agreed
21 documents, agreed maps there, is it?---Map 7?

22 Map 7. There's no reference to any protection zone or
23 otherwise in that area, is there?---Well, there was no
24 protection zone.

25 Well, from January 2008 logging is prohibited,
26 correct?---During the period that it was a draft, yes.

27 When was it lifted?---In the finalisation of the review of
28 the forest management zoning undertaken by DSE the
29 draft was superseded by the final version which
30 incorporated the new reserve, therefore the draft no
31 longer applied.

1 When did that happen?---In 2009.

2 When in 2009?---I don't have the exact date off the top of my
3 head though, late 2009.

4 HIS HONOUR: If we look at the next page at page 8, it
5 gives the zones as at post November 2009. That's the
6 after situation you have just described, is that
7 right?---That's correct. But we also note on that map
8 that the new parks and reserves are delineated separate
9 from the forest management zoning, because the actual
10 forest management zone layer is yet to be updated to
11 incorporate those parks.

12 MR NIALL: I just want to get this timing clear, Mr Spencer.
13 Are you saying that harvesting within that pink area
14 was prohibited until the SMA was finalised, and it was
15 finalised at some time in 2009, correct?---That's
16 correct.

17 And it was finalised in October or November 2009, was it
18 not?---Yes.

19 So from January 2009 until at least October 2009 logging in
20 that third of coupe 15 was prohibited?---There was a
21 proposal that logging would be prohibited in that area,
22 and actual logging at that time was prohibited, yes.

23 And you say now that the SMA has now been reduced somewhat
24 and it runs along the line on the western side of
25 Legges Road?---No, I say it's been completely replaced
26 and that SMAs are now replaced by the new action
27 statement which now defines them as core protected
28 areas.

29 Right.

30 HIS HONOUR: Is "action statement" the right word?---The
31 potoroo action statement defines them by a different

1 term. Long footed potoroo, I'm sorry.

2 MR NIALL: And where do we see in your maps the current area
3 of the core protected area for the potoroo in this
4 area?---The core protected area is included within the
5 interim parks, it's not specifically defined within
6 that broad park area.

7 So your position, as I understand it, or the position I
8 should say is now that the core protection area has
9 been absorbed in the new parks that have been created
10 in 502?---That's the direction we have been given, yes.

11 Now, you say in paragraph 46 of your affidavit, you refer to
12 "at the outset availability for harvest is determined
13 by GIS", and that goes through FMZ, SFRI Fred, and log
14 season, and there's nothing in those matters which
15 would have identified the officer that logging was
16 prohibited in part of coupe 15, correct?---Not during
17 the coupling up process, no.

18 And then you go on to say in paragraph 48, that "Once an area
19 of forest which is potentially available for harvesting
20 ... (reads) ... there is a further review to ensure
21 that other factors will not limit the ability to
22 harvest." And you give three examples: contours,
23 roads and hydrology. Now, I take it from that that
24 during this process, having identified potential land,
25 VicForests then looks to suitability for that land
26 using contours, roads and hydrology, and no doubt seeks
27 to rank which would be more suitable, which would be
28 better, which would be less preferable, correct?---I am
29 not sure I understand, but I think the gist - we
30 ascertain that if the areas can be practically
31 harvested, yes.

1 So what you are doing, what you are addressing in paragraph
2 48 of your affidavit is "we identify available land and
3 then we look to see whether there are any factors such
4 as it's very steep or there are no roads or there are
5 water problems which might limit harvesting"?---Yes,
6 that's correct.

7 And those issues, that is contours, roads and hydrology,
8 those data sets are up to date, are they not?---Yes.

9 And they are accurate, are they not?---They are accurate
10 within reason. No, they are not particularly
11 accurate with respect to all of those things.

12 But certainly accurate enough to enable some assessment of
13 coupes which are more preferable there others?---They
14 provide enough to determine whether some coupes may or
15 may not be accessible, that's correct.

16 And VicForests at this point is forming some qualitative
17 assessment as to which parts of the landscape they want
18 to include in the TRP?---At this stage we are assessing
19 which parts we want to undertake further assessment and
20 warrants the investment of further assessment to
21 potentially include on a TRP.

22 And there is a significant qualitative analysis going on, is
23 there not?---Can you explain, sorry?

24 Well, at this point you are - you have got expert foresters
25 who are trying to identify within all of the allocation
26 area their best land to be included in the TRP,
27 correct?---Not always the best. There's a variety of
28 drivers for which bits of forest - I guess the land
29 that best suits a variety of objectives, which might be
30 winter harvesting, it might be areas that meet the
31 allocation order that - - -

1 And that takes no doubt some skill and qualifications to do
2 that process?---Yes.

3 In relation to fauna, there's no qualitative assessment by
4 VicForests, is there? It's either caught within a GMZ
5 or protection, or it's not; that's right, isn't
6 it?---VicForests assesses the forest management zoning
7 to determine if DSE have deemed it available for
8 harvest.

9 But if it's available for harvest, VicForests doesn't engage
10 in any exercise as to whether or not it's good quality
11 habitat for fauna?---No.

12 Or whether it's likely to be habitat for fauna which is
13 threatened but which is not included in a protection
14 area?---No.

15 So it's the case, is it not, that it puts in significant
16 professional skills and effort to assess the preferable
17 logging areas to be put in the coupe, but it doesn't
18 put in any qualification and experience in relation to
19 fauna, is that right?---Yes.

20 Is that a convenient time, Your Honour?

21 HIS HONOUR: Yes, we will adjourn until 2.15.

22 <(THE WITNESS WITHDREW)

23 LUNCHEON ADJOURNMENT

24

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1 UPON RESUMING AT 2.15 PM:

2 HIS HONOUR: Mr Spencer, would you come back into the
3 witness box, please.

4 <LACHLAN RAYMOND SPENCER, recalled:

5 HIS HONOUR: Yes, Mr Niall.

6 MR NIALL: Thank you, Your Honour. Mr Spencer, have you got
7 a copy of your affidavit there, and could I take you to
8 paragraph 55, please?---Yes.

9 You say that once the coupe plan is drawn, or the boundary is
10 drawn it's given a name. Who gives the coupe plans
11 the name, Mr Spencer?---It's given a coupe number and
12 then for convenience the tactical planning foresters
13 give it a name, so they can reference back to it
14 easily.

15 And you have identified the names that have been given to 15,
16 19, 26 and 27. Do you know the name that was given to
17 coupe 20?---The name was "The Walk".

18 And who gave it that name, Mr Spencer?---A forest officer
19 from VicForests.

20 Do you know who it was?---No, I don't.

21 Have you spoken to anyone about that?---In regards to, sorry?
22 The choice of name?---Yes, we have.

23 And who did you speak to?---I spoke to the senior forester
24 for tactical planning about a revised convention for
25 naming coupes.

26 Yes. And you know why it was called The Walk, don't
27 you?---I didn't name the coupe, I haven't spoken to the
28 person who did.

29 You know why, though? You know what The Walk refers to,
30 don't you, Mr Spencer?---As I say, I haven't spoken to
31 the person, I don't know what they were referring - - -

1 Do you know what The Walk refers to or not?---No, I don't.
2 You know - have you read the affidavit of Ms Redwood in this
3 proceeding?---I have.
4 And you know that she identifies a walking track which EEG
5 had named the Valley of the Giants, Old Growth Forests
6 Walk; do you remember that?---I am familiar that
7 there's a - there's been talk of a walk, yes.
8 Yes. And The Walk is the walk that was conducted by EEG
9 through a number of the coupes including coupe 20, was
10 it not?---I'm sorry, I don't understand.
11 You know that the walk that was conducted by EEG for members
12 and local residents went through the coupes the subject
13 of this proceeding, and coupe 20, don't you?---I don't
14 know that, no.
15 No one's ever told you that?---I am not familiar with the
16 walk you are referring in terms of EEG taking people
17 through the forest.
18 Well, why did you speak to someone about the naming
19 convention?---The naming convention - I know of comment
20 about a walk through the forest, I don't know about
21 people being taken there, and therefore the naming
22 convention was discussed.
23 What was the convention, or is now - - -?---Within the
24 current instructions it's that there shouldn't be names
25 that refer to potentially other things that are in the
26 forest that people out of context may or may not take
27 umbrage to, after naming The Walk was raised in the
28 parliament of Victoria.
29 You know perfectly well that The Walk was a reference to the
30 EEG walk, and it was chosen to thumb the nose at EEG,
31 wasn't it?---I know that it was raised in the

1 government of Victoria, the naming of that coupe
2 appeared inappropriate and therefore a convention was
3 changed.

4 You knew that VicForests had - coupe 20 was part of its TRP,
5 had been locked in, and it called it The Walk to thumb
6 its nose at EEG, do you agree with that?---I don't know
7 that, no.

8 Now, I want to take you to the process by which the coupe
9 plan is developed by reference to coupe 15, to start
10 with. In paragraph 56 you refer to the desktop
11 assessment and you say that "Subject to the proposed
12 coupe to further analysis involving desktop analysis,
13 field assessment and final analysis of the data." And
14 in relation to desk top analysis, the documents that
15 are created for that are the overlay report, is that
16 right?---The overlay report is created during the
17 desktop assessment, yes.

18 What about the coupe planning check list?---A portion of the
19 coupe planning check list is used during this process,
20 yes.

21 Are there any other documents used in the desktop
22 analysis?---There are many documents used in the
23 desktop analysis. It may include management plans, it
24 may include directions from DSE and many documents.

25 All right. But two documents created by DSE for the process
26 of desktop analysis include the overlay report and the
27 coupe planning check list, correct?---They are not
28 created by DSE, no.

29 Created by VicForests, I'm sorry?---During the process those
30 two documents are created, yes.

31 All right. And what about for field assessment, firstly, a

1 field inventory plot is created?---A part of the field
2 assessment may be undertaking a plot, yes.

3 And that produces a field inventory plot?---The field
4 inventory plot is the physical measurement of the
5 trees.

6 And you have produced those for two of the coupes,
7 correct?---Field inventory plots may have been done,
8 and I understand that you may be asking about plot
9 sheets, then, yes, they would be filled in if the plot
10 was done.

11 And also a field inventory base map prepared?---Yes.

12 And you say in 57 that the purpose of the assessment is to
13 determine with the highest accuracy possible the
14 matters that you have set out, including management
15 issues?---That's correct.

16 And in terms of management issues, when you say the highest
17 accuracy possible, you are relying, that is VicForests
18 is relying entirely on what DSE provides to it?---In
19 regards to?

20 To the management issues?---No, I disagree.

21 I will come back to that. Perhaps if we could start with
22 the coupe overlay for coupe 15, which you will see is
23 LRS 24, Mr Spencer. Could you go to that,
24 please?---24, sorry?

25 Yes, thank you?---Yes, I have it.

26 Now, as I understood your evidence about this process, it's
27 designed to identify where the relevant coupe
28 intersects with other management and prescription
29 issues, is that right?---It's designed to where the
30 proposed gross shape intersects or is within 500 metres
31 of data within a variety of layers, that's correct.

1 All right. And the computer is programmed to identify the
2 intersection within the coupe and within a 500 metre
3 radius around the coupe?---If the coupe were buffered
4 by 500 metres within that portion of forest.

5 Now, I just want to take you down some of the matters listed
6 on the coupe overlay, if I may. Down about a third of
7 the way down there's a reference to "Water supply
8 catchment within 500 metres"?---Yes.

9 And you were taken by Mr Redd to slide 27, if you could get
10 that?---Yes.

11 And that identifies the catchment of the Brodribb River, does
12 it?---Yes.

13 And all of the blue shading is the catchment area?---The
14 hatched area, yes.

15 Now, going back to slide 25 for a moment, you said in
16 evidence that that is the same as Exhibit 24 to your
17 affidavit, but they don't, on my quick looking of it,
18 reading it, they don't seem to be the same?---I'm
19 sorry, I don't understand.

20 Have you got 25? Slide 25?---I'm sorry.

21 And comparing that with your coupe overlay LRS 24, my
22 understanding of your evidence was that you were saying
23 that they were the same document?---No, they are not
24 the same document.

25 What's the difference between the two?---The document LRS 24
26 was the overlay produced on the 4/12/2008. Slide 25
27 is an example of what the overlay report outputs in
28 terms of a table. In relation to this one is an
29 example of the overlay that was done some three weeks
30 ago on the same coupe. They may differ due to an
31 updating of the data behind, and this is an example for

1 the court to see how the overlay works. 24 is an
2 example - is the overlay that was done prior to
3 approval of the coupe.

4 So is the possess that when the operator identifies the
5 coupe, a list of variables is created by the
6 computer?---The list of variables is set. It may
7 change over time due to provision of new data or
8 through the request of the DSE.

9 So going back to LRS 24, that list has been filtered by the
10 computer to identify relevant criteria to the coupe, is
11 that right?---That list was the list that was checked
12 against at the time. 25 is the list that it's checked
13 now, which has been updated over time.

14 Is 25 the complete list or just - - - ?---This is the overlay
15 - - -

16 No, LR - the slide 25 - - -?---No.

17 That's just the first page of the screen dump, is it?---Just
18 as an example of how it comes out on the screen.

19 Well going to 24, which was the actual one used in December
20 '08, the computer identified relevant items which
21 needed to be considered by the operator, is that
22 right?---Yes.

23 And going down the list of 24, the computer identifies that
24 there's modelled old growth within the coupe?---Yes.

25 And your slide 29, I won't take you to it, showed that the
26 whole of coupe 15 was modelled old growth?---Yes,
27 that's correct.

28 And the significance of that is what, Mr Spencer?---The
29 significance is that it is modelled old growth and that
30 we have identified that and highlighted that to the
31 department.

1 And why is that significant?---In terms of the prescriptions
2 it doesn't provide any significance other than the DSE
3 have asked us to check for it so we have.

4 Does it assume any significance for VicForests as to whether
5 or not certain fauna or flora might be present?---No,
6 it doesn't.

7 Do you use it - that fact that "yes" is ticked, does
8 VicForests use that to predict anything?---No.

9 Does it use it for any purpose?---No, it does not.

10 It just ticks the box because DSE has asked them to tick
11 it?---It informs DSE that when we submit the coupe for
12 TRP approval that this area is within the modelled old
13 growth area.

14 But it assumes no significance for VicForests?---There's no
15 prescription for VicForests to follow because it is
16 within that area, no.

17 And if there's no prescription as far as flora and fauna is
18 concerned, VicForests are completely indifferent to the
19 issue?---VicForests follows the prescriptions as
20 required.

21 I think if you answer my question. If there's no
22 prescription, VicForests are indifferent to that
23 particular issue?---I am unsure of what you mean by
24 "indifferent", but - - -

25 Well, they don't care whether it's old growth or not,
26 provided there's no prescription?---I wouldn't say we
27 don't care, but if there's no prescription we have no
28 prescription to follow, that is correct.

29 Well, is old growth used as a model because it might be more
30 valuable timber?---No.

31 HIS HONOUR: Does it affect the yield?---The modelled old

1 growth, what is within that modelled layer has a really
2 wide range.

3 Yes?---And in itself it indicates a broad type of forest, but
4 without a combination of other factors, and including
5 the field assessment for volume, it in itself doesn't
6 give us an indicator necessarily of yield.

7 MR NIALL: So from a forestry perspective, old growth is not
8 an indicator of value or yield?---Because of the
9 prescriptions associated with some old growth forest,
10 the yields may in fact be lower because you are
11 restricted in what you may be able to harvest. So the
12 way the old growth modelling was done is not
13 necessarily an indicator because there may be a level
14 of prescription which limits the ability to harvest and
15 therefore reduce volume.

16 Would you agree that modelled old growth might be an
17 indicator of conservation values within the coupe?---It
18 may or may not. The modelled - the fact that it is
19 modelled, when we go on the ground there may actually
20 be a wide variety of things there.

21 Now, a little further down there's a reference to the giant
22 burrowing frog, do you see that? Just below halfway
23 down the page?---Yes, I do.

24 And the letter N next to "value" is recorded. Now, do you
25 know why the giant burrowing frog is on this
26 list?---It's on the list because whilst there is a
27 consolidated threatened fauna layer, the DSE provide us
28 with other layers of information in regards to species
29 where they have sightings that are not on the
30 consolidated list. In this case they have provided an
31 additional layer for the giant burrowing frog,

1 therefore it is checked as well as the threatened fauna
2 layer.

3 And that's limited to sightings?---I am not familiar as to
4 the method they have to provide the spots.

5 And that's a shapefile, is it?---That is a shapefile, yes.
6 So there's a specific giant burrowing frog
7 shapefile?---That's correct.

8 And is it the case that it comes on this particular screen
9 because it's something that DSE has asked you to
10 specifically look for?---It's a layer they have
11 provided, and within East Gippsland it's one that we
12 are required to check against.

13 And it's provided, I suggest, because there will be a
14 probability that the area in East Gippsland would be
15 suitable habitat for the giant burrowing
16 frog?---Possibly, within the entire FMA of East
17 Gippsland, yes.

18 But a "no" turns up from that shapefile, VicForests puts it
19 to one side, correct?---That's correct.

20 And doesn't consider the matter any further?---No, it does
21 not.

22 Now, a little below that there's a reference to "threatened
23 fauna within 500 metres", and that's "no ". And then
24 a little bit below it says "Long footed potoroo SMA
25 within coupe", and that is a "yes". And I take it
26 that that's a reference to what you called the draft
27 SMA that had been provided by VicForests in January
28 2008?---Provided by DSE?

29 Provided by DSE, I'm sorry, Mr Spencer?---Yes, that's
30 correct.

31 And you deal with that, or you provide a slide in relation to

1 that at slide 63 - - - ?---Sorry, 32?
2 63, slide 63?---32.
3 It was probably done twice?---No, it's in the bottom
4 right-hand corner.
5 It's done twice?---Was it?
6 Yes. 32 is fine. Now - - -?---Yes, sorry.
7 You know that the SMAs were the management regime under the
8 old long footed potoroo action statement?---They were
9 the proposed management regime, yes.
10 But they weren't proposed, they were - under the old action
11 statement SMAs were in force in relation to potoroos,
12 were they not?---Special management areas, yes.
13 Sorry, I thought you were referring to this particular
14 one. Yes, that was the mechanism for protection under
15 the old action statement.
16 And is it your understanding that the SMAs under the old
17 action statement were replaced with core protection
18 areas under the new action statement?---The terminology
19 was changed, yes.
20 But otherwise they were the same?---No, I don't believe they
21 were the same areas.
22 So the old SMAs didn't become core protected areas as far as
23 you are aware?---Not necessarily, no. In fact they
24 did not.
25 And it's your understanding that some time in October or
26 November 2009, a core protection area was created in
27 the reserve, is that right?---Not - the core protected
28 areas were created not necessarily within reserves but
29 the new reserves were created, yes. And contained a
30 core protected area, yes.
31 Are you able to tell His Honour why the draft SMA was

1 contracted to the boundaries of the reserve?---That was
2 done by the Department of Sustainability and
3 Environment, I can't tell you why, no.

4 Did VicForests participate in that decision?---I am sure
5 VicForests - VicForests provided comment, but - as did
6 many others no doubt.

7 What comment did they provide in relation to that particular
8 issue?---I am not savvy to that.

9 It's the case that what they told DSE was that the SMA should
10 be contracted to the west of Legges Road?---I am not
11 familiar with that correspondence, I'm sorry.

12 Now, going back to the coupe overlay, a little bit below the
13 long footed potoroo SMA within the coupe there's a
14 reference to the "spot-tailed quoll SMZ within coupe"
15 and a bit below that "spot-tailed quoll SMZ within 500
16 metres", do you see that, Mr Spencer?---Yes, I do.

17 Now, why is there a reference for the spot-tailed quoll on
18 this list?---Within East Gippsland there are
19 spot-tailed quoll special management zones, therefore
20 this list contains it and we check against it.

21 And do you know what those management zones are based
22 on?---No, I do not. But I believe that the special
23 management zones referred to in that layer are the same
24 as the special management zones contained within the
25 forest management zoning layer.

26 And they are incorporated in the SMZs, are they?---In the
27 forest management zoning as special management zones.

28 Would you have a look at map 7 of the agreed maps. Not that
29 one, Mr Spencer, but the bundle of agreed maps?---Yes.

30 And are you able to tell His Honour that the bits in yellow
31 are special management zones, correct?---That's

1 correct.

2 And are you able to tell His Honour whether any of those
3 represent quoll special management zones?---Not without
4 referencing the additional data, no.

5 But according to this there was no quoll special management
6 zone within 500 metres of the coupe, is there?---That's
7 what the overlay reported, yes.

8 And again once that box was ticked there was no longer any
9 reason for VicForests to turn its mind to the
10 quoll?---That's correct. In regard to the special
11 management zones, yes.

12 Well, apart from special management zones, did it turn its
13 mind to the quoll at all?---Had the quoll been
14 identified in other layers, we may have. But in this
15 case no.

16 So does that mean that there could be a special spot tail
17 quoll SMZ buried in another SMZ which would have turned
18 up as a quoll SMZ?---No, that's not correct. Many
19 SMZs have multiple characteristics, and if an SMZ is
20 within - near the coupe, one needs to investigate the
21 forest management plan to determine it may be quoll and
22 potoroo and there may be multiple reasons why the same
23 bit of forest is within SMZ.

24 So I take it that if there was no spot-tailed quoll SMZ,
25 either on its own or as part of another SMZ within the
26 coupe or 500 metres, VicForests put the question of the
27 quoll aside?---If there was no special management zone
28 to comply with, we haven't - there was nothing to
29 comply with, that's correct.

30 Never turned its mind to the question of whether it might be
31 suitable habitat for a quoll, is that right?---That's

1 not the role of VicForests, no.

2 Whose role is it, Mr Spencer?---The DSE create a special
3 management zone.

4 And whose role is it to consider whether the area that
5 VicForests is logging might be suitable habitat for a
6 threatened species?---The DSE.

7 And how do they do that, Mr Spencer?---I am not - I am not
8 from the DSE, you will have to ask them.

9 You don't know how they determine whether or not a particular
10 area you are logging is suitable habitat for the
11 quoll?---No, I do not.

12 You know they don't conduct pre logging surveys, don't
13 you?---In what context?

14 Well, do DSE conduct pre logging surveys?---Not to my
15 understanding at the moment.

16 Do VicForests conduct pre logging surveys?---For what?
17 Quoll?---No.

18 For any of the species on the photo board?---No.

19 Now, the giant burrowing frog, the potoroo and the quoll are
20 all on the coupe overlay plan. I am not able to see
21 any reference to gliders there, Mr Spencer. Is there
22 any reference to gliders?---On this list?

23 Yes?---I don't believe so, no.

24 So there's nothing here that would alert the officer to the
25 question of whether or not there were gliders within
26 the coupe and in what concentration?---If there were
27 records within the flora layer or within the forest
28 management zone layer, he maybe identified it, or she,
29 otherwise no.

30 But there's no item which would pick up gliders, is there, or
31 am I wrong?---There's items that pick up multiple

1 characteristics. If there were a special management
2 zone for gliders, the forest management zoning would
3 pick it up. If there isn't a special management zone
4 for gliders, then they are not.

5 You know that there are no special management zones for
6 either the greater glider or the yellow bellied glider
7 in Victoria, don't you?---I do not know that, no.

8 You know that there are no SMZs for those two species of
9 gliders in the Gippsland area, don't you?---I do not
10 know, that no.

11 You have never been told that?---No, I haven't.

12 Now, there's no reference to owls in this either. Is there
13 anything to alert the operator as to the possible
14 presence of owls?---Again, the management zoning has
15 many zones for owls, though if it's not there, no.
16 There's not a specific layer for - - -

17 You know under the sooty owl action statement it provides for
18 the creation of a sooty owl management area called a
19 SOMA, are you aware of that?---I am aware of the sooty
20 owl action statement, yes.

21 And you are aware that provides for SOMAs?---Yes, I am.

22 Do the FMZ map pick up SOMAs?---I am not 100 per cent
23 familiar, I would assume it did if one was in place.

24 Well, there's no SOMA on page 7, is there?---Without
25 interrogating the data as to what the special
26 management zones and the other zones within this map
27 are, I can't confirm one way or the other in regards to
28 that.

29 Do you know whether SOMAs are picked up as SPZs?---Do I know
30 specifically?

31 Yes?---I am not aware, though if there are harvesting

1 restrictions I would assume they were.

2 You have got no - as you sit there today you are not able to
3 tell His Honour whether SOMAs are picked up as SPZs or
4 not?---I don't know specifically, but I would assume.

5 What about powerful owls and the POMAs, are you able to tell
6 His Honour whether they are picked up as to SPZs?---As
7 with the sooty owl, if they are protected zones one
8 would - I can only assume they would be in the forest
9 management zoning. I don't know specifically.

10 Now, the next step in the process - so this is the coupe
11 overlay - the next document that I want to take you to
12 in relation to coupe 15 is the coupe planning check
13 list, which you will see at LRS 28?---Yes.

14 Now, this is the document which is prepared or at least
15 initiated as part of the desktop analysis, is that
16 right?---Excuse me. The coupe planning check list, a
17 portion of the coupe planning check list covers the
18 tactical planning section of the planning practice,
19 yes.

20 And you say in your affidavit that in respect of coupe 15,
21 the coupe planning check list is incomplete?---Yes.

22 And that's because there are a number of gaps in the
23 document, is that right?---That's not correct, the
24 coupe planning check list covers the life cycle of the
25 coupe. Only the portions completed are those for
26 which that part of the life cycle has been completed,
27 as the harvesting and other portions have yet to be
28 completed, those sections of the coupe planning check
29 list are not complete.

30 What about operational planning, has that been completed, on
31 page 3?---Portions have been.

1 Have all the portions that are required to be completed prior
2 to harvesting completed?---It is incomplete and it
3 should be complete prior to harvesting, that's correct.
4 Well, what bits have been left out which would need to be
5 completed prior to harvesting?---When you say "need to
6 be completed", in respect of - can you clarify what you
7 mean?
8 Well, doesn't VicForests have a process that they complete
9 this document up to a certain point prior to
10 harvesting?---The internal processes of VicForests in
11 respect to planning state that, yes, these should all
12 be either ticked or not applicable for the coupe. And
13 they are not all done as we can see in the operational
14 planning section of the check list.
15 So in terms of the pre harvesting, the issues that haven't
16 been completed are operational planning, is that
17 right?---That's correct.
18 And you don't know whether those items have actually been
19 performed, do you?---That's the purpose of the check
20 list, is to nominate if they have or they haven't.
21 So because they haven't been checked, it's a fair assumption
22 that they haven't been done?---We are unable to say one
23 way or another as the check list hasn't been completed.
24 Well, can you give an estimate of how long it would take an
25 officer to complete the operational planning
26 section?---Just one moment. From its current state?
27 Yes, prior to harvesting?---It may take one, it may take
28 multiple days.
29 Multiple days? Up to how many, Mr Spencer?---If there are no
30 issues relating to the coupe and things are in order,
31 it could be done within one day.

1 And if there are things that are not in order?---It's
2 impossible for me to say. If issues need to be
3 resolved, the time it would take to resolve them.
4 Well, how long might that be?---I am unable to say.
5 Well, what needs to be done?---On the face of it, if a coupe
6 is approved there will be no issues. But issues arise
7 which may need to be addressed, and they may take time.
8 If we look at - I could go through the list if you
9 would like.
10 You won't be able to tell His Honour how long it will take
11 until you actually do each step, is that fair?---That's
12 exactly, exactly.
13 And it could take many weeks?---No. Well, it's unlikely to
14 take many weeks, but as we have ascertained, if new
15 rulings are required, and additional prescriptions are
16 put together, it may take some time, though it may also
17 take one day.
18 New rulings by whom?---By the DSE.
19 Anyone else?---If you look at the check list, it mentions
20 Telstra and cables. It mentions road management
21 requirements, public safety zones. They are all
22 elements that may be issues.
23 And they may be issues outside the control of
24 VicForests?---They may well be, there's always the
25 potential for issues.
26 And the coupe planning check list to the extent it's been
27 completed was completed on 14 September 2009, wasn't
28 it?---The tactical planning section of the coupe
29 planning check list was completed on 14 September,
30 that's correct.
31 Do you know when it was started?---No, I do not. No, I do

1 not.

2 Now, did you know that Mr MacDonald has sworn some affidavits
3 in this proceeding?---Yes.

4 Did you know he'd sworn one on 31 August 2009?---I don't know
5 the specific date, but that sounds correct.

6 And you know that there was an injunction application in this
7 matter that was heard by Justice Forrest on 1
8 September, don't you?---I don't recall the specific
9 date, but yes.

10 You know there was an injunction application?---Yes.

11 And you know that VicForests resisted the injunction?---Yes.

12 And you know that VicForests told His Honour that they
13 intended to log the coupe in the first week of
14 September, do you know that?---I know we told His
15 Honour that we were planning to commence, if it's the
16 first week of September, I would have to take your
17 word.

18 Well, Mr MacDonald swore an affidavit on 31 August saying
19 "Subject to weather conditions VicForests currently
20 intends to commence harvesting in coupes 15 and 19 next
21 week." Do you remember him saying that?---I don't
22 have that before me, but if that's what the affidavit
23 says - - -

24 Now, on 31 August the coupe planning, tactical planning
25 section hadn't been completed?---Certainly, no.

26 And the operational planning section was incomplete?---The
27 operational planning section of the check list is
28 incomplete.

29 And there was no way of knowing how long it would take to
30 complete?---Well, there's no way of me knowing, looking
31 at the check list in this court, knowing how long it

1 would complete. I have no idea what information
2 Cameron had or the operational planning section at the
3 time of swearing that affidavit.
4 Does VicForests take these documents seriously?---It
5 certainly does.
6 Are they simply a tick the box exercise?---No.
7 Then how could Mr MacDonald swear that "VicForests intends to
8 commence harvesting next week" when the documents are
9 not completed?---I can't answer that question.
10 Did Mr MacDonald ask you to look for the relevant
11 documentation for 15 and 19 prior to 31 August?---I
12 don't recall.
13 He might have?---I don't recall.
14 Did you assist Mr MacDonald in preparing material for his
15 affidavit?---I don't believe so, but honestly I don't
16 recall.
17 It was the case, was it not, that VicForests was telling the
18 court that it wanted to log next week when it knew that
19 it wasn't in a position to do so?---There's nothing
20 before me that indicates that's the case.
21 Well, having looked at that coupe planning cover sheet now,
22 Mr Spencer, if that was the information you had and
23 someone asked you when will we be ready to log, the
24 answer to that question, if you were honest, would be
25 "I don't know", do you agree with that?---No, I would
26 say "I would need to ask someone".
27 HIS HONOUR: Who would you ask?---I would ask the
28 operational planning staff in Orbost that the inference
29 from this is that you can't harvest, is that correct?
30 MR NIALL: And who are the people that would be asked?---I
31 would ask the operations planning manager in Orbost.

1 And who is that?---His name is Wayne Long.

2 So you would ask Mr Long. Would you ask anyone else?---I

3 mean, no, I would ask - if he is not available I would

4 ask the regional manager.

5 And who is that?---Barry Vaughan.

6 Now, going back to that document on page 2, which is under

7 the tactical planning section, item 13, do you see

8 that, Mr Spencer?---I'm sorry - - -

9 Item 13 on page 2?---Yes.

10 It says "Have all the environmental and social risks been

11 identified and assessed for this coupe? If new risks

12 are identified please update aspects and impacts

13 register"?---Yes.

14 Do you say that VicForests identified all environmental

15 risks?---The risks referred to in section 13 - excuse

16 me - are from the risk register within VicForests of

17 key risks. There is a list in respect to East

18 Gippsland and the various areas, and as stated here,

19 "The lists that we have identified as being significant

20 have been checked."

21 And they are on the aspects and impacts register?---That's

22 correct.

23 And you don't - I think you don't refer to that in your

24 affidavit?---No, I do not.

25 And that's a document that VicForests maintains?---The

26 aspects and impacts register is a requirement of our

27 sustainable forest management system.

28 And VicForests maintains that register?---Yes, it does.

29 And that's on a computer?---The control copy of the register

30 - I'm sorry, I just need to recall. There may be a

31 hard copy control copy, just off the top of my head I

1 am not sure.

2 And what does it list, Mr Spencer?---The aspects and impacts
3 register?

4 Yes?---Aspects and impacts is a term I guess introduced by
5 environmental management systems, though often for
6 common understanding equates to risks and outcomes of
7 activities, and it lists social, economic,
8 environmental risks and how we manage them as a
9 business.

10 I call for that, if Your Honour pleases.

11 HIS HONOUR: Yes.

12 MR REDD: Your Honour, I can't produce that now, but we can
13 certainly make enquiries overnight.

14 HIS HONOUR: Yes.

15 MR NIALL: So the document I have just been asking you
16 questions about, the coupe planning check list, is the
17 second document you produced in your affidavit in
18 relation to coupe 15. You say in paragraph 75 that no
19 field assessment was conducted from 2009 because one
20 had been conducted in December 2006. And I will come
21 back to that, but a little bit later on in your
22 affidavit in paragraph 79 you refer to two printouts
23 from CIS dated January 2009, the first is LRS 37 and
24 the second is LRS 38. Can I take you to 37, please.
25 And from what I understand in paragraph 79, what you
26 are saying is that "I can't produce the plot sheets and
27 the field maps, but here's the printout of the CIS
28 which records the relevant information", am I right in
29 that?---Yes, the plot sheets and the field maps are not
30 - were not within the coupe file, and could not be
31 located, though the information from that raw data is

1 entered into the CIS and therefore the page LRS 37
2 represents that, yes, that's what we are saying.
3 Thank you, I will come to those. Now, you say that the plot
4 sheets and the field maps were not in the file. Are
5 you able to tell His Honour whether or not you know
6 whether they were done or not?---I was under the
7 understanding they'd been done, but their location we
8 couldn't find.
9 So you don't know whether or not they'd been
10 done?---Certainly the CIS recorded that a field
11 assessment had been undertaken, therefore I would
12 assume there was a map and plot sheets, though I
13 couldn't locate them.
14 Did it identify the officer who was said to have done the
15 field assessment?---Yes, it did.
16 And who was that?---Off the top of my head I can't recall.
17 All right, we will come to that when we come to these
18 documents, I think. If you go to LRS 37, that's the
19 first extract from CIS which concerns coupe 15. That
20 sets out various logging estimates and the like. And
21 this is - is this an extract from the merchantable - -
22 -?---I'm sorry.
23 Are you all right there? It's a very confined space,
24 Mr Spencer, so please say if you need to stretch.
25 HIS HONOUR: We will take a break in about 10 minutes.
26 MR NIALL: Is this the merchantability and viability
27 extract?---Yes, it is.
28 And it records various items about the forest. And you will
29 see on the first page coupe 15, it says "Field check
30 performed. No"?---Yes.
31 Does that not suggest that no field assessment was

1 undertaken?---At the time that this was undertaken, the
2 reviewed reconnaissance, they did not again undertake a
3 field check, that's why I can record that when the
4 coupe was reviewed in 2009 there was no field check
5 undertaken at that time.

6 I understand. But does it mean that you can't interrogate
7 the system as to whether or not a field check was
8 performed in 2006?---No, it does not - the system
9 records previous versions of the reconnaissance
10 information, and that superseded information informed
11 that a field check had been undertaken at a previous
12 time.

13 But you haven't attached that to your affidavit?---I have
14 only attached to the affidavit the information that was
15 recorded at the time of approval on the TRP.

16 Which is January 2009; that is the information?---Yes.

17 Now, just in terms of chronology, this has the relevant
18 information being completed by 19 January 2009,
19 correct?---Yes.

20 And you know that the draft TRP was submitted to the
21 secretary in May 2009?---Yes.

22 And it was approved by the secretary in June
23 2009?---Thereabouts, yes.

24 So this is some four months prior to the submission of the
25 draft TRP to the secretary?---Prior to submission to
26 the secretary there was a process with the regional DSE
27 that takes some months. The entire approval process
28 is nearly six months long, therefore this is some time
29 before the secretary approved it, yes, though not long
30 before it was approved to the DSE as a whole.

31 Now, if I could go to LRS 38, which is the next exhibit, and

1 this is the part of the CIS system which addresses
2 management issues, which I take it includes
3 conservation, flora and fauna, correct?---The CIS
4 system, yes.

5 Now, over on "Other biodiversity issues" on the second
6 page?---Yes.

7 It says "Not present", which refers to the overlay. Now,
8 are you able to explain why other biodiversity issues
9 were not recorded by reference to the overlay?---I
10 could only interpret performing, and that was not
11 present within the coupe, so clearly from a comment was
12 present within 500 metres of the coupe in the overlay.

13 Can I ask you this, where does that 500 metres come from,
14 Mr Spencer?---500 metres was delineated in the past due
15 to the rules at the time regarding roading into coupes,
16 and that roading could be within 500 metres of a coupe
17 and be considered a part of the approval. That has
18 now changed, it's a somewhat arbitrary figure, yes.

19 What's the significance of the 500 metres for flora and
20 fauna?---It's an arbitrary figure of things within the
21 vicinity of the coupe.

22 And as far as VicForests are concerned, it doesn't matter if
23 they are in the vicinity, they have got to be within
24 the coupe?---Certain things within the vicinity may
25 impact the requirements for prescriptions within the
26 coupe, that's why we check adjacent - - -

27 In respect of any of these species, do you know?---Which
28 species, I'm sorry?

29 On the photo board?---There certainly is potential.

30 Are you able to identify what that potential is?---Would you
31 like me to go through them all?

1 I will come back to that, Mr Spencer. So the only
2 biodiversity issues that are identified were the
3 presence of a particular species of plant which was
4 located not within the coupe but within 500 metres of
5 the coupe, is that right?---On this overlay report,
6 yes, that's correct.

7 Now, why is it that in January 2009 the presence of a draft
8 LFP_SMA was not identified as a biodiversity issue in
9 this document?---I can't answer that, I don't know.

10 Well, we know that the coupe overlay identified the SMA as
11 being within the coupe for the LFP, correct?---Correct.

12 And we know that this is the completion of the process on 19
13 January 2009, but there's no reference to that, and you
14 have earlier said to His Honour that there couldn't
15 have been logging in that portion of the coupe. So in
16 those circumstances, how is it that there's no mention
17 of it under management issues in the CIS?---There is
18 additional mention under the approval of this coupe,
19 where a requirement was put on this coupe not to be
20 harvested until the finalisation of the reserves, as
21 the DSE during the approval process raised this
22 particular issue.

23 So somewhere, but not on CIS, it's said that VicForests won't
24 log until the reserves have been finalised?---Within
25 the CIS, not within the management issues, because the
26 management issue section's locked when we submit to
27 DSE. In the TRP approval, additional prescriptions
28 can be placed on VicForests by DSE, and additional
29 action was defined for these coupes not to harvest
30 until the reserves were finalised.

31 And we know that that didn't happen until October or November

1 2009, don't we?---That's correct.

2 Do you know - was that the subject, that fact, was that the
3 subject of an agreement between VicForests and
4 DSE?---Agreement in what sense?

5 Well, did VicForests agree not to log the coupes that were
6 affected by the new reserve system until the boundaries
7 had been completed?---VicForests approved - DSE
8 approval of the coupes was conditional on the
9 additional prescription of no harvesting until the
10 coupes are reserved. That was raised through - in
11 terms of the additional prescriptions are discussed
12 between DSE and VicForests regarding on how it would be
13 worded, but it was a condition of approval from the
14 DSE.

15 So are you saying that coupe 15 was not approved in June
16 2009?---No, it was approved with conditions.

17 And one of the conditions was completion of the boundaries of
18 the new reserves?---Yes.

19 So unless and until that happened, there was no approval,
20 operative approval, for coupe 15, is that
21 correct?---Until the reserve was completed we couldn't
22 commence in that coupe, that's correct.

23 Now, the finalisation of the reserves in 2009 was a major
24 issue for VicForests, was it not?---It was a
25 significant issue, yes.

26 And it was one which would have been discussed and considered
27 by Mr Pollard, the CEO on a number of occasions?---In
28 what respect? Surely it was raised, yes.

29 And it would have been - it was known to you in August 2009
30 that VicForests couldn't log until the boundaries had
31 been finalised, wasn't it?---Yes, it was.

1 And it was known to Mr MacDonald?---I don't know. I
2 wouldn't know what Mr MacDonald meant. One could only
3 assume.
4 You didn't have any conversations with him about that
5 topic?---I don't recall.
6 Well, did this only apply to 15?---My understanding is it's
7 two or three of the coupes. I would have to look at
8 the information.
9 All right. Well, have you got it in front of you?---I do.
10 Perhaps you could identify which of the coupes were subject
11 to this restriction?---One moment. Within the first
12 affidavit.
13 In your first affidavit?---Yes.
14 Yes, thank you?---It's coupe 15 on 109. Coupe 15 was -
15 coupe 27. No, coupe 27 is not limited by this,
16 that's incorrect, I'm sorry.
17 HIS HONOUR: So where were you looking,
18 Mr Spencer?---Sorry, I was looking at the first
19 affidavit, 109.
20 Yes?---Where I responded - where the response from the
21 approval of TRP was "VicForests will not harvest the
22 coupe until the icon reserve boundaries are modified."
23 Yes?---Will not harvest until approved. From my notes it's
24 only coupe 15 that that applies.
25 MR NIALL: And 26, could you have a look at 110?---Sorry,
26 yes. My mistake, and 26.
27 And in relation to 27, you yourself made the comment that:
28 "Adjacent to proposed icon reserve ensure that coupe
29 boundaries are marked outside icon reserve." Doesn't
30 that really have the same effect?---Coupe 27 was
31 different because it was, as I understood it, it was

1 about slithers on either side of the road due to the
2 mapping at a higher scale, and it was to ensure that it
3 was outside the map boundary as proposed by DSE.

4 So looking at your paragraph 110, 109 and 110, on 5 June
5 using CIS you responded to land and fire sections
6 comment in relation to 15 and in relation to 26 and
7 said "Coupe will not be harvested until icon reserve
8 boundaries are approved"?---That's correct.

9 "VicForests will not harvest in an icon reserve"?---That's
10 correct.

11 Now, - - -

12 HIS HONOUR: It all starts back at paragraph 104?

13 MR NIALL: Yes, thank you, Your Honour.

14 HIS HONOUR: Or 103, in fact. 103 says that you got the -
15 you produced the comments from the land and fire
16 section of DSE in relation to coupe 15, 19, 26 and 27,
17 and then you set out the comments with respect to 15.
18 And at 106 you set out the comments relating to coupe
19 26?---That's correct.

20 Yes, all right. Yes, I think we might just take a short
21 break and you can stretch your legs for 5 minutes, and
22 then we will come back.

23 WITNESS: Thank you.

24 (Short adjournment).

25 MR NIALL: Now, Mr Spencer, I just want to take you back to
26 your affidavit at paragraph 103. Now, the issue of
27 the ALP reserves hadn't been - had been on the agenda
28 since 2006 and wasn't settled until late 2009,
29 correct?---That's my understanding, yes.

30 Now, on paragraph 104 you say that Mr Hammond of the DSE in
31 reference to coupe 15 said "Must not be harvested until

1 these reserves have been finalised", and after that on
2 5 June, this is 109, you added it to CIS with an
3 annotation that it will not harvest coupe until icon
4 reserves are modified - have been completed. You say
5 that CIS was annotated accordingly and also in the same
6 way in respect to coupe 26. Is it the case that
7 anyone interrogating CIS in respect of those two coupes
8 would have seen that annotation?---That annotation is
9 printed directly on the front page of the coupe plan,
10 and clearly marked that it takes precedence over
11 anything else contained within the plan, so that is the
12 case, yes.

13 And the issue of Brown Mountain and the logging of these
14 coupes, 15, 19 and 20, had been a very contentious
15 issue, had it not?---It's been a long-running issue,
16 yes.

17 And coupe 20 was logged in November 2008, is that correct -
18 October 2008?---Thereabouts. Without the information
19 in front of me I can't confirm the exact date.

20 Or at least do you recall it was late 2008?---Yes.

21 And that prompted demonstrations at the forest, did it
22 not?---As I understand it.

23 And there were arrests?---I don't know.

24 And questions were asked in parliament about the logging of
25 Brown Mountain, correct?---Yes, it was.

26 Do you know when they were asked?---Not without reference to
27 notes, no.

28 So Brown Mountain was pretty high up on VicForests' radar of
29 potential issues for 2008 and 2009, wasn't it?---It was
30 certainly a significant issue within East Gippsland,
31 yes.

1 And you know that a decision not to log 15 or 19 until the
2 reserves had been settled was a significant issue,
3 wasn't it?---Sorry, I don't understand.

4 Yes, I withdraw the question. You made the annotation on 5
5 June 2009?---Yes.

6 As you say in 109 and 110?---Yes.

7 Now, I assume that was a pretty significant step, was it
8 not?---The annotations in 109, it's part of the TRP
9 approval process that conditions are placed on coupes
10 and agreed actions are made to facilitate approval.
11 These comments were amongst many comments made, and
12 there were in addition to these coupes other coupes
13 that weren't approved at all, regardless of conditions.
14 So it was an issue. To say it was above and beyond
15 the planning and approval process maybe overstating it.

16 Well, you must have, mustn't you, have spoken to someone else
17 at VicForests about this issue; that is, not logging 5
18 and 19 until the reserve boundaries had been
19 completed?---I spoke with the senior forester of
20 tactical planning in East Gippsland in regards to the
21 approval of TRP coupes.

22 And you made it clear to him that there would be no logging
23 until the boundaries had been settled?---Certainly he
24 was aware, yes.

25 Now, who do you report to in VicForests?---I report to the
26 director of sales and planning.

27 And at the relevant time that was Mr Green?---I believe at
28 that time it was Mr Crapp.

29 Sorry, Mr Crapp?---C-R-A-P-P.

30 And if you go to Exhibit LRS 1, you have a VicForests
31 structure?---Yes.

1 And are you reporting to director, sales and
2 planning?---That's correct.

3 And you have got there Mr Green but it might have been his
4 predecessor at the time?---That's correct.

5 And Mr MacDonald sits over at director strategy in Corporate
6 Affairs Melbourne?---On this structure, that's correct.

7 Now, you told your boss, didn't you, that you had - well,
8 firstly you told your boss, that is the director, that
9 DSE had required us not to harvest the reserves until
10 the coupes had been finalised, the boundaries of the
11 reserves had been finalised?---I am not sure. I am
12 sure I briefed him on the TRP. The content of that I
13 am not clear.

14 Now, when EEG issued proceedings in the Supreme Court on 25
15 August 2009, were you told about that?---Yes.

16 Do you remember when you were told?---No.

17 Was it on the 26th?---I don't know.

18 You were told before the injunction application was heard,
19 weren't you?---I assume, but I don't know.

20 Did you come down to Melbourne for the injunction
21 application?---I work in Melbourne.

22 Did you go to court for the injunction application?---Sorry
23 about my confusion. I don't quite put which bits I
24 went to. I went to court, I am not sure if it was the
25 initial one or the subsequent. I'm sorry.

26 Now, Mr MacDonald is director, strategy and corporate
27 affairs. Now, in terms of planning and scheduling of
28 harvesting of coupes, he would need to speak to someone
29 in sales and planning, wouldn't he?---Sorry, I don't
30 understand the question.

31 Well, if Mr MacDonald wanted to know when a particular coupe

1 was being harvested, who would he get that information
2 from?--He would talk to the regional manager and his
3 staff.

4 And the relevant regional manager for East Gippsland?---Was
5 Barry Vaughan.

6 Barry Vaughan. And do you remember speaking to Mr MacDonald
7 about the schedule for harvesting these coupes 15 and
8 19?---No.

9 You have no doubt that Mr Vaughan knew that there was to be
10 no logging of 15 and 19 until the ALP reserve
11 boundaries had been settled?---No, I don't know.

12 You don't know. Did you speak to him about that topic?---I
13 don't recall.

14 Well, anyone, as you have said earlier in your evidence,
15 examining the CIS and the coupe plan would see pretty
16 prominently displayed on it there was to be no logging
17 until the reserve boundaries had been completed,
18 correct?---If a coupe plan were produced, yes, that
19 would be prominently on it.

20 Well, had a coupe plan been produced by August
21 2009?---Without checking the system - I am not familiar
22 with it, but I believe it wasn't, but I don't know.

23 You believe it wasn't or was?---I don't know. I would have
24 to look at the file.

25 So the coupe plan for coupe 15 and 26 are not in your
26 affidavit, is that right?---No, there were no coupe
27 plans as described before.

28 All right. Now, going back to LRS 38, which is the
29 management issues from the CIS?---Yes.

30 That's the relevant extract as it operates on 19 January
31 2009, correct?---Yes.

1 Now, in paragraph 75 of your affidavit you say that "In
2 respect of coupe 15 and 19", which I will come to, but
3 "In respect of coupe 15", "these coupes had already
4 been approved in the 2000 amendment, had been subject
5 to a field assessment in or around December '06, and
6 the overlay reports for 15 and 19 did not indicate any
7 new information which warranted a further field
8 assessment being conducted"?---Yes.

9 Now, is it your evidence to His Honour that the overlay
10 report for coupe 15 did not warrant a further field
11 assessment?---What we are saying here is that the new
12 overlay report didn't indicate new information that
13 wasn't already addressed in the management issues.

14 Apart from the overlay report, as you sit in the witness box
15 now, do you say that there's no new information which
16 hadn't been known in December 2006 which warrants a
17 further field assessment?---Sorry, I am not quite clear
18 on the chronology. As of today or as of - - -

19 I will ask the question again, Mr Spencer. Do you say that
20 there's nothing in the overlay report which warrants a
21 further field assessment, correct?---That's correct.

22 And do you say there's nothing else that you know of that
23 would warrant a further field assessment?---Prior to
24 the submission or today?

25 No, as of today?---Well, as further field assessments have
26 been undertaken, there were obviously things that were
27 raised subsequent to the approval.

28 Field assessments undertaken by whom?---By the DSE.

29 Well, which ones are they that you are referring to?---The
30 flora surveys - fauna surveys.

31 They are the ones in January to March '09?---I don't know the

1 exact date. I assume so.

2 So you say that the surveys conducted by DSE warrant a
3 further field assessment, do you?---I say that field
4 assessments were undertaken by the DSE after the
5 approval of the TRP coupes because additional issues
6 were raised.

7 I will just need to get this clear, Mr Spencer. You say
8 further field assessments have been conducted of coupe
9 15, is that right?---Yes.

10 And they consist of the DSE surveys?---That's correct.

11 Has VicForests done any field assessments?---No.

12 But you say that the DSE surveys constituted field
13 assessments having been conducted?---Sorry, I am a bit
14 confused with the question in regards to field
15 assessments. Are you inferring there field
16 assessments by VicForests? I'm sorry, I am a bit
17 confused.

18 It's my fault and I will start again. There was a field
19 assessment in December 2006, correct?---Yes.

20 There was an overlay report in January 2009?---Yes.

21 And your evidence is there's nothing in that overlay report
22 that warranted a further field assessment?---Prior to
23 submission in (indistinct), yes.

24 Now, subsequently DSE did some surveys in early 2009, didn't
25 they?---Yes.

26 Do you say the result of those surveys warrant a further
27 field assessment being conducted by VicForests?---No.

28 So the DSE surveys don't warrant a further field assessment
29 being conducted by VicForests. Is there anything at
30 all which you now know which warrants a further field
31 assessment being conducted by VicForests of coupe

1 15?---No.

2 Now, the situation in relation to the surveys, you know that
3 EEG provided some surveys in late January 2009 in
4 relation to the greater glider and the yellow bellied
5 glider, don't you?---I now know that individuals
6 provided surveys, yes.

7 And they related to the greater glider and the yellow bellied
8 glider, correct?---They related to arboreal mammals,
9 yes.

10 Yes. And subsequently DSE conducted a survey over three
11 nights for arboreal mammals, did they not?---They
12 conducted surveys. The exact details without reading
13 the report - but yes.

14 And you know, don't you, that at least some of those surveys
15 conducted either by EEG or by DSE exceeded the limit
16 for arboreal mammals set in the management plan?---I
17 know the reports indicate levels consistent with the
18 limit in the management plan, yes.

19 When you say "consistent with", it's the case that at least
20 some of them were in excess of, is it not?---Without
21 knowing the full detail of the methodology, but yes,
22 the reports claim that that's the case.

23 And they were reports conducted by DSE, correct? Surveys
24 conducted by DSE, I'm sorry?---I would prefer the
25 reference report in front of me, but if that's what the
26 report says.

27 Can Mr Spencer be shown volume 3 of the agreed bundle at
28 1052. Now, have you got 1052 open, Mr Spencer?---Yes.
29 You have seen that before, haven't you?---I believe so.
30 And if you go over to page 1060, you will see under the
31 heading of "Results" - perhaps if you go to 1059, I'm

1 sorry, under DSE survey program there's a reference to
2 greater glider and yellow bellied glider. It says
3 "DSE conducted a survey on 9 and 21 January, 5 February
4 and 12 March", do you see that?---Yes.
5 And you know Mr Vaughan attended one of those surveys, didn't
6 he, on 5 February?---Yes.
7 And the methods are set out there. And over on 1060 there
8 is a reference to the results, do you see that?---Yes.
9 And you will see on the last column on 12 March, in bold, on
10 transect 3, that "both the greater glider and the
11 yellow bellied glider exceeded the prescribed limit",
12 is that correct?---I see they are in bold. I believe
13 that's the limit, but without the management plan I
14 can't - - -
15 You will see it extracted at page 1055?---It would appear to
16 be the case, yes.
17 Now, do you know when that was provided to VicForests?---No.
18 The results were provided in about March 2008, weren't they -
19 2009?---I don't know.
20 You don't remember seeing them back in March 2009?---I don't
21 know, I'm sorry.
22 What about April, do you remember seeing them in April?---I
23 don't recall when I first saw that report.
24 Do you remember going to a meeting in April 2009 at which
25 these results were discussed, on 7 April?---I don't
26 recall.
27 Well, looking at it now, Mr Spencer, do you say that the fact
28 that the DSE recorded these results, if you assume that
29 that's what happened, you say that this would not
30 provide a basis for a further field assessment being
31 conducted?---By VicForests?

1 Yes?---No.

2 Why not?---If the field assessment indicates that the DSE is
3 required to undertake to create something, then
4 VicForests isn't to challenge that. It's to follow
5 the DSE guidance.

6 What's the purpose of a field assessment,
7 Mr Spencer?---Sorry, you will have to provide more
8 detail.

9 In your affidavit you say in paragraph 73 that field
10 assessment is used to confirm and assess - I'm sorry,
11 get your affidavit?---I'm sorry, is that 73?

12 Yes?---Yes.

13 You say "Field assessment is used to confirm and assess in
14 greater detail all information identified in the
15 desktop assessment. Field assessment is also used to
16 identify the presence of additional features that were
17 not identified during the desktop assessment." Now,
18 we know, don't we, that concentration of gliders was
19 not identified in the desktop assessment?---That's
20 correct.

21 And we know that the DSE performed surveys which identified
22 high levels of arboreal mammals in the coupes,
23 correct?---As from the report, yes.

24 But you say that wouldn't justify a field assessment?---By
25 VicForests?

26 Yes?---No.

27 Why not?---The field assessment is to - as much as VicForests
28 is capable, is to gain information about the area to
29 provide to DSE to assist with their approval of a
30 timber release plan. If the DSE are already aware of
31 this information through their survey, there's no

1 further additional information VicForests can give to
2 DSE. DSE are the experts in this regard.

3 Is the field assessment, as far as VicForests is concerned,
4 simply used to confirm the harvestable timber that's in
5 the coupe?---No.

6 Well, does it have any purpose for VicForests to try and
7 identify flora or fauna that are threatened within the
8 coupe?---As far as practical, yes. And if identified
9 then the assessment attempts to find that
10 characteristic. And if assistance is required it may
11 gain it, but it's not a general flora survey, no, fauna
12 survey, my mistake.

13 Now, you know, don't you, that EEG provided a hair tube
14 sample for the potoroo on about 3 February to
15 DSE?---Through preparation for this trial I understand
16 that.

17 You didn't know before you prepared for this trial?---I don't
18 believe so.

19 Did you know at the time that they were conducting, that DSE
20 were conducting surveys for the potoroo in that January
21 to March period?---In what - in what vicinity, sorry?

22 I beg your pardon, sorry?---I am not sure on where DSE are
23 conducting surveys.

24 So you don't remember any consideration of the provision of
25 an LFP, a long footed potoroo hair tube in February
26 2009?---I don't recall mention of a hair tube then, no.

27 If evidence of a potoroo in one of the coupes was given to
28 VicForests, would that provide a reason for a field
29 assessment as part of the TRP?---We would provide that
30 information to DSE for their application.

31 But VicForests itself wouldn't use it for the purposes of a

1 field assessment?---No.

2 HIS HONOUR: Well, when you say you provided to DSE for
3 verification, is it not simply for verification but for
4 a substantive response? In other words, if they
5 verified it, as you have put it to me, they also decide
6 what to do in response to that verification, is that
7 right?---Certainly if it was verified that would start
8 a sequence of events of leading towards the application
9 of the action statement, and the first step is
10 verification.

11 I see.

12 MR NIALL: But VicForests would play no role in verification,
13 is that your evidence?---VicForests doesn't have the
14 expertise in that area, so no.

15 What about if a detection is confirmed in one of the sites,
16 what role does VicForests then play?---If it's within a
17 harvesting coupe, it's active or planned - - -

18 I beg your pardon?---Are you proposing this was in an active
19 coupe or a planned coupe?

20 Inactive or active, did you say?---Are you proposing either,
21 or just in general?

22 No, a planned coupe?---Okay. If it's within a coupe, we
23 would assist DSE using our forest planning skills to,
24 if they required, in assistance in creating whatever is
25 the implication of the action statement, which we know
26 in this case is the creation of a special management
27 zone.

28 So VicForests would use its mapping skills, is it, to help
29 DSE? Or forest planning skills?---That's correct.

30 Well, how are they relevant?---All prescriptions to be
31 applied on the ground need to introduce an element that

1 can be applicable, and that they are of assistance in
2 terms of interpreting the prescriptions and working
3 through how they may be logically applied on the
4 ground, so that they can be achieved. For example, if
5 a boundary is placed across the landscape it needs to
6 be identifiable at some point, and that VicForests
7 contributes its perspective on those issues.

8 So it doesn't try and put any ecological or zoological
9 perspective on it?---It applies the prescriptions as
10 defined within the action statements.

11 Well, we are not at that stage, Mr Spencer. We are trying
12 to work out how the prescriptions get put into place.
13 Now, on this assumption you have got a coupe which is
14 active, you have got a detection which has been
15 confirmed, and I am asking you what role VicForests
16 then plays. And you say, said in your evidence, that
17 you have a forest planning role, is that
18 right?---That's correct. If it were the case that a
19 prescription needed to be applied, there is
20 practicalities in complying that prescription, and
21 VicForests would provide its perspective in that
22 regard. We don't formulate the prescriptions, we are
23 working with the application of the prescription.

24 What are the practicalities?---Well, there are practicalities
25 in regards to, for example, this prescription says, the
26 long footed potoroo, refers to creeks and ridges and
27 geographic features. It also refers to particular
28 area limits. That doesn't necessarily fit all
29 landscapes, and there are ways of proposing in the
30 landscape. VicForests would put together its
31 suggestion as to how it believes the prescription could

1 be best met.

2 Has that got anything to do with the ecological needs of the
3 species?---The way the prescriptions are developed take
4 into account the ecological needs of the species.
5 VicForests works on applying those prescriptions within
6 the landscape.

7 But are you saying that VicForests simply has a forestry
8 planning role, or are you saying something more; that
9 is, that it's got a role on how the prescription should
10 be drawn?---VicForests like all stakeholders provide
11 input into the development of prescriptions. But
12 ultimately VicForests' main focus is in the application
13 of those prescriptions across the landscape, and where
14 possible if there's a practical interpretation of how
15 the prescriptions are to be applied, VicForests will
16 contribute its perspective.

17 Its main focus is not losing harvesting timber, isn't
18 it?---VicForests wish to comply with the action
19 statement, and there are many prescriptions that
20 require interpretation of how they can be actually put
21 in place on the ground, and VicForests offers its
22 perspective in regards to that.

23 And its perspective is to maximise the timber harvesting
24 yield, is it not?---Its perspective is to comply with
25 the prescriptions and action statements that it's
26 required to comply with.

27 But in doing that it brings no ecological or zoological
28 experience, does it?---No.

29 So it's simply looking at it from a forestry perspective, do
30 you agree with that?---It's looking at it from a land
31 use perspective of how a prescription that's been

1 defined, considering the ecological requirements, can
2 be placed into the landscape.

3 But it has no experience or knowledge of what those
4 ecological requirements are, does it?---It doesn't
5 develop the prescriptions.

6 Now, I want to ask you some questions about - I want to ask
7 you some questions about surveying before logging.

8 Now, earlier you said to His Honour that VicForests
9 does not undertake surveys for fauna before logging, is
10 that right?---That's correct.

11 And DSE do not do so either, is that correct?---DSE have in
12 this case, but generally no.

13 Now, in this case what happened was that in early 2009 EEG
14 provided a number of surveys relating to arboreal
15 mammals and the sooty owl and the powerful owl, that's
16 right, isn't it?---I am not familiar with the timing,
17 but generally I believe that to be the case.

18 And as a result of those surveys being provided, DSE also
19 undertake some surveys in January to March 2009,
20 correct?---That's my understanding, but you would have
21 to ask DSE if that was the specific trigger, but I
22 understand it to be the case.

23 And is a result of those surveys being undertaken, and in
24 particular because trigger points had been reached for
25 arboreal mammals, VicForests became concerned that it
26 would lose harvestable timber in the Brown Mountain
27 coupes, didn't it?---If a trigger point has been
28 reached VicForests' main concern is there's clarity as
29 to how the prescription will be applied, yes, and it
30 may affect harvestable areas within the coupe.

31 Yes. And VicForests was keen to ensure that those surveys

1 did not reduce harvestable area for
2 VicForests?---VicForests has to - must comply with the
3 prescriptions. VicForests seeks clarity as to how
4 those prescriptions are to apply.
5 Well, it works pretty hard to avoid the prescriptions being
6 applied, doesn't it?---I'm sorry, I don't understand.
7 Well, you have just said to His Honour that VicForests
8 complies with the prescriptions, and what I suggest to
9 you is - I withdraw that. You are not implying, are
10 you, that VicForests simply passively sits by while DSE
11 imposes prescriptions, are you?---VicForests certainly
12 contributes its perspective wherever possible.
13 And that perspective is to avoid prescriptions being imposed,
14 is it not?---VicForests would prefer the application of
15 prescriptions to limit its effect on harvesting, yes.
16 Well, VicForests has a business of chopping down trees and
17 prescriptions operate to limit the trees that are
18 available, isn't that right?---Prescriptions are a
19 nature of our business we must comply with.
20 Now, VicForests became concerned about this mode of operating
21 of providing surveys and considered that it needed to
22 work out how to respond to those, didn't it?---Yes.
23 Well, when you say "mode", VicForests was concerned
24 about clarity in regards to what happens and what is
25 the process when individuals or groups, including the
26 DSE, find survey results and how does that equate to
27 the application of the procedures.
28 What's the problem with individual members of the public
29 providing survey results?---There's certainly nothing
30 wrong with a member of the public providing survey
31 results. The concern was the process that was

1 undertaken to confirm those survey results were
2 accurate, and the timing for creation of any trigger
3 management zoning which those survey results may occur
4 in.

5 And VicForests had a position that there should be a very
6 rigorous verification of any claimed
7 detections?---VicForests has the position that only
8 verified sightings should trigger the prescriptions,
9 yes.

10 And that there should be a time limit in which surveys should
11 be able to be submitted?---I am unsure where you are
12 getting that, but there certainly was a number of
13 issues raised by VicForests regarding the process
14 following and of submitting surveys, yes.

15 And as a result of that concern, there were meetings between
16 DSE and VicForests for the purpose of what was it
17 called "threatened species management",
18 correct?---That's correct.

19 And you attended those meetings on behalf of
20 VicForests?---With another member of VicForests, yes.

21 With Mr MacDonald and Mr Potter?---No, not with Mr MacDonald
22 on every occasion.

23 How many meetings were there?---Without reviewing my notes,
24 from my recollection, some half a dozen.

25 And the first meeting was held on 7 April?---Without my diary
26 I'm sorry, I can't - - -

27 Did you take notes at the meetings?---I am sure I took some
28 notes, yes.

29 And where are they?---They would be in my notebook.

30 And you recorded notes of all the meetings that you
31 attended?---There was an official minutes taken, I am

1 sure I took notes along the way, though there were
2 official minutes produced from the meetings, as I
3 understand.

4 Well, you produced the minutes, didn't you?---Not all the
5 minutes, no.

6 Well, you certainly produced the minutes of the first meeting
7 on 7 April, didn't you?---I produced the minutes of at
8 least one of the meetings, yes.

9 And you used your notes that you'd handwritten in your
10 notebook?---That's correct.

11 I call for that notebook, if Your Honour pleases.

12 MR REDD: Your Honour, it's not produced now, but again we
13 can make enquiries overnight about that.

14 HIS HONOUR: Yes.

15 MR NIALL: Now, would you have a look at this document,
16 please. One for Your Honour, one for the witness and
17 one for our learned friend?---Thank you.

18 Now, I will just get you to have a look at that document.

19 The first one is described as "Threatened species
20 management meeting 1, 7 April 2009." And that goes
21 over three pages. And then there's meeting 2, 7 May
22 2009, which goes over through to 7 and there's a table
23 at the end. Now, have you seen that document
24 before?---It certainly looks familiar, yes.

25 Well, the first three pages relates to a meeting on 7 April
26 2009 at which you attended?---Yes.

27 And I suggest that these are minutes prepared by you
28 following that meeting, is that right?---They don't
29 appear in a style that I would create the minutes - I
30 am unsure of the status of this particular document,
31 though it certainly looks consistent with notes that I

1 may have taken, but I can't confirm one way or the
2 other without reference to - - -
3 Do you know if there's another version of the document?---Not
4 off the top of my head, no.
5 Well, will you be able to find out overnight whether there's
6 another copy of the minutes of that version of that
7 document?---I can certainly look up the notes I typed
8 up, and if these are the same I am happy to agree.
9 Now, in your copy are there the words "Brown Mountain file"
10 up in the top right-hand corner?---Yes, sorry.
11 In handwriting?---Yes.
12 Do you know whose handwriting that is?---No, I don't.
13 Do you remember this meeting of 7 April, Mr Spencer?---I do.
14 And you will see under the second dot point that
15 "Environmental groups have undertaken fauna surveys
16 that purport to identify high density of arboreal
17 mammals." Do you know why the word "purport" is
18 there?---I guess - yes, a survey report was produced,
19 but the validity of that report was at that time
20 unconfirmed.
21 This is 7 April 2009?---Yes.
22 And you will see the next dot point "DSE responded to these
23 surveys by undertaking a number of surveys at the same
24 location. A report has been prepared for the
25 minister"?---Yes.
26 And that report which I have taken you to in your evidence,
27 confirmed the results of the environmental group study,
28 did it not?---It's my general understanding that's the
29 case, but I again didn't produce the DSE report or
30 undertake the subsequent surveys, so I can't be 100 per
31 cent.

1 Now, under fauna surveys, it's said "Subsequently seven
2 additional surveys of environment groups have been
3 received", and it's recorded as Lee Miezis as having
4 the response of DSE. Do you remember him saying that
5 VicForests is the harvesting organisation and therefore
6 it's their issue?---Sorry, do I recall saying that or -
7 - -

8 No, do you remember Lee Miezis saying that at the
9 meeting?---I don't recall personally, but if that's
10 what the notes say.

11 Well, it's in quotes. Does that refresh your memory?---I
12 don't recall.

13 You do recall, don't you, that in general terms at 7 April,
14 at the first meeting, DSE said it was VicForests'
15 responsibility?---These are the minutes. There was a
16 lot of discussion had that day, I don't recall that
17 being the outcome.

18 Now, this was an important issue, wasn't it?---Certainly was.
19 The question of survey?---Yes.

20 Because it had the potential to significantly impact on
21 VicForests' business, didn't it?---It had significant
22 implications, yes.

23 Because if surveys kept on being undertaken prior to logging,
24 there was a high risk of disruption to the VicForests
25 business, was there not?---There was potential, yes.

26 And VicForests did not agree that responding to the surveys
27 was its responsibility, did it?---No, it did not.

28 And its point was that "We have got a reserve system, and
29 that's where the protection of the species should be",
30 was it not?---Because the management of the reserve
31 system is a DSE responsibility.

1 And its point is that you have got all these reserve systems
2 which protect species, and outside of that VicForests
3 should be able to log, is that not right?---That's the
4 prescription, yes.

5 Well, there are also protections in relation to various
6 action statements and management plan which operates
7 outside of reserves, do they not?---There are
8 prescriptions that occur outside the reserves, yes.

9 And VicForests' position in relation to those is that there
10 shouldn't be surveying and they shouldn't be used to
11 reduce harvestable timber?---No, I disagree.

12 Now, there's a reference down at the bottom to the density
13 prescription, and over on the top of the next page
14 there was a discussion about arboreal mammals, wasn't
15 there? Do you remember that discussion?---I broadly
16 recall the discussion.

17 And it was made clear at that meeting that the results that
18 had been obtained were such that it was quite rare to
19 find animals at that density or above the threshold,
20 and on any scale the threshold densities are very high;
21 do you remember that being said?---That was a point of
22 view put forward in the meeting.

23 And that was the point of view put forward by DSE, wasn't
24 it?---By a member of DSE, as I understand it.

25 Who was it?---I don't recall specifically.

26 Was it Stephen Henry?---I don't recall specifically.

27 Well, Mr Henry conducted the surveys, hadn't he, on behalf of
28 DSE?---I believe he participated, yes.

29 And he was saying that what had been found was quite rare,
30 wasn't he?---I don't recall it was he saying that.

31 And down the bottom, you see the last dot point "It was said

1 by someone that it would be unlikely to find other
2 areas containing this density within East Gippsland",
3 do you remember that being said?---Sorry, where am I
4 reading?

5 The last dot point, do you remember that being said?---I
6 don't recall, but again, I'm sorry, it's in the notes.
7 What was being said by DSE at that meeting was that the
8 concentration of arboreal mammals was unique in East
9 Gippsland, wasn't it?---I'm sorry?

10 What was being said at that meeting by DSE, that the
11 concentration of arboreal mammals in these coupes were
12 unique within East Gippsland?---That's an
13 interpretation. I don't know if that's exactly what
14 they were saying though.

15 What did you interpret the last dot point to mean when it was
16 raised?---Reading the dot point is that it was rare,
17 yes.

18 Well, more than rare, wasn't it? You were being told that
19 it's unlikely to find it anywhere else in East
20 Gippsland, do you remember being told that?---I don't
21 recall being told that, but that's certainly what's
22 within the notes.

23 And I suggest you recorded it in the minutes?---As I said, I
24 took notes so that I could recall it after.

25 You don't recall whether these are your minutes or
26 not?---They look similar to my notes, but I - again,
27 just being shown that, I can't confirm.

28 And in relation to the particular prescription that had been
29 described in the management plan, the point was made
30 that it had never been applied before, do you remember
31 that being spoken about?---Yes.

1 So the situation as at April 2009 is that you were being
2 told, you and Mr MacDonald and Mr Potter, that the
3 threshold for these animals was high, that it was rare
4 to find them, that it was unlikely to find them in any
5 other place in East Gippsland; that was what you were
6 being told, wasn't it?---That's certainly what my notes
7 indicate, yes.

8 And this was before the timber release plan had been
9 submitted by VicForests which happened on 15 May?---I
10 don't think that's correct.

11 Well, have a look at your affidavit on page - paragraph
12 122?---Sorry, to clarify my confusion, the submission
13 to the DSE commences some many months prior to the
14 submissions to the secretary, therefore the coupes,
15 yes, you are correct, that that was prior to the
16 submission to the secretary, though it's not correct
17 that it was prior to the coupes being submitted to the
18 DSE for land and fire review and for comments to be
19 received, those comments which did not refer to the
20 arboreal mammal densities.

21 So is what happened that prior to May there was discourse
22 between VicForests and DSE about the form of the
23 TRP?---No, it's a formal approval process.

24 But that formal approval process is actually constituted by a
25 formal submission of a proposed TRP which happened on
26 15 May 2009 under the hand of the CEO, is it not?---The
27 submission is made to the land and fire area manager.
28 Responses are required from the land and fire area
29 group's comments, and then it's placed as the second
30 phase of the approval, it's given by letter from the
31 CEO to the secretary.

1 And no one at VicForests thought that it was appropriate to
2 revise the TRP as it applied to coupes 15 and 19
3 because of this rare occurrence of arboreal
4 mammals?---The TRP submitted for approval to the DSE.
5 The creation of an SMZ for arboreal mammals is the
6 responsibility of DSE, therefore we submit to DSE, and
7 if they wish to, and they do, not approve coupes, then
8 that's the DSE's prerogative.

9 If a coupe was entirely an SMZ it wouldn't be on the TRP,
10 would it?---No, a special management zone allows
11 harvesting and there are coupes solely within them.

12 If a coupe was entirely an SPZ, it would not be included in a
13 TRP, would it?---If there was a gazetted SPZ, or it was
14 within the management zoning, no, it's very unlikely.

15 Now, I come back to my question. No one at VicForests
16 thought it was appropriate to revise the TRP in
17 relation to these two coupes, 15 and 19, on the basis
18 of the very high concentration of arboreal
19 mammals?---No.

20 Did anyone turn its mind to the question of what the
21 significance of the higher concentration of arboreal
22 mammals was in these two coupes?---In what regard,
23 sorry?

24 Did anyone at VicForests turn their mind from a conservation
25 perspective about what the significance of these
26 records of arboreal mammals was?---I am not sure I
27 understand the question, but certainly if these
28 meetings were undertaken and the coupes were submitted
29 to DSE for their consideration, VicForests as we have
30 touched on doesn't have the expertise to determine the
31 significance of this find.

1 So VicForests didn't - I withdraw that. Did you turn your
2 mind to what the conservation significance was of these
3 survey results?---No.

4 Do you know if anyone in VicForests turned their minds to the
5 conservation significance of these results?---No, I
6 don't, no.

7 You would be surprised if they did, wouldn't you, Mr Spencer,
8 because the perspective of VicForests was that it's got
9 nothing to do with it, is that not right?---We would
10 seek our guidance from the DSE.

11 Now, in terms of seeking guidance from the DSE in relation to
12 those results, what actually happened, Mr Spencer, was
13 that VicForests sought to challenge the survey results,
14 didn't it?---I don't know what you are talking, sorry.

15 Well, it sought to complain about the technique that had been
16 used?---I am not familiar with the communications about
17 challenging the results, I'm sorry.

18 Your Honour, is that a convenient time?

19 HIS HONOUR: Yes. Do you want to go over to 10 o'clock or
20 half-past 10?

21 MR NIALL: 10 o'clock, please.

22 <(THE WITNESS WITHDREW)

23 ADJOURNED UNTIL 10.00 AM TUESDAY 16 MARCH 2010

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