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UPON RESUMING AT 2.14 P.M.:

<JILL REDWOOD, sworn and examined:

MS MORTIMER: Your full name is Jill Redwood?---Yes it is.

Your address is 6800 Bonang Road Goongerah in the State of
Victoria?---That's right.

What is your occupation?---It varies. I run an accommodation
business. I am a small farmer. I am a freelance writer and
cartoonist.

You have sworn three affidavits in this proceeding, Ms Redwood.
Do you have copies of the affidavits with you in the
witness box?---I do.

Your Honour, can I ask what Your Honour's practice is about
affidavits? Do you prefer for to have the witness adopt
them or I can simply ask her to take them as read.

HIS HONOUR: The witness can adopt them in a general way if
that is what is proposed. If there is some correction then
you should specifically go to that but otherwise just
adopt them in a general way.

Your Honour, there has been agreement reached on objections to
Ms Redwood's affidavit and the objections only relate to
the first affidavit so I will just go through those.

Ms Redwood, do you have a copy of your first affidavit with you
in the witness box?---Yes.

That is the one sworn on 28 August 2009?---M'mm.

Your Honour may I jus take you through the objection?

HIS HONOUR: Yes.

MS MORTIMER: And the resolution.

HIS HONOUR: Yes.

MS MORTIMER: Can I ask Your Honour first to go to paragraph 4
sub-paragraph (f) of Ms Redwood's affidavit.

1 HIS HONOUR: Yes.

2 MS MORTIMER: And in the second last sentence, the one that
3 starts, "In particular, e.g." Can I ask Your Honour to
4 delete the adjective "old growth".

5 HIS HONOUR: Yes.

6 MS MORTIMER: And to delete the words "critical habitat" from
7 before the word "area."

8 HIS HONOUR: Yes.

9 MS MORTIMER: The next amendment by resolution of the
10 objections is to paragraph 8 of Ms Redwood's affidavit.

11 HIS HONOUR: Yes.

12 MS MORTIMER: And may I ask Your Honour to delete the words
13 "were charged for".

14 HIS HONOUR: Yes.

15 MS MORTIMER: Paragraph 9. I ask Your Honour to delete that
16 paragraph.

17 HIS HONOUR: Yes.

18 MS MORTIMER: Those are the only amendments.

19 HIS HONOUR: Thank you.

20 MS MORTIMER: Ms Redwood, having heard those amendments which
21 are legal issues and you don't need to worry about them,
22 otherwise are the contents of that affidavit true and
23 correct?---Yes.

24 Your second affidavit is an affidavit sworn on 17 November
25 2009. Do you have a copy of that with you in the witness
26 box?---17 November 2009, yes.

27 Are the contents of that affidavit true and correct?---Yes.

28 Your third affidavit is an affidavit sworn on 16 January 2010,
29 do you have a copy of that?---19 February 2010.

30 I am sorry. Yes. That is my mistake with the date. 19 February
31 2010. You have that?---Yes.

1 Are the contents of that affidavit true and correct?---As

2 I recall they are, yes.

3 I have no questions for Ms Redwood.

4 MR WALLER: If Your Honour pleases, before cross-examination
5 could Your Honour make an order for witnesses out of
6 court.

7

8 (At the request of MR WALLER all witnesses were ordered
9 out of court.)

10 Your Honour, I intended not to exclude Mr Spencer who is
11 obviously a representative of the defendant but the
12 witnesses of fact who are not representatives of either
13 party who may or may not be in court at the moment. We
14 accept that each party is entitled to have a
15 representative. We accept also that experts are generally
16 allowed to remain but we had in mind Mr Lincoln for
17 instance or Ms McLaren who are the next witnesses today,
18 or indeed Ms Poole.

19 MS MORTIMER: None of those people are in court, Your Honour.

20 HIS HONOUR: Mr Waller, don't you have other representatives?

21 Is your client in court?

22 MR WALLER: Yes I have another representative so in that case

23 I am content for Mr Spencer to remain outside.

24 <CROSS-EXAMINED BY MR WALLER:

25 Ms Redwood, you would agree that you are very passionate about

26 Brown Mountain?---Yes.

27 And that passion is shared by many people within the community

28 of Brown Mountain and its surroundings?---Yes.

29 It is shared by people who may not be members of Environment

30 East Gippsland as well, isn't it?---Correct.

31 Because you would agree that many people within that area are

32 opposed to timber harvesting on Brown Mountain aren't

1 they?---In which area, sorry?

2 Let us start with the area immediately surrounding Brown

3 Mountain. You would agree with that statement?---That

4 would include Bonang, Goongerah, Bendoc.

5 Let us talk about the four coupes in question. You would agree

6 with me that there are many people who live in East

7 Gippsland who are opposed to timber harvesting in those

8 four coupes?---Yes.

9 And there are many people who live outside of East Gippsland

10 but in the State of Victoria who would likewise be opposed

11 to harvesting of those four coupes?---Yes.

12 There would be many people who live outside Victoria but in

13 Australia who are concerned with harvesting of those four

14 coupes?---Absolutely.

15 And there may indeed be people who live outside of Australia

16 who are equally passionate and concerned about logging in

17 those four coupes?---I would agree with that, yes.

18 You know, don't you, that many people have written to the State

19 Government expressing their opposition to the logging of

20 Brown Mountain, haven't they?---Yes, yes.

21 And you are aware that the government issued a standard form

22 response to those people who expressed their

23 concern?---Yes.

24 And you exhibit that standard form response as Exhibit 15 to

25 your first affidavit don't you?---Yes.

26 You would agree that there are quite a few groups that are

27 concerned with protecting the forests of East Gippsland

28 other than EEG, aren't there?---True.

29 One such group would be GECO do you agree?---Yes.

30 GECO is an independent grass-roots environment organisation

31 based in East Gippsland which is said to be dedicated to

1 protecting old growth forest in the region?---True.
2 GECO is not another name of EEG is it?---Absolutely not.
3 No, it is a separate entity?---Yes.
4 In some ways the interests of GECO may not be in harmony with
5 the interests of EEG, do you agree?---I don't understand
6 how that could be but I think our interests are both very
7 much along the same line.
8 But the shall we say, strategies that might be adopted by EEG
9 on the one hand and GECO on the other may not be entirely
10 the same?---That's right, we do have different strategies.
11 For instance a protest was organised yesterday in Brown
12 Mountain wasn't it?---Not that I am aware of, no.
13 You are not aware of any protest being organised
14 yesterday?---No.
15 Another group which is concerned with protecting the forests of
16 East Gippsland is the Gippsland Environment Group. That is
17 another group isn't it?---Yes.
18 That is separate from GECO?---Absolutely, yes.
19 And separate again from EEG?---That's correct.
20 Are you a member of either GECO or Gippsland Environment
21 Group?---No I am not.
22 Another group which is concerned with protecting the forests in
23 East Gippsland is the Victorian Forest Alliance?---Yes.
24 Do you agree?---Yes.
25 Again that is a distinct group separate from the other three
26 I have mentioned?---It is an umbrella group encompassing
27 many environment groups that are involved in forest
28 protection in Victoria.
29 Is it an umbrella group with which EEG has affiliation?---Yes,
30 we are one of the member groups.
31 So would you say that the Victorian Forest Alliance acts as a

1 peak environment group subsuming other groups under its
2 umbrella?---No, not exactly. I think the Victorian Forest
3 Alliance has been formed specifically so that groups can
4 network better but it actually doesn't represent the
5 groups in things such as making representations to
6 government and that type of thing, as I understand it.
7 Another group which is concerned with protecting the
8 environment of East Gippsland is the Victorian National
9 Parks Association?---That is true.
10 You mentioned in your first affidavit that EEG has 420 members.
11 EEG does not include other environmental groups as members
12 does it?---Not as members. We have a different category
13 for some groups which we share newsletters with, we do an
14 exchange so they are actually on our database but they are
15 not actually members. Not paid up members.
16 Because I want to suggest to you that given the range of
17 environmental groups that operate, EEG is not in any way a
18 peak environmental organisation in the same way that say
19 the Wilderness Society is, do you agree?---Certainly not
20 national, no.
21 But it is not a peak organisation in any sense is
22 it?---Relative to the region we could be seen as it, but
23 no, we are not a peak organisation if you look at us on a
24 Victoria-wide basis.
25 But even in the region of East Gippsland I suggest to you that
26 there are these other groups that I have mentioned which
27 are equally concerned with the protection of the forests
28 in East Gippsland?---That is true.
29 The government funding that your group has received can be
30 described as limited, do you agree?---Absolutely limited,
31 yes.

1 And sporadic, would you agree?---Yes.

2 And there have been no recurrent grants received by your group
3 from any government have there?---No.

4 Your group EEG doesn't receive government funding for the
5 purpose of running the forest ecology camps referred to in
6 your affidavit, does it?---No.

7 EEG in fact has not received any funding at all from the State
8 government, has it?---Ever?

9 Your affidavit speaks of a couple of instances of funding from
10 the Commonwealth but nothing from the State. Is that the
11 position?---I am just trying to think who actually funded
12 us for the Bonang Highway Tour Booklet. I have got an idea
13 that might have been the State but I can't recall. I think
14 it was the State government.

15 What is that booklet called?---Self-guided tour of the Bonang
16 Highway.

17 That is referred to in paragraph 3 sub-paragraph (a) of your
18 second affidavit of 17 November and you exhibit the
19 leaflet that you produced?---Yes.

20 When did you produce that leaflet, do you remember. Was it
21 1990?---Here it says 1990, yes.

22 That was before the incorporation of EEG wasn't it?---Yes it
23 must have been. I have to look back on when we were
24 incorporated but yes, I think that was.

25 Your statement of claim says that - I think it says that EEG
26 was incorporated some time in 1991, is that
27 correct?---That probably is so, if it is in my statement
28 of claim. I don't have the exact year in my head.

29 Did you take the decision to incorporate? Was that a personal
30 decision that you were involved in?---I was involved in it
31 but - along with the executive of our group. We decided we

1 should become incorporated. It wasn't my personal
2 decision.

3 In your first affidavit you refer to EEG being invited by
4 government to comment on a proposed - a discussion paper
5 concerning the Gippsland Region Sustainable Water Strategy
6 and that is an invitation that you I think exhibit as
7 Exhibit JR8 to your affidavit of 28 August?---Yes. What
8 paragraph was that?

9 It is J1R8, paragraph 4H?---Thank you. Okay, yes.

10 Do you accept that any member of the public was able to provide
11 comments on that discussion paper?---Gippsland Water
12 Strategy.

13 Yes?---I assume that would have been one that was open for
14 public comments, yes.

15 And you accept that EEG did not make a submission?---Yes.

16 To the office of Water, did it?---Probably didn't at that time.
17 No.

18 No. Are you familiar with the East Gippsland Shire Council
19 Environmental Sustainability Advisory Board?---I am not
20 very familiar with it but I think I recall there is
21 something to that effect that has been set up within the
22 Shire, yes.

23 Can I hand you a document, copies to our learned friends and to
24 His Honour. If I could provide a copy to Ms Redwood and a
25 copy to His Honour and a copy to my learned friend.
26 Ms Redwood, this has been downloaded from the internet you
27 will see, yesterday, in the bottom right hand corner and
28 it deals with - it is from the web page of the East
29 Gippsland Shire Council and it deals on the second page
30 with the East Gippsland Shire Council Environmental
31 Sustainability Advisory Board. Is it your evidence that

1 you have some understanding of its existence but not an
2 in-depth understanding?---That is true.

3 It says that in March 2008 the East Gippsland Shire Council
4 called for expressions of interest from community members
5 to be appointed to the Environmental Sustainability
6 Advisory Board, that the Advisory Board acts as a
7 consultative mechanism for council and the community and
8 provides recommendations on the best way for council to
9 approach environmental sustainability in East Gippsland,
10 provides recommendations on matters that fall within the
11 Board's terms of reference and is currently overseeing the
12 development of an environmental sustainability strategy.

13 I take it that EEG did not put itself forward as a member
14 to be appointed to this board?---No.

15 Your Honour, I tender that.

16

17 #EXHIBIT A - East Gippsland Shire Council Environmental
18 Sunstainability Strategy Document.

19 Ms Redwood, are you familiar with the Victorian Environmental
20 Assessment Council?---VEAC, yes.

21 Has EEG put itself forward for membership or other
22 participation in VEAC?---No.

23 Concerned Residents of East Gippsland for material that is
24 before the court and from other material that I might put
25 to you, is a group that has been active even after EEGs
26 incorporation, hasn't it?---CROEG, CROEG.

27 Yes?---Were active after EEGs incorporation?

28 Yes?---Not that I am aware of.

29 The forest management plan for East Gippsland is a document you
30 are familiar with?---Yes.

31 That document was published in 1995?---Okay. I can't dispute
32 that. I can't remember, but - yes.

1 It states in the acknowledgement section that, "The team, there
2 was a multi-disciplinary project team of various experts
3 who were involved in its drafting and publication but that
4 the team was guided by an East Gippsland Forest Management
5 Area Advisory Committee." You weren't on that committee,
6 were you?---That is going back in history a bit far for me
7 but I can't recall. I would say not but I am not
8 absolutely sure.

9 Any reference in there to Concerned Residents of East Gippsland
10 I take it has got nothing to do with you then?---When were
11 we incorporated again?

12 1991?---'91?

13 HIS HONOUR: I think that is not the sense of the
14 question?---No.

15 Or if it is the sense of the question the question is
16 ambiguous. I took the question to be inquiring after you
17 personally.

18 MR WALLER: Yes, that is so. I am suggesting to you that you
19 had nothing to do with the development of the forest
20 management plan by reason of sitting on any advisory
21 committee?---I don't think we were a part of an advisory
22 committee but we did make comment on the draft plan I am
23 pretty sure.

24 HIS HONOUR: I think you had better put p.374 to the witness.

25 MR WALLER: Just before I do, when you say you made comment on
26 the draft plan are you there referring to a Timber Release
27 Plan?---No, the East Gippsland Forest Management Plan.

28 If I could ask you to look at Vol.1 of the agreed book which
29 will be provided to you in a moment, and if you could go
30 to p.374 - the page number is in the bottom right hand
31 corner. You will see there is a list of people at the top

1 and that is the multi-disciplinary project team but then
2 later there is another list described as the East
3 Gippsland Forest Management Area Advisory Committee, and
4 second amongst them is Leonie Cameron. Is that someone you
5 are familiar with?---Yes, yes.

6 You will see that there is reference to Concerned Residents of
7 East Gippsland. I want to ask you, given that your entity,
8 Environment East Gippsland was incorporated in 1991 does
9 the absence - let me rephrase the question. Leonie
10 Cameron wasn't representing EEG at that time was
11 she?---She was representing us under one of our names and
12 I am not sure whether this whole process may have started
13 before we were incorporated and so the name has continued
14 on in the end of the final document.

15 Is it the case that Concerned Residents of East Gippsland still
16 operates under that name in some way?---No.

17 It doesn't?---We haven't used that name for years.

18 When would be the last time you had used that name?---If we
19 were incorporated in 1991 then it probably would have been
20 soon after that we would have stopped using that name,
21 although that name could appear on some of the things that
22 we had produced back then that was used for several years
23 afterwards.

24 Could I show you a document please?---Yes.

25 HIS HONOUR: Did Ms Cameron hold an office with Concerned
26 Residents of East Gippsland or with your current
27 group?---No, she wasn't an office bearer, she was just an
28 active member, an interested person from Cann River.

29 MR WALLER: She was involved in that process in an individual
30 capacity was she?---No, I am pretty sure she must have
31 represented us then if that is the group name that is with

1 it. I had forgotten back then, it is a long time.
2 What role did you occupy within Environment East Gippsland in
3 1991 following incorporation?---That is nearly 20 years
4 ago is it? Probably coordinator. 1991? Probably
5 coordinator.
6 Would that be the most senior position within the
7 organisation?---Well, senior position? It's the role at
8 the moment does most of the coordinating and overseeing
9 and the work, yes.
10 You've occupied that role since 1991 continuously?---I can't
11 remember when I first started in that role or under that
12 title.
13 But putting titles aside, is it fair to say that you have been
14 the or a senior person within the group at all
15 times?---Since we were incorporated, yes.
16 HIS HONOUR: Do you know if this advisory committee kept
17 functioning after this plan was released or what happened
18 to it?---(Inaudible response).
19 MR WALLER: Could I show you another document with a copy to
20 His Honour and our learned friends. Do you recognise that
21 document?---So far I don't recognise the photos at the
22 back. No, 2003. EEG put in a submission to the 2003
23 Victorian Bushfire Inquiry but not under that name.
24 So this particular document which is headed "Concerned
25 Residents of East Gippsland" and constitutes a submission
26 to the 2003 Victorian Bushfire Inquiry is not anything, so
27 far as you're aware, that EEG produced?---I'd have to read
28 the text to be absolutely sure but I'm not sure why we
29 would use that logo and I've always wanted to get rid of
30 that name ever since I first joined the group because it
31 doesn't reflect what we're about, so I don't know if I was

1 to put in this submission why that letterhead logo would
2 be heading it.

3 Because by this stage this is more than ten years after the
4 incorporation of EEG?---Yes.

5 And there doesn't appear to be any mention of EEG in this
6 document so I wanted to suggest to you that this document
7 is not the product of EEG, is it?---It doesn't have a name
8 attached to it, does it, like a person's name. As I said,
9 I would have to read it to find out if I can recognise any
10 of those paragraphs. Through these references though
11 there could have been that one of our members could have
12 put this together because I know they were using a lot of
13 references of various scientific journals and papers and
14 they may have used an old letterhead. That's the only
15 thing I can think of at the moment, Mr Waller.

16 But it's not just the letterhead, is it, because the first page
17 has several mentions of CROEG?---Yes.

18 And describes it as a community group focused on environmental
19 issues in East Gippsland?---M'mm.

20 So, as at 2003 it would be inappropriate to be describing EEG
21 if that's what this is supposed to be doing in those
22 terms, do you agree?---Can you repeat that question.

23 If this is a document intended to reflect the views of EEG then
24 it's inaccurate in some respect, isn't it?---It's
25 inaccurate if that's the name that's been used, yes.

26 This is not a document that your familiar with?---As I said,
27 I'd have to read through it to be sure but I can't recall
28 the photos - ever using these photos at the back.

29 Your Honour, I seek to tender that document.

30 MS MORTIMER: I object to that, Your Honour. There's no basis
31 on which it can be tendered at the moment. The witness

1 said she doesn't know what it is.

2 MR WALLER: Your Honour, I've cross-examined the witness over

3 it. It needs to be - - -

4 HIS HONOUR: It can be tendered subject to identification and

5 you can call the author, in due course, Mr Waller.

6 MR WALLER: I don't seek to call the author. I seek to put it

7 to the witness as a document that she's been giving some

8 evidence about and it's a document that on its face

9 appears to be inconsistent with evidence that the witness

10 has earlier given about - - -

11 HIS HONOUR: I'm not sure about that.

12 MR WALLER: About CROEG or Concerned Residents of East

13 Gippsland not being a name used since on or around the

14 date of incorporation.

15 HIS HONOUR: Yes.

16 MR WALLER: This is twelve years after and to that extent it

17 does contradict that evidence and it's therefore relevant

18 as a piece of evidence that is at odds with the earlier

19 evidence to the extent that there is any connection

20 between this document and EEG. I can ask Ms Redwood if

21 this document has nothing to do with EEG.

22 HIS HONOUR: She doesn't know, as I understand it.

23 MR WALLER: (To witness) You don't know?---I can't say one way

24 or the other until I look at it properly.

25 Your Honour, I would seek to have it admitted. It can be

26 marked for identification at this point to make sense of

27 the cross-examination.

28 MS MORTIMER: I would object if anything is to be done with it

29 other than it is to be marked for identification. It's

30 providence is completely unrelated.

31 HIS HONOUR: Yes, I'll admit it on that basis at present.

1 MR WALLER: If Your Honour pleases.

2

3 #EXHIBIT B (For identification) - Submission to 2003
4 Victorian Bushfire Inquiry.

5 Ms Redwood, the plaintiff last year wanted the Minister of
6 Environment and Climate Change to make an interim
7 conservation order over an area that includes Brown
8 Mountain, didn't it?---Yes.

9 The plaintiff also wanted the Secretary of the Department of
10 Sustainability and Environment to declare a critical
11 habitat over that area?---That's right.

12 Neither of those things occurred, did it?---No.

13 Environment East Gippsland looked at ways of having those
14 decisions reviewed, didn't it?---I'm not sure decisions
15 were actually made.

16 The decisions not to do anything. The decision not to declare
17 critical habitat and the decision not to grant an interim
18 conservation order.

19 MS MORTIMER: I object to that question on the grounds that it
20 contains an assumption that's not proven by the evidence,
21 that is that there's been a positive decision not to do
22 something. Your Honour, I can explain that objection but
23 my understanding of the evidence is that the last we heard
24 was that it was still being considered.

25 HIS HONOUR: Mr Waller, I think there's a difference between a
26 failure to decide and a refusal and I think what the
27 witness said in her last answer was she wasn't sure there
28 had been a decision. Now you can pursue the same line of
29 questioning, responding to that answer, if you like, can
30 you not?

31 MR WALLER: Yes.

32 HIS HONOUR: But the answer is not - she doesn't agree that

1 there's been a refusal.

2 MR WALLER: If Your Honour would bear with me for one moment.

3 (To witness) It's the case, isn't it, that you instructed
4 - or the plaintiff instructed its solicitors to send a
5 letter to the Minister on 19 August last year stating that
6 - and I'm quoting - "your decision to refuse an interim
7 conservation order or, alternatively, your failure to
8 consider whether or not to make such an order is infected
9 by legal error" and later on that letter stated "In the
10 circumstances, your failure to make an interim
11 conservation order or to consider whether to make such an
12 order is unlawful". That was the position of the
13 plaintiff as expressed in the letter of its solicitors as
14 at 19 August 2009, wasn't it? This is all set out in
15 paragraph 50 of your first affidavit?---I'm just trying to
16 find - I'll have to refresh my memory with these things,
17 there's been so many - - -

18 Can I just ask you - and I think this may be common ground - in
19 the first line of paragraph 50 it says "On 19 August 2009
20 EEG instructed Bleier Lawyers to send a letter to the
21 defendant which said" and goes on - I think it's common
22 ground that that's an error that should in fact say "a
23 letter to the Minister" because of its content but also
24 because the response - I don't know whether there's an
25 issue about that.

26 MS MORTIMER: No, Your Honour, there's not. It should say "the
27 Minister".

28 MR WALLER: (To witness) Have you had a chance to refresh your
29 memory?---I've scanned that letter, yes.

30 HIS HONOUR: The letter itself was JR42.

31 MR WALLER: Yes, that's so. Because what your solicitors did -

1 I assume at all times your solicitors, that is EEG's
2 solicitors have acted pursuant to its instructions given
3 to them by EEG?---M'mm.

4 Do you agree?---Yes.

5 This letter written to the Minister setting out the background
6 and the request that such an order, that is an interim
7 conservation order be made concludes that if an
8 undertaking is not given by the Minister to consider again
9 making an interim conservation order in respect of
10 critical habitat at Brown Mountain and an undertaking that
11 the Minister will prevent logging on Brown Mountain until
12 a decision is made about whether to make an interim
13 conservation order and notifying EEG in writing or the
14 solicitors for EEG in writing of that decision and the
15 reasons for it, if those undertakings are not given and in
16 the absence of those undertakings if within 14 days of
17 logging of Brown Mountain notice is given to enable EEG to
18 apply to court to review the decision to refuse an interim
19 conservation order or failure to consider whether or not
20 to exercise that power your solicitors said that they
21 needed a response to the request for those undertakings or
22 commitments within two days, failing which they were
23 instructed to proceed to make an application to court for
24 urgent interlocutory relief and they would produce this
25 letter including on the question of costs. So, what I'm
26 suggesting to you is you instructed - or EEG instructed
27 Bleier Lawyers to write to the Minister to make these
28 demands and to foreshadow legal action against the
29 Minister if the demands were not met, that's the position,
30 isn't it?---That was very hard to follow, I'm sorry.

31 I take it that when your solicitors wrote these letters you

1 were sent copies of them at the time?---Yes.

2 I take it that when you made this affidavit on 28 August

3 referring in detail to these letters that you were

4 familiar with their contents?---Yes, when I read them

5 through, yes. But now trying to remember everything on

6 the spot, it's not as easy.

7 You would remember - and I'm suggesting you do remember - that

8 EEG took a very serious position on this to the point of

9 instructing its solicitors to threaten bringing

10 proceedings against the Minister if certain demands were

11 not met within 48 hours of the letter being sent. That's

12 not something that you would readily forget, I'm

13 suggesting to you?---Oh yes.

14 You agree that that would be a very big step to take?---I think

15 that was because we believed that logging was imminent and

16 we needed a fairly quick response to our request for

17 information from the Minister for a decision.

18 It wasn't just to get a quick response, it was foreshadowing

19 the issue of proceedings which you had instructed your

20 lawyers to commence if those demands were not met?---The

21 demands of receiving a response from the Minister?

22 Yes.---Yes.

23 So you agree that you told your solicitors "If we don't get the

24 response you are instructed to commence proceedings

25 against the Minister"?---We believed logging was imminent

26 so, yes, we believed that was necessary.

27 Yes, but that's not my question. Do you agree that you acting

28 on behalf of EEG instructed your solicitors to commence

29 proceedings against the Minister if an adequate response

30 wasn't received from the Minister by midday on

31 21 August?---I don't know whether we were going to proceed

1 with action against the Minister or we would've proceeded
2 with an interim injunction.

3 This letter says to the Minister that it will be produced,
4 including on the question of costs - you understood what
5 that meant?---I believe so.

6 You understood that that was a statement that if the
7 proceedings were commenced that this letter might be
8 produced as a way of securing EEG's costs of the
9 proceedings commenced against the Minister, didn't
10 you?---I'm sorry, I don't know how to answer that.

11 Let us be clear. Is it your evidence that the proceedings that
12 you instructed your solicitor to commence were to be
13 proceedings against the Minister or against some other
14 party?---I remember it was - the action was to stop the
15 logging on Brown Mountain, which I don't think was against
16 the Minister, it was an interim injunction.

17 A letter was received by your solicitor from the DSE - and this
18 is referred to in paragraph 52 of your affidavit - which
19 says "Thank you for your letter of 19 August to the
20 Minister regarding the making of an interim conservation
21 order. As this matter falls within my area of
22 responsibility the Minister has asked that I respond on
23 his behalf. Correspondence to the Minister from EEG
24 regarding this matter was received by the Department of
25 Sustainability and Environment late last week. It
26 included the detailed report by Dr Charles Meredith to
27 which he referred it is currently under consideration".
28 Do you remember - you were informed of that, weren't you,
29 by Ms Bleier on 20 August?---Yes, if that's what that
30 says, yes.

31 You weren't satisfied with that response, that is to say EEG

1 wasn't satisfied with the response on behalf of the
2 Minister, was it?---We were happy that he was considering
3 it but as far as we were concerned it needed to have fast
4 tracking consideration because we believed that Brown
5 Mountain was in imminent threat of being logged.

6 So you instructed your solicitors to reply to Ms Dripps and to
7 again foreshadow commencing proceedings against the
8 Minister, is that the position?---I don't recall
9 threatening the Minister with any sort of legal action.

10 So in the next paragraph where it sets out the text of your
11 solicitor's letter to Ms Dripps and it states that there
12 hasn't been a proper response to the earlier letter from
13 Ms Bleier. The undertakings sought haven't been provided
14 nor the request for 14 days' notice. "Our client is
15 grateful" it says in paragraph 5 "to receive some
16 correspondence arising from our 19 August letter, however,
17 given the inadequacy of your 20 August letter our client
18 is not relieved from making the necessary application to
19 the court referred to in paragraph 9 of our 19 August
20 letter, we are instructed to continue to prepare to apply
21 to the court to do so within seven days to allow for
22 proper response to our 19 August letter. A lack of
23 response or one that remains insufficient will not be in
24 the interests of justice or the court as this matter might
25 otherwise have been resolved at least at this stage
26 without the need for litigation, not be consistent with
27 the model litigant guidelines in the State of Victoria
28 including a requirement to avoid litigation and cause us
29 to rely on this letter on the question of costs". I want
30 to suggest to you that your instructions to your lawyer in
31 writing those two letters was to convey to the Minister

1 that proceedings would be taken to review the decisions,
2 that is to say the failure to make an interim conservation
3 order in respect of the coupes in question, do you
4 agree?---That sounds right.

5 You'd agree that if an interim conservation order was made that
6 would prevent logging in the coupes and that was what you
7 were aiming to achieve to get an interim conservation
8 order?---True.

9 If the Minister wouldn't make that decision you gave
10 instructions to your lawyer representing EEG to force the
11 issue against the Minister in court?---To carry out
12 interim - what's the word?

13 Interim conservation order?---No.

14 An interim - - -?---Injunction.

15 You understood, didn't you, that the role played by VicForests
16 and the role played by the DSE were quite different in
17 terms of the forest that you were concerned to
18 protect?---Quite different with a bit of overlap, yes.

19 But you understood, didn't you, that it was DSE's legal
20 obligation - - -

21 MS MORTIMER: I object to that question.

22 MR WALLER: I press it because I'm asking about this witness's
23 understanding, Your Honour, and it's reflected in the
24 evidence.

25 HIS HONOUR: I think that in the end it's a matter for me,
26 isn't it?

27 MR WALLER: The way in which the matter progressed, Your
28 Honour, may be relevant. It may go to issues of
29 discretion, possibly.

30 HIS HONOUR: Yes, all right.

31 MR WALLER: (To witness) I want to suggest to you that you had

1 a very clear understanding that DSE was the party or the
2 entity with a legal obligation and responsibility to
3 protect sensitive species?

4 MS MORTIMER: I object to that question, Your Honour, on two
5 bases: either because the answer is likely to disclose
6 communications legally privileged or, secondly, because it
7 asks this witness who is not an expert about the legal
8 obligation. This witness can't give any evidence about
9 that, it's a matter for Your Honour. My learned friend
10 wants to explore with this witness how she dealt with DSE
11 and how she dealt with VicForests on a day-to-day basis to
12 establish some dichotomy, I accept that's appropriate.
13 But pressing this witness for what her understanding the
14 legal position is, in my submission, inadmissible and
15 unhelpful.

16 MR WALLER: Your Honour, can I approach it a different way.

17 HIS HONOUR: Yes.

18 MR WALLER: Perhaps, Ms Redwood, if you look at paragraph 36 of
19 your affidavit you there refer to a letter that EEG sent
20 to the Minister on 23 April 2009. If I could ask you to
21 look at Exhibit 33 to that affidavit, which should be in
22 the folder of exhibits.

23 MS MORTIMER: May my instructor hand the witness a folder of
24 the exhibits, Your Honour, they're not there.

25 HIS HONOUR: Yes.

26 MR WALLER: If you could look, Ms Redwood, at Exhibit

27 33?---Yes.

28 That's a letter that you wrote to Ministers Jennings and

29 Lenders on 23 April 2009?---Yes.

30 You sign that letter as the coordinator of EEG?---Yes.

31 In that letter you stated that it is DSE's legal obligation and

1 responsibility to protect sensitive species?---Yes.

2 That was your understanding at the time?---Yes.

3 You also stated that VicForests was established purely to be a
4 commercially profitable entity, didn't you?---Yes.

5 That was your understanding at the time?---Yes. I could add
6 something to that, but - - -

7 You stated later in the letter that given the differing roles -
8 and I'm paraphrasing - given the differing roles that you
9 understood DSE and VicForests to play you said "We
10 therefore feel it is inappropriate that we deal with
11 VicForests regarding the destruction of habitat or of
12 sensitive species which must be protected including under
13 prescription".

14 HIS HONOUR: Mr Waller, I don't think that's really fair.

15 Before that she says "VicForests must adhere to the Code
16 of Forest Practices and the East Gippsland Forest
17 Management Plan".

18 MR WALLER: Yes.

19 HIS HONOUR: And then it is because of its performance, not its
20 expressed role that she says what she says about
21 inappropriateness, isn't it, if you read the letter
22 fairly?

23 MR WALLER: Yes, I accept what Your Honour has said in relation
24 to that part but what I want to say - and I'd suggest to
25 you, Ms Redwood, that you understood, didn't you, that
26 where an SPZ, for instance, had to be created that that
27 was not the responsibility of VicForests but the
28 responsibility of DSE?---Absolutely.

29 You say as much later in your letter where, having dealt with
30 Mr Cameron MacDonald's response you say "However, Cameron
31 MacDonald is right in one regard, SPZs are the

1 responsibility of the DSE" and you go on to say "When the
2 species were identified on Brown Mountain by a local
3 biologist in January this year, logging was halted while
4 confirmation surveys were carried out by DSE staff. This
5 precedent should be followed in other areas where similar
6 values have been recorded. Resources can be made
7 available to carry out confirmation surveys for sensitive
8 or rare species. This is the role of DSE not VicForests".
9 Those are your words in this letter, aren't they?---Yes.

10 You understood that there was a clear demarcation, as it were,
11 between the roles of DSE and the role of VicForests?---As
12 far as identifying and protecting threatened species
13 although VicForests does have a role to protect threatened
14 species as well.

15 When surveys were conducted by EEG in 2009 and these - I am
16 talking now about surveys that might have been conducted
17 by Mr Lincoln for instance, the results were sent by EEG
18 to the DSE weren't they?---I can't recall whether it was
19 EEG that sent them or Andrew sent them but we both had
20 correspondence with the DSE over it.

21 EEG didn't send those survey results to VicForests did it?---No
22 it sent them to DSE.

23 I suggest to you it sent them to DSE because EEG regarded DSE
24 as the relevant entity to deal with the issue?---Can you
25 just tell me what survey results these were because there
26 were about three or four different lots of survey results
27 during that time.

28 Let us take them in order. There was a report of Mr Bilney of
29 26 January?---Yes.

30 Do you remember that one?---Yes.

31 That was sent to the DSE wasn't it?---M'mm.

1 There was a report of Mr Lincoln of 24 February in respect of
2 potoroo?---At Brown Mountain?
3 There were three reports of Lincoln and Cop. One of
4 24 February, one of 9 March and one of 13 March?---Yes.
5 They were all sent to the DSE I suggest to you. Are you
6 familiar with all of those reports?---I am but because
7 there were so many and so much going on at that time.
8 I know there was potoroo found I think on the
9 (indistinct), one down at Survey Road, one done at Stony
10 Creek, but probably they were all sent to DSE but I think
11 at the time there was also something given to VicForests
12 in the coupes that were being logged at the time, alerting
13 them to the fact that there had been threatened species
14 found there and that they could be in contravention of the
15 law.
16 Do you refer to that in your affidavit, the communication you
17 had with VicForests?---That probably wouldn't have been
18 EEG, it may have been the people who were in the coupes at
19 the time protesting.
20 I suggest to you that EEG dealt directly with the DSE when it
21 had matters of concern in relation to threatened
22 fauna?---That's right, yes.
23 Your first affidavit from paragraphs 19 to 53 sets out in some
24 detail how these reports were sent to DSE by EEG and in
25 addition letters were sent on several occasions to the
26 Minister for Environment and Climate Change. That is an
27 accurate statement isn't it?---Yes it sounds fine.
28 And EEG also sent a letter to the Federal Minister of
29 environment Mr Garrett at the time, seeking his
30 involvement?---In critical habitat listing?
31 Yes?---Yes.

1 And there were several email and telephone communications that
2 you had as well with local DSE staff, weren't
3 there?---That's correct.

4 And I want to suggest to you that over a period of
5 approximately seven months between January and August 2009
6 EEG made no attempt to bring the information directly to
7 the attention of VicForests did it?---I can't recall but
8 I would say I probably would have targeted DSE over that
9 time.

10 I want to suggest to you that the first contact that EEG had
11 with VicForests was on 24 August 2009 when you telephoned
12 VicForests and spoke to Barry Vaughan seeking information
13 about when the harvesting would commence. Do you
14 agree?---I recall that phone call, yes.

15 Do you agree that was the first contact in that seven month
16 period that you or EEG had directly with
17 VicForests?---I can't recall.

18 That was the day before EEG served the writ on VicForests
19 wasn't it?---I can't recall but I know that it was very
20 soon after.

21 When Mr Lincoln - you are aware that Mr Lincoln was involved in
22 conducting surveys for potoroos in 2009?---Yes.

23 In and around Brown Mountain?---Yes.

24 I take it Mr Lincoln is a person well known to you?---Yes

25 I have had a fair bit to do with him while he has been
26 surveying in the area.

27 Is Mr Lincoln to your knowledge a member of EEG?---No he is
28 not.

29 Sorry?---He is not.

30 When Mr Lincoln surveys potoroos are you aware what methods he
31 uses?---Yes I think he has used hair tubing and I think

1 more recently since we have had cameras he has been using
2 the movement-sensing cameras.

3 Sorry?---I think he has also detected a potoroo skull at one
4 stage.

5 When you say, "Since we have had cameras" you are referring to
6 EEG being in possession of certain infra-red
7 cameras?---"We" being a collective group up there. I think
8 GECO also have three or four or five cameras and we have
9 about five, so combined we have got enough to use.

10 When Mr Lincoln undertakes these surveys, even though he is not
11 a member of EEG, he uses EEGs camera equipment for
12 instance, does he?---Yes, a lot of our volunteers use our
13 equipment, yes.

14 When he has completed the survey I take it he returns the
15 camera equipment to you?---Unless he has another area he
16 would like to put them in, yes he returns them to us.

17 Does EEG keep a log or a record of where the cameras are at any
18 time?---We leave that up to Andrew. He is a notorious note
19 taker so we rely on his records.

20 That question may have been ambiguous. Does EEG have a log at
21 its end of who it has given the cameras to on any
22 occasion?---Not a written log but it wouldn't be going out
23 to any more than about three known and trusted people who
24 know how to use the cameras.

25 Are you familiar with how the cameras work?---I have
26 familiarised myself with them but I haven't used them
27 enough to be very familiar so I prefer to leave that up to
28 those who are, such as Andrew Lincoln.

29 And Ms McLaren, is she in the same category as Mr Lincoln so
30 far as being someone who uses the cameras?---Certainly
31 Andrew uses them more than probably anyone who has been

1 doing surveys or helping with surveys. I would say Shirley
2 McLaren is more of a helper although I think she has
3 instigated some of the surveys, I can't recall.
4 To your knowledge is Ms McLaren a member of EEG?---No she is
5 not.
6 Neither Ms McLaren nor Mr Lincoln receive any remuneration for
7 their work?---No, not from EEG.
8 You leave it up to Mr Lincoln do you, as to where he might
9 place survey cameras?---Yes. I like to know where he is
10 going to place them but yes, I trust his judgment
11 absolutely.
12 When a camera is set up, to your knowledge it is not the
13 practice for a person to remain with the camera. The
14 camera is left to record certain images remotely or
15 automatically, so to speak?---Yes, absolutely, yes.
16 You don't personally accompany people to sites when they place
17 hair tubes, do you?---I have in the past but not for quite
18 a while now.
19 In the same way that you trust Mr Lincoln to set up his camera
20 you are prepared to trust those people to set up their
21 hair tubing as well?---Yes, under instruction, yes. Once
22 I know they have had clear instruction I do, yes.
23 You don't accompany those people when they go to collect the
24 hair tubes either do you?---Not for a long time, no.
25 How did you come to learn that Mr Lincoln had stated that he
26 had through his surveying captured an image of a potoroo
27 in or around 21 August 2009. How did you first learn of
28 that?---They came back from the coupe with the camera SD
29 cards saying they think they had found a potoroo, can we
30 use your laptop and whoever went out with him at the time,
31 I can't recall who it was, came in and put them on the

1 laptop, got the full screen and it was excitement all
2 round because we thought it was definite potoroo. So that
3 was the first time I learned about it, the day that the
4 card was retrieved from the forest.

5 Are you able to say what day that was?---No I can't remember
6 what day.

7 You are aware that Mr Lincoln contacted the DSE and advised
8 them that he had an image of a potoroo in one of the
9 coupes?---That is probably what he would have done, yes,
10 I am pretty sure I remember that.

11 You are aware also aren't you that when DSE was advised of that
12 Mr Lincoln was asked to produce the video and still images
13 to the DSE?---Yes, we actually found two potoroos but
14 I think that was for the first one we found, yes.

15 You know Mr Steven Henry within DSE?---Yes I do.

16 You contacted Mr Henry about that time, that is about 23 August
17 2009 and you told him that a Long-footed Potoroo had been
18 photographed in one of the proposed logging coupes in
19 Brown Mountain?---I can't recall off the top of my head
20 but if there is record of it, yes, that's likely what
21 I did.

22 You are familiar with Mr Miezis within the DSE?---I know of him
23 and I think I have met him once.

24 You have had communications by email with him haven't
25 you?---Yes.

26 On 24 August you received an email from Mr Miezis didn't you,
27 asking you to provide all footage, still images and video
28 taken at the camera location at which the potoroo had been
29 photographed and other camera locations at Brown
30 Mountain?---Yes.

31 You recall Mr Miezis offered to pay any costs associated with

1 sending that footage to him?---Yes.

2 Mr Miezis explained to you in another email that the reason he

3 needed the footage was to verify the claim about the

4 existence of the potoroo?---Yes.

5 Remember that?---Yes.

6 I suggest to you that after getting those emails you had a

7 telephone conversation with Mr Miezis about this issue of

8 the footage?---Yes.

9 Do you remember that?---Yes.

10 And that you told him that you would not release the complete

11 footage to him without clearance from your legal

12 advisers?---That is true.

13 After that conversation, the next day Mr Miezis sent an email

14 to you saying "I understand you are not willing to release

15 footage to the department without clearance from your

16 legal advisers. I ask that you send my request to your

17 advisers as a matter of priority and that you provide all

18 footage, images, still images and video taken at this

19 camera location and other camera locations at Brown

20 Mountain Creek for the duration of the camera being

21 located in and or adjacent to the coupes in question. This

22 along with a field visit by my staff will enable full and

23 proper verification of the report you have made. I trust

24 you understand the department cannot act on the reporting

25 until it is verified." Do you recall getting that

26 email?---Yes I do.

27 You didn't provide the footage and stills requested by

28 Mr Miezis to the DSE did you?---No.

29 Why not?---On the advice of our lawyers and also some of that

30 footage wasn't any longer available because he was wanting

31 footage the whole time the cameras had been there and each

1 time people go out and check them and there is nothing on
2 the SD cards it is wiped and put in clean again so of
3 course those records are lost.

4 You didn't explain that to Mr Miezis at the time did
5 you?---Probably not. I can't recall.

6 At no stage have you provided the SD card you have referred to
7 to DSE to enable them to verify or to - in response to
8 their request for complete footage?---It was provided to
9 our lawyers and I think the lawyers allowed them to view
10 that SD card at one stage.

11 And the SD card, that is the property of EEG is it, or is it
12 the property of Mr Lincoln so far as you know?---The
13 property of EEG as far as I know.

14 Would Your Honour excuse me for a moment. You are aware that in
15 this proceeding EEG has provided five seconds of footage
16 of a potoroo said to be taken by Mr Lincoln on or about
17 21 August?---The camera that he put out, yes.

18 Is it the position that you're aware that there was other
19 footage taken using that camera at that location which has
20 since been deleted from the SD card?---No, if that's the
21 same SD card the lawyer's in possession with, nothing's
22 been deleted of that session, like of that week or two
23 that that camera was out before it was checked again, it
24 should have everything else that was on that card at the
25 time.

26 When you viewed the SD card on the laptop and there was great
27 excitement at having discovered the potoroo, how many
28 seconds of footage did you see that day?---It was probably
29 five seconds. The cameras only take five seconds to
30 reserve - to conserve battery power in the forest because
31 otherwise they'd be going off every time a leaf falls or a

1 bush rat runs past. It only takes five seconds and then
2 cuts off.

3 So there's a series of five second grabs, are there, every time
4 there's movement of any kind recorded by the
5 camera?---Yes, and I think some of those cameras are heat
6 sensitive as well, so some are tripped by heat and
7 movement and some are just tripped by movement. Yes, it's
8 only five or ten seconds, I think.

9 The camera in question that recorded the potoroo in coupe 15,
10 was that to your knowledge a movement camera or a heat
11 camera or both?---The brand was a Moultrie and it is one
12 of the better cameras so possibly it was a heat and
13 movement sensing camera.

14 HIS HONOUR: What's the name of the brand?---Moultry - M-o-u-l-
15 t-r-y.

16 Thank you.

17 MR WALLER: And that camera is the property of EEG?---Yes, the
18 Moultrie was, yes.

19 So when you were viewing it, did you view just the five second
20 footage or did you view other footage that had been
21 collected of other animals or other movement of various
22 species as well?---Yes, we viewed everything, sometimes
23 there's cats, foxes, I can't remember what was on that
24 particular card, but there's brushtail possums, wallabies,
25 bush rats antechinus and there's a still file like a JPEG
26 photo and then there's an AVI that might take a still and
27 then a five seconds but the AVI and the JPEG AVI.

28 This is all done to your knowledge by the camera itself?---Yes.
29 Automatically?---Yes.

30 HIS HONOUR: Does the camera record the time at which it takes
31 the image?---Yes, and the temperature.

1 So that if you have the whole card in effect you not only have
2 a series of images but you have a log of when the images
3 were recorded?---That's right.

4 MR WALLER: Who to your knowledge checks the accuracy of the
5 settings which record temperature and time in the
6 cameras?---Nobody has a log of it but that would be on the
7 images themselves so we have a record of it on the SD card
8 or if we download it on to a CD or a hard drive it's all
9 on there.

10 I understand that that's where it's recorded but sometimes a
11 video camera may be picked up and it might have the wrong
12 date on it, for instance?---That's true, yes.

13 Does anybody to your knowledge check the accuracy of the date
14 before it's used?---That has happened and there's one
15 camera in particular that I think is always a problem
16 because as much as we try to reset it the date always
17 seems to go screwy on it but all the other ones are
18 checked and they've been pretty accurate, I don't think
19 we've had any problems with them.

20 The camera that was used by Mr Lincoln, is that the same camera
21 that was used by Ms McLaren?---I can't recall but I think
22 the Moultrie was our preferred camera, that could have
23 caught both of them but you would have to ask Ms McLaren.

24 I just wanted to ask you, are any of the experts that are
25 retained by the plaintiff members of EEG, to your
26 knowledge?---I think either Rohan Bilney or his parents,
27 I'm not sure, I know we've got a Bilney on the membership
28 database.

29 There's a Roger Bilney, is that Rohan Bilney's father?---Yes,
30 that's right.

31 But you don't know which of the Bilneys is the

1 member?---I can't recall, no.

2 Apart from Mr Bilney there's no one else who's a member, to
3 your knowledge?---I'm just trying to think who they are.

4 No, I couldn't say positively. I don't think any are
5 but - - -

6 Thank you, Your Honour, I have no further questions.

7 <RE-EXAMINED BY MS MORTIMER:

8 My learned friend asked you some questions about the Victorian
9 Forest Alliance and you said that, as you understood it,
10 it was formed specifically so that other groups could
11 network better. Can you explain from EEG's perspective
12 how the Victorian Forest Alliance does that, how does it
13 enable groups to network?---We have an email list so
14 whenever somebody has news it goes out on the Forest
15 Alliance list and everybody across Victoria that's
16 campaigning for forests is alerted and can comment on
17 that, so there's a lot of alerting of things that are
18 happening and backwardsing and forwardsing on the E list.
19 There's meetings held whenever we think there is an issue
20 that requires the groups to meet and discuss things and
21 maybe respond in a combined manner.

22 You also gave some evidence when my learned friend was asking
23 about whether EEG was a peak body. You said something to
24 the effect that you could be seen as a peak body in East
25 Gippsland. Can you explain why you gave that response and
26 why you think East Gippsland might be seen as a peak body
27 - Environment East Gippsland might be seen as a peak body
28 in East Gippsland?---Well, I suppose because we've been
29 around since the early '80s and we've got - we're well
30 known I suppose because we've been so active for so long
31 and we do a lot of media as well and comment on a lot of

1 government processes and I suppose we have a high profile
2 as an environment group in East Gippsland, so that's why
3 we could be seen as a peak group.

4 You were asked a series of questions about the participation of
5 both concerned residents of East Gippsland and EEG in the
6 development of the East Gippsland Forest Management Plan.
7 Can Ms Redwood be shown p.383 of the agreed book of
8 documents, it's in vol.1 please.---383, was it?
9 383. Do you see the heading "Planning process" and then
10 "proposed plan"?---Yes.

11 You'll see the sentence then says "Work commenced on this plan
12 in 1989 with the publication of a brochure". Are you able
13 to recall when Concerned Residents of East Gippsland first
14 became involved in the process? Was it around then or
15 later?---It was earlier, actually, I think. If that's the
16 time the statement of resources uses and values were put
17 together and that was a big document that informed the
18 draft forest management plan which then informed the
19 forest management plans so, yes, we commented on that and
20 had involvement in that as well as the draft plan.

21 My learned friend also asked you some questions about a
22 document that he put to you that bore the title "Concerned
23 Residents of East Gippsland" and a date in 2003. Do you
24 know anyone in this area who purports still to be running
25 an organisation called Concerned Residents of East
26 Gippsland?---Absolutely not, no.

27 Do you recall whether in 2003 anyone in this area was
28 purporting to run an organisation called Concerned
29 Residents of East Gippsland?---Not that I was ever aware
30 of, no.

31 You were asked some questions about the requests made of the

1 Minister for an interim conservation order and a critical
2 habitat declaration and you were taken to the letter which
3 is at paragraph 50 of your affidavit, so can I ask you
4 just to go back to that for a moment, Ms Redwood.

5 Paragraph 50 of your first affidavit. You see the third
6 numbered paragraph of the letter reads "Our client is
7 concerned that logging is imminent in the area known as
8 Brown Mountain" and continues?---M'mm.

9 Can I ask you to go over the page, please, to paragraphs 55 and
10 56 of your affidavit?---Yes.

11 There's a heading at paragraphs 55 and 56 that says "The
12 decision to log and imminence" and then there are then two
13 paragraphs, one where you deal with the media statement
14 made by the Minister on 21 August and one where you deal
15 with some observations that you made from your property on
16 21 August?---Yes.

17 Was there anything else from your perspective at the time that
18 led you to think logging was imminent apart from the two
19 things you talk about there?---I have a memory that there
20 was one other thing. I'm not sure whether that came from
21 the Minister or from VicForests that said there was a
22 letter that we received that said they would be planning
23 to start logging "next week". Sorry, my memory is not
24 what it should be.

25 Have a look at paragraph 61 of your affidavit, Ms Redwood, and
26 tell His Honour whether that's what you're referring to or
27 not?---Yes, that's it. "VicForests intends to commence
28 its planned harvesting next week", that's it.

29 You were then asked some questions, Ms Redwood, about who EEG
30 sends survey results to and you gave some evidence about
31 how they are sent to DSE. Now when you talk about survey

1 results being sent to DSE, are you talking about sending
2 them to a particular person in DSE?---They usually go to
3 the manager of flora and fauna, Steve Henry.

4 Where's Mr Henry based?---He's in Orbost.

5 How are they sent?---Via email now.

6 Has that always been the case?---In the past when we've had
7 results back from Barbara Triggs on hair sampling we've
8 faxed them.

9 How often in 2009 do you estimate you were in touch with
10 Mr Henry about survey results, are you able to tell His
11 Honour about that?---Golly. In 2009 there were quite a
12 few survey results back then. I think there was four -
13 possibly at least five maybe six times that were in touch
14 with Steve Henry.

15 How did you find Mr Henry to deal with?

16 MR WALLER: Your Honour, I object to that. That doesn't arise
17 out of cross-examination and it's irrelevant.

18 HIS HONOUR: What do you say, Ms Mortimer?

19 MS MORTIMER: Your Honour, in my submission, it does and that
20 will become obvious with the next couple of questions.

21 I'm going to ask some questions about Mr Vaughan.

22 HIS HONOUR: I'm prepared to allow it.

23 MS MORTIMER: (To witness) How do you find Mr Henry to deal
24 with?---Very reasonable and reliable and professional.

25 You were asked some questions about your dealings with
26 VicForests and it was suggested to you that the only
27 conversation about surveys that - or about logging that
28 you'd had with VicForests was your conversation with
29 Mr Vaughan on 24 August 2009 and your answer was that you
30 couldn't recall whether that was the only time that you'd
31 spoken to someone from VicForests. Are you able to give

1 His Honour any indication of how much contact during 2009
2 you had with Mr Vaughan?---There was another example of an
3 issue that I raised with Mr Vaughan and the response was
4 very unsatisfactory. That was to do with another coupe
5 and a breach.

6 How do you find Mr Vaughan to deal with, Ms Redwood?---Not as
7 easy as Steve Henry and from the dealings with the
8 precedence track enquiry I felt - what's the word - like
9 there was little respect there for our concerns.

10 Can I move on to the questions that you were asked by my
11 learned friend about hair tubing and you gave some
12 evidence about in the past having company people to set up
13 hair tubes and about wanting to be confident and the
14 people understood their instructions about setting them
15 up. Do you know how to do hair tubing?---Yes, I actually
16 learned from professionals in New South Wales and I've
17 passed on what I've learned to volunteers.

18 Can you explain the process, please?---Yes. What it is is a
19 tube and there's two different types: there's the solid
20 plumbing type tube with a screw-on end where you put the
21 bait and you there's a screen there that stops any animal
22 getting to it but you put the tapes on the inside, peg it
23 down into the ground with a big wire hoop, place it in
24 certain places where you think there's diggings and
25 there's likely to be potoroo, face it downhill so it
26 doesn't fill with water, a potoroo hopefully will come
27 along, sniff in it - you get a lot of bush rats, possums,
28 sometimes foxes, cats as well but they leave their hairs
29 on the inside of the tubes where there's super sticky tape
30 and then that's taken off and sent for analysis, a cross-
31 section under the microscope. The other type of hair tube

1 is a clearer one which is easy to carry into the bush,
2 they're lightweight and they fold out flat so you can
3 stick them in a packet, the same sort of thing - sticky,
4 double-sided tape on the outsides - and I make sure that
5 people are very careful not to get their own hairs on it
6 or jumper hairs because every sample costs us money to
7 analyse, so we try to keep them very clean.

8 I've no further questions, if Your Honour pleases.

9 HIS HONOUR: Thank you, Ms Redwood, you are excused.

10 <(THE WITNESS WITHDREW)

11 (Witness excused.)

12 <ANDREW STEPHEN LINCOLN, affirmed and examined:

13 MR NIALL: Mr Lincoln, is your full name Andrew Stephen

14 Lincoln?---It is.

15 Your address is RSD Bonang Road, Goongerah?---Yes.

16 What's your occupation?---I don't have an occupation at the
17 moment.

18 For the purposes of this proceeding, you have sworn an

19 affidavit of seven paragraphs together with three

20 exhibits?---That's correct.

21 Can I ask the witness be shown a copy of the affidavit please,

22 together with the exhibits. Your Honour, there is an

23 objection to the whole of the evidence on the basis of

24 opinion on the basis of qualifications. I've had some

25 discussions with my learned friends. We don't press

26 Mr Lincoln as an expert so to the extent that any opinions

27 are expressed in his evidence they're lay opinions and we

28 don't seek him to, in effect, identify the potoroo for

29 Your Honour as a potoroo long - - -

30 HIS HONOUR: Yes.

31 MR NIALL: Have you got a copy of the affidavit in front of

1 you, Mr Lincoln?---I do.

2 Before I get you to adopt that affidavit, I'd like to take you

3 to the third exhibit?---Yes.

4 Do you have that there, Mr Lincoln?---M'mm.

5 That's a photograph. Could you explain to His Honour how the

6 process by which that image was created?---Okay. With the

7 motion sensor camera set up in the bush, as the animal

8 comes in front of it and moves it and sets off the camera

9 then the specific camera takes a photo image first of the

10 animal and then straight away then it takes a five second

11 video footage of the animal in front of it.

12 Does the camera record on the still image the time and date at

13 which the picture was taken?---Yes, it does.

14 Do you recognise that photograph?---I do.

15 When did you first see that photograph?---At about 12.30 on

16 22 August last year or around that time.

17 Where were you?---I was near Brown Mountain Creek on Brown

18 Mountain.

19 How did you first view it, what was the mechanism by which you

20 viewed it?---On this camera you can open it up and view -

21 on a very small screen view your footage of what it's

22 taken over the last duration of time.

23 Are you also able in that way to observe any video footage

24 that's captured on the camera?---Yes.

25 Did you observe any video footage on the 22nd on Brown

26 Mountain?---Yes.

27 I'd ask that the attachment, Exhibit AL2 be played for the

28 witness, please.

29 (Video played to court.)

30 MR NIALL: I'm not sure if Your Honour can see that.

31 HIS HONOUR: I could but I would like to see it again.

1 (Video played to court.)

2 MR NIALL: (To witness) Are you able to tell His Honour what
3 duration the camera records a video?---As in?

4 I asked the question badly and I'll try again. That image
5 seemed to be about five seconds. Why is the image five
6 seconds?---That's just how the camera operates, it just
7 takes a five second footage.

8 Do you know why the camera is set to video periods of five
9 seconds?---That's just the way they set up the camera.

10 After you viewed it on Brown Mountain you then - what did you
11 then do?---Then I took the footage home to have a look at
12 it, again on the computer on the big screen.

13 HIS HONOUR: The word "footage" in a sense is an anomaly or an
14 anachronism, it's on a card, is that right?---Yes, it's on
15 a little SD card which goes into a computer.

16 MR NIALL: Did you download from the SD card on to a computer
17 to view?---Yes.

18 If you go back to paragraph 7 of your affidavit, and with that
19 explanation of the creation of the still image that you
20 talk about, are the contents of your affidavit true and
21 correct?---Well, for - as ASL3 for Exhibit 3, the photo is
22 actually just the one that the camera takes and not one
23 that I have cut and pasted myself.

24 Following 22 August did you have any written communication with
25 DSE?---Following 22 August? Yes.

26 When did you do that?---On the next day, on 23 August I sent an
27 email to DSE.

28 Would you have a look at these two documents, please, and then
29 I'll just get you to identify them and then they'll be
30 handed to His Honour. I think you've got a copy in the
31 witness box. If the witness could just identify the

1 document, please. Is that a copy of an email you sent to
2 DSE on 23 August?---Yes.
3 Was there an attachment?---Yes.
4 Is that document a copy of the attachment that you sent to DSE
5 on 23 August?---Yes.
6 I tender that, if Your Honour pleases.
7
8 #EXHIBIT C - Copy email to Stephen Henry.
9 HIS HONOUR: Do you need to tender the video image as well?
10 MR BEST: It's exhibited as an attachment to his affidavit,
11 Your Honour, as ASL2.
12 HIS HONOUR: Yes, that's sufficient. Continue, Mr Niall.
13 MR NIALL: It's a CD that Your Honour has in the file. (To
14 witness) The attachment to that was entitled "Report on
15 remote camera survey of potorous longipes Brown Mountain",
16 have you seen that document before?
17 HIS HONOUR: It should be longipes - pes/pedis - it's the Latin
18 word for a foot. Long foot.
19 MR NIALL: I was given some phonetic assistance this morning,
20 Your Honour. I've immediately both left my phonetic
21 assistance at home and forgotten what it was but
22 I apologise to Your Honour.
23 HIS HONOUR: Just think of "long macchiato" - "macchiato
24 longu", it's the same idea, "long foot".
25 MR NIALL: If Your Honour pleases. (To witness) Did you
26 prepare that report?---Yes, I did.
27 Why did you prepare the report?---To alert the DSE and anyone
28 else who was interested in what we found at Brown
29 Mountain.
30 Did you understand there to be any significance about a finding
31 of the Long-footed Potoroo on Brown Mountain?---Yes.
32 What was the significance?---The significance is that there's a

1 relevant action statement for the Long-footed Potoroo and
2 I believe this related to that.

3 On p.3 of the report you attached four images?---Yes.
4 And figure 2 was a still camera image of the potoroo, is that
5 correct?---Yes.

6 What are the other three images that are contained on that
7 report or how are they created?---Well, 3A, B and C are -
8 they're the actual, the five second video footage and I've
9 just paused it at certain times and just taken a print
10 screen of the computer screen, so just a copy of the
11 computer screen and then just kind of cropped it down to
12 make that image.

13 Did you also provide to DSE the five second footage or
14 not?---Yes.

15 That was at a computer file?---Yes.

16 That's the attachment that you'll see on the bottom of your
17 email, is that right?---Yes.

18 With the extension dot.ABI?---Yes.

19 Following providing that report on 23 August, did you have any
20 contact with anyone from DSE?---Following that? Yes.

21 What was that contact?---It depends how soon after. But some
22 time in the next couple of weeks I went out with a couple
23 of guys from DSE to check the site to make sure it was the
24 same one that was - - -

25 So you attended back at the site with two officers from DSE, is
26 that correct?---Yes.

27 Do you remember their names?---No I don't.

28 Did they take with them any equipment?---Yes.

29 What did they take?---A GPS. I am not positive but I think they
30 had a camera as well.

31 Did they also have a copy of any photographs or any footage

1 that you had provided?---Yes, they had the still image of
2 the potoroo.

3 Is that Exhibit ASL3?---Yes.

4 Where did you go with those gentlemen on that day?---We went
5 back to the site where these images were taken.

6 How did you know where that was?---Well both from memory and
7 from recording on my GPS.

8 Did you observe whether the officers from DSE used their GPS to
9 establish the coordinates?---Yes.

10 What did you observe?---That they were verifying - trying to
11 verify the site once we go there, to make sure it was -
12 and match it up with the GPS location that I wrote on my
13 report.

14 Did the gentlemen say anything to you?---Yes.

15 What did they say?---Well they believed it was the same spot
16 and - yeah - and they believed that the picture they had
17 of the potoroo matched up with the site that we went to.

18 Can you just explain to His Honour what they were actually
19 doing at the site when you got there?---What the two guys
20 were doing?

21 Yes?---We went out together to - we went out together to verify
22 the site and we all walked down and then when we got to
23 the site they were checking their GPS to make sure it
24 matched up and then from the same perspective as the
25 camera was taking we went around and had a look and then
26 they had their sheet of paper and were looking up to make
27 sure it looked like the same because there was a pretty
28 funny looking tree in the background, and kind of used
29 that and the other features there to verify that that is
30 where it was taken.

31 ASL1 to your affidavit if you go to that?---M'mm.

1 Do you have that?---Yes.
2 There should be a copy of a map?---Yes.
3 Your affidavit discloses that you put a mark at the site at
4 which the video was recovered?---Yes.
5 Does that accurately - given the scale of the map does it
6 accurately record where the camera was recovered by
7 you?---Yes I believe so.
8 Do you know which logging coupe within Brown Mountain the
9 camera was located in?---Yes.
10 Which coupe was that?---It was 8405020015.
11 They are the only questions I have, if Your Honour pleases.
12 <CROSS-EXAMINED BY MR REDD:
13 Mr Lincoln, are you a member of the EEG?---No.
14 Have you ever attended EEG meetings before?---No.
15 Have you ever made donations to the EEG?---No.
16 But I take it you know Jill Redwood?---Yes.
17 How long have you known Ms Redwood for?---About a year now.
18 You state in your affidavit that was sworn on 24 August last
19 year that you had been living in East Gippsland for about
20 eight months as at that date?---M'mm.
21 You are still living in East Gippsland are you?---Yes.
22 Where were you before you moved to East Gippsland?---I was
23 living in Melbourne.
24 When did you start undertaking surveys of native fauna in the
25 East Gippsland region?---About a year ago.
26 Was it Ms Redwood that encouraged you to get into that field of
27 endeavour?---Not to get into it, no.
28 How was it that you did begin undertaking native fauna
29 surveys?---Some friends I had met were getting interested
30 in it and so I started doing it then.
31 Are those friends also living in East Gippsland?---I don't

1 think they are any more.

2 Are they members of the plaintiff, of EEG to your

3 knowledge?---Not that I know of.

4 You didn't have any prior experience with native fauna surveys

5 prior to you moving to East Gippsland is that

6 right?---Yes, that's correct.

7 In paragraph 4 of your affidavit - have you got a copy of your

8 affidavit?---Yes I do.

9 You describe where it is that you set up an infra-red motion

10 sensor camera?---Yes.

11 Did you place that camera near Brown Mountain Creek because

12 that is where you thought it was most likely you would

13 have a successful detection?---I thought it was a likely

14 spot, yes.

15 Why was this. What were the factors that made you think that

16 was a likely spot to increase your chances of a

17 detection?---Just good vegetation and cover for the

18 animal.

19 Was it a relevant factor that closer to the creek the habitat

20 is more moist and wet than further away from the creek.

21 Was that a relevant factor for why you put the camera in

22 that position?---No.

23 HIS HONOUR: Were there any diggings?---Not at that specific

24 spot I don't think.

25 MR REDD: Did you prior to determining to place the camera in

26 that position, had you consulted with anyone else about

27 where you ought to place it?---I don't think so, no.

28 That was a decision completely of your own making?---Yes.

29 How was it that you obtained that infra-red camera that you

30 refer to in paragraph 4. Is that your own camera?---No.

31 Where did you obtain that camera from?---From friends in the

1 area.

2 Do you know the name of the person who gave you the
3 camera?---I don't know the name of the person who gave it
4 to me.

5 Who are the names of the friends that you are thinking
6 of?---I know it to be a Goongerah Environment Centre
7 camera but I am not sure exactly who gave it to me.

8 Who are the people that you are referring to when you refer to
9 that group. Who did you have discussions with about
10 getting a camera?---I am not sure exactly.

11 If you look at - have you got a copy of the report that you
12 emailed to DSE that was tendered in your evidence in
13 chief?---M'mm.

14 If you look at p.2 of that report?---Yes.

15 Do you have that before you, Mr Lincoln. Look at p.2 of that
16 report. Down the bottom of that page it describes that you
17 used a total of nine cameras for the purposes of that
18 survey, is that correct?---Yes.

19 Did you obtain all the cameras from the one group?---No.

20 If there were other groups you obtained cameras from who were
21 they?---Environment East Gippsland.

22 Ms Redwood was a participant in this survey was she?---Yes.

23 What was Mr Redwood's role in the survey?---In providing the
24 cameras and baits. Providing some of the cameras.

25 I am sorry, I didn't catch the first part of your answer if you
26 wouldn't mind repeating?---In providing some of the
27 cameras.

28 You have described two different types of cameras in that
29 report?---M'mm.

30 Moultrie and scout guard cameras?---Yes.

31 Do you know which cameras it was that Ms Redwood provided to

1 you?---Yes.

2 And which ones were they?---They were five Scoutguards and one

3 Moultrie.

4 The camera that is described in paragraph 4 of your affidavit,

5 you said that one was not provided by the EEG, it's

6 provided by a different group?---I'm not positive but

7 I don't think so. I think it was provided by Goongerah

8 Environment Centre.

9 Were you aware or were you of the belief prior to undertaking

10 this survey that if you obtained a detection of a Long-

11 footed Potoroo, that would have an effect on possible

12 harvesting in that area?---Was hopeful, yes.

13 Had you used a camera of the type you described in paragraph 4

14 before, prior to this particular survey?---Yes.

15 Had you used that particular camera before?---Yes.

16 How many times had you used that particular camera?---I'm not

17 sure.

18 You say in paragraph 6 of your affidavit that on Saturday

19 22 August you went back to the location where the camera

20 was and you recovered the footage?---M'mm.

21 Did you actually collect the camera itself at that time?---No.

22 What was it that you took when you left the area?---Just a SD

23 card.

24 Why did you leave the camera there?---To hopefully find it

25 again.

26 Did you return to that camera and collect it on another

27 occasion?---Yes.

28 When was that?---That was the next week with the guys from the

29 DSE.

30 Did you examine the footage from the camera when you collected

31 it?---The second time, yes.

1 And you didn't have any detections on that footage, I take
2 it?---Of the potoroo?
3 The second batch of footage, can I put it that way?---Yes. No.
4 Not of the potoroo, no.
5 So once you collected the SD card on 22 August on the
6 camera?---Yes.
7 What did you do with that card?---I took it back to look at it
8 on the computer.
9 Where were you looking at it on the computer?---At Jill
10 Redwood's house.
11 Who was it that owned the SD card? Whose SD card was it?---I'm
12 not sure whose SD card it was.
13 Did you leave Ms Redwood's house with the SD card
14 yourself?---No.
15 You left it behind?---Yes. Well - yes.
16 What is your estimation of how close the camera location was to
17 the creek?---Between 50 and 100 metres.
18 By the time you collected the camera on the 22nd, were you
19 aware that the relevant Minister had made an announcement
20 the day before, that is the 21st, to permit harvesting on
21 Brown Mountain under certain conditions? Were you aware
22 of that?---No.
23 Are you aware of the Minister's release at all about that
24 issue?---Very vaguely. Not really.
25 When is the first time you heard of the Minister making an
26 announcement about logging on Brown Mountain coups?---Some
27 time - when I got back on 22 August someone said that.
28 The following day?---Yes.
29 Do you know what has become of the camera that took the footage
30 you collected and you described in paragraph 6 of your
31 affidavit?---Of the camera?

1 Yes. Where is the camera now, do you know?---The actual
2 camera, it's still being used in the field.
3 By which group is using that at the moment?---Just a - I'm not
4 sure of the specific group that's using it or individuals.
5 I've - I might have - I think I've put it out, I'm not
6 sure.
7 Do you know if EEG is using that camera?---I don't think EEG
8 is, no.
9 What about the other group you mentioned, was it GEKO?---Yes,
10 or Goongerah Environment Centre.
11 Do you know if they're using that camera?---I don't know if
12 they're using it specifically but somebody's using it.
13 Do you know the whereabouts of that camera at the moment?---Not
14 off the top of my head.
15 Do you know someone by the name of Eliza Poole?---No.
16 There has also been an email tendered through your evidence-in-
17 chief which was you sending the report to Mr Henry at DSE
18 on 23 August last year at 3.53 in the afternoon?---Yes.
19 Prior to you sending that email, had you at all sent that
20 footage to any independent expert for identification of
21 the animal that was contained in the footage?---I hadn't
22 personally done so.
23 Have you ever been asked for that camera by anyone since you
24 took the SD card back from Brown Mountain Creek?---Yes.
25 Who is it that's asked you for it?---What do you mean by who's
26 asked me or - - -
27 Has someone asked you to give them or to produce the camera
28 that took the footage that contains the detection of the
29 animal?---Yes.
30 Who was it that asked you for that camera?---I think HWL
31 Ebsworth Lawyers.

1 Did you provide the camera?---No.

2 Why was it that you didn't provide the camera?---I was advised
3 that I didn't have to.

4 Who was it that gave you that advice?---I think it was Bleier
5 Lawyers.

6 Do you know when that was?

7 MR NIALL: I object to the question, Your Honour. It goes to a
8 communication between this witness and a lawyer. It is
9 not clear.

10 HIS HONOUR: Mr Niall, I think we've gone so far into the topic
11 that I'm going to permit the question.

12 MR NIALL: If Your Honour pleases.

13 HIS HONOUR: Yes, Mr Redd.

14 MR REDD: Would you like me to repeat that question,
15 Mr Lincoln. When was it that you were given that advice
16 not to give the camera?---Well, it wasn't my camera to
17 give, something I gave to someone but I'm not sure, some
18 time next year - - -

19 The time, the date?---I don't know.

20 Can you do a bit better than that. Can you pick a month? It
21 was August of last year when you collected the
22 footage?---September maybe, I'm not sure.

23 Were you given any advice to do anything with the camera?---No.

24 By anyone? Were you given advice about the camera beyond that
25 you've already described, which is not giving it to HWL
26 Ebsworth in response to the request?

27 MR NIALL: In my submission that is objectionable. The witness
28 has answered the question he has had communication with a
29 lawyer, and now the substance of that question is what
30 advice were you given in relation to it. Albeit he has
31 given some evidence in relation to the camera but in my

1 submission it goes too far to ask him to give that
2 substance of the advice in evidence.

3 HIS HONOUR: I must say, Mr Redd, at the moment I don't see
4 where this is going.

5 MR REDD: Your Honour, I will just go to a subpoena that was
6 issued in - - -

7 HIS HONOUR: No, I don't see where the question of production
8 of the camera is going.

9 MR REDD: There have been numerous requests for it, it hasn't
10 been made available, and Your Honour separately has
11 already seen emails from the DSE asking for the camera and
12 I think further footage as well. That is the only further
13 area of questioning.

14 HIS HONOUR: I think there is a distinction between the camera
15 and the further footage.

16 MR REDD: Your Honour, not having seen the camera or had the
17 ability to inspect it we don't know to what extent it
18 retains any memory on whether it has a hard drive - I mean
19 I don't know.

20 HIS HONOUR: I see, I understand.

21 MR REDD: We haven't been in a position to be able to determine
22 that because it has never been made available.

23 HIS HONOUR: I understand. I don't think pursuing this witness
24 is going to make that point better or worse. I understand
25 why you wanted to get hold of it and you asked for it and
26 were refused access to it.

27 MR REDD: Yes.

28 HIS HONOUR: What do you say, Mr Lincoln, does it have a memory
29 - the camera apart from the card?---It has a - something
30 which we have never used before, an internal memory but
31 I am not sure even if that works or what it does.

1 Do you think you would be in a position to be able to get the
2 camera, say overnight or something like that?---It is not
3 my camera so - - -

4 I know.

5 HIS HONOUR: It wasn't your camera when you used it. It may not
6 be your camera. Do you think you may be able to get hold
7 of it or not?---Possibly. No.

8 MR REDD: If you could make those inquiries and perhaps
9 communicate with the plaintiff's lawyers.

10 HIS HONOUR: I don't think you can ask him to do that. You can
11 ask him to bring the camera into court if you like, but
12 that is the only thing you can ask him to do.

13 MR REDD: Mr Lincoln, if you could make those inquiries
14 overnight and I will ask of you tomorrow morning if you
15 have been able to locate and bring the camera to
16 court?---Can I ask, what if the person who owns it doesn't
17 give it to me?

18 HIS HONOUR: If they don't they don't.

19 MR REDD: Mr Lincoln, who will you ask if you can actually
20 bring the camera to court?---Probably someone from the
21 Goongerah Environment Centre. Not sure who.

22 Your Honour, subject to tidying up that one inquiry in the
23 morning I don't have any further questions for this
24 witness.

25 HIS HONOUR: Thank you. Just before you re-examine, Mr Niall.
26 If you look at this picture, Mr Lincoln, just tell me what
27 you understand the notations across the bottom of the
28 image to mean. They all come from the camera, is that
29 right?---Yes.

30 Automatically?---Yes.

31 Just tell me what is 28.48 INHG and the arrow mean?---I am not

1 sure what that bit means.
2 I see?---Can't tell you the rest of it.
3 Tell me the rest of it?---Eight degrees Celsius is the
4 temperature it records.
5 Yes?---The circle is the moon phase.
6 Yes?---The next part is the date and the time and the last part
7 is the camera ID.
8 The camera ID?---Yes. Which hasn't - that is just the stock
9 standard one.
10 So on another camera would that last figure be different?---All
11 the ones I know have all got 5555555.
12 I see, so it is the camera ID in the sense that that is the
13 model of camera rather than the particular unit?---No, no,
14 I think you can program into that but we just don't
15 bother.
16 Thank you. Anything arising out of that, Mr Redd.
17 MR REDD: No there is not.
18 <RE-EXAMINED BY MR NIALL:
19 You were asked some questions about whether you had had
20 experience in conducting native fauna surveys prior to
21 coming to East Gippsland?---M'mm.
22 Have you had any training in relation to the conducting of
23 fauna surveys?---Not formal training.
24 Have you had any informal training in relation to that
25 topic?---Just basic, yes.
26 What did that training teach you?---Well, for one, how to set
27 up cameras or how to look for specific animals and -
28 different techniques and possibilities like that.
29 You were asked some questions about where the camera that took
30 the image of the animal was placed within the coupe. At
31 the same time - and you were also asked some questions

1 about the other cameras that you identify in your report.
2 At the time that you collected this camera on 22 August
3 how many cameras were placed out in the forest?---On
4 22 August?
5 Yes?---How many were out there?
6 Yes?---I think there were nine.
7 How many were in the particular coupe that this camera was
8 placed in?---Probably one or two under nine, or some maybe
9 six or seven.
10 Where within the coupe were they distributed?---Kind of from
11 the top of Legge Road down to Brown Mountain Creek and
12 then up to Errinundra Road.
13 If you have a look at the map which is ASL1?---M'mm.
14 In general terms, starting at Legge Road?---M'mm.
15 And going east - in general terms where were they located
16 within the coupe?---Say one near Legge Road, one a bit
17 further down, a bit further down again towards the creek
18 and then crossing the creek and going up towards
19 Errinundra Road on the other side.
20 What determined where you placed all of those cameras in the
21 coupe?---Just making a transect across the - across the
22 coupes.
23 How did you decide where to start, where to place the first
24 camera?---Well, we parked up on Legge Road so somewhere
25 close to that.
26 In the particular location in which each camera was placed,
27 could you tell His Honour why a particular location was
28 chosen by you?---Okay. Well, the first one, closest one
29 to Legge Road was - found diggings that we thought looked
30 like potoroo diggings, yes, so placed one there, and then
31 the next spot a bit further down where there was a bit of

1 a clearing for a camera to take a photo without
2 interference from vegetation setting off the camera and
3 then - yes, just like that.

4 You have just told His Honour about interference from
5 vegetation. Is this camera triggered by motion or heat or
6 both?---Motion sensor as far as I believe.

7 What sort of range is the motion that would trigger the
8 camera?---A few metres or - say up to five metres maybe.
9 I'm not sure exactly.

10 Prior to 22 August, how many surveys had you undertaken of
11 fauna in Coupe 15 and Coupe 19?---At least one, I'm not
12 sure if more.

13 That was with a camera, was it?---Well, the camera survey had
14 been going on for a few months but beforehand I'd done a
15 spotlighting survey of the coupe.

16 In terms of the particular camera that was used to take this
17 footage, His Honour asked whether you knew whether there
18 was internal memory to the card apart from the SD card.
19 Are you able to tell His Honour whether any internal
20 memory was used during the time the camera was placed down
21 in August 2009?---It wasn't.

22 They are the only matters I have, if Your Honour pleases.

23 HIS HONOUR: I just had one other question. You said that the
24 tree you looked at with the DSE officers was quite
25 distinctive, and that's that tree there, is that
26 right?---Yes.

27 It has got a split or bifurcated main trunk?---Yes.

28 And a branch going out the back?---M'mm.

29 It is almost like a trig point in the sense that you've got one
30 trunk closest to you and as you move around the
31 relationship between that trunk and the branch going to

1 the left and the other trunk sitting behind it will
2 change, is that right - you move around?---Yes.
3 So it is actually quite a distinctive - it's not only
4 distinctive in shape but the shape actually enables you to
5 work out what angle the photograph was taken from?---Yes.
6 And to stand with reasonable confidence on a view line?---Yes.
7 Is there anything arising out of that?

8 MR NIALL: Subject to the question of the camera, I won't ask
9 that Mr Lincoln be excused. We will address that
10 overnight.

11 MS MORTIMER: Your Honour, just before Your Honour rises, if
12 the witness can leave the witness box, Your Honour.

13 HIS HONOUR: Thank you very much Mr Lincoln. If you locate the
14 camera I would be grateful if you would bring it along and
15 I think if you can't locate it you had better come back
16 and tell us that as well. Thank you. You can leave the
17 court and there are a couple of thing I want to raise with
18 counsel.

19 <(THE WITNESS WITHDREW)

20 MS MORTIMER: Your Honour, there was one matter arising from
21 some discussions between my learned friend and I about
22 Ms Redwood's affidavit and what objections were to be
23 taken that I omitted to deal with in terms of tendering a
24 document that relieved my learned friend from having to
25 make an objection and I should do that now. It relates to
26 what Ms Redwood deposes to in paragraph 7 of her first
27 affidavit and it is about the listing of the Brown
28 Mountain area as part of the Old Growth National Estate
29 and I tender a document which establishes that perhaps
30 slightly more reliably.

31 HIS HONOUR: I don't know whether this will be helpful but in

1 relation to this question of the camera, as I understood
2 the witness's evidence, there were four of these Moultries
3 cameras. One of them comes from Ms Redwood and the others
4 come from the other group. Now if he produces a camera
5 that contrary to his last evidence has some sort of
6 memory, well and good but if he doesn't we won't actually
7 know which of the three cameras that come from the group
8 it is. Do you follow what I'm saying? Really, it is all
9 at the moment save for some sort of technical handle that
10 I can't perceive, I don't know whether it's going very far
11 Mr Redd but having said that, I am quite content for you
12 to make the request that you have made because logically
13 there is a possibility that a camera might be produced
14 that has some information in it.

15 MR REDD: Yes, I will ask.

16 HIS HONOUR: The problem if he comes back and says look I think
17 this is the camera, unless the camera has a number, they
18 all say - they all give the same ID on the image, there is
19 a difficulty.

20 MR REDD: Yes, it is probably already (indistinct) I'm no
21 technician about these matters, Your Honour.

22 HIS HONOUR: I am just raising it with you now because I think
23 we have got to think about - you can just think about what
24 might or might not be shown and it seems to me well the
25 first possibility and it is not a strong possibility,
26 given the last answers to Mr Niall but it is possible
27 there's an image on the machine and you are entitled to
28 enquire after that. But if there is no image at the
29 moment, I am at a bit of a loss to see how the actual
30 camera can be identified and I am also at a bit of a loss
31 to see where we're going and I have to say to you that you

1 have not put in cross-examination to this man that his
2 evidence was in any way untrue.

3 MR REDD: No.

4 HIS HONOUR: And I can't see how the production of the camera
5 could provide a basis for you putting that so at the
6 moment the truthfulness of his evidence as to where this
7 image was taken and when is effectively unchallenged.

8 MR REDD: No, I don't think there is any dispute on the
9 evidence as to the location of the camera and the timing
10 of the footage, Your Honour.

11 HIS HONOUR: My Associate is asking me are we formally
12 accepting Exhibit 1 and the answer is yes, we are. The
13 document you handed up to me Ms Mortimer will be Exhibit
14 1.

15 MS MORTIMER: I think it is Exhibit D, Your Honour.

16 HIS HONOUR: It is already?

17 MS MORTIMER: My learned junior tendered one and I think it was
18 marked C when it should have been 1, I think Your Honour.
19 This should be 2.

20 HIS HONOUR: Yes, C should be 1 and this should be 2.

21 MS MORTIMER: Yes, if Your Honour pleases.

22 HIS HONOUR: Thank you.

23
24 #EXHIBIT 2 - Australian Heritage Database Register of the
25 National Estate, relating to the Errinundra
26 Plateau area, Gunmark Road, Bonang.

27 I had proposed to adjourn until half-past nine but to then
28 break at one o'clock, let's not sit beyond that time. Is
29 that doable or do you want to adjourn until ten, what is
30 the position?

31 MS MORTIMER: Your Honour, we are in our learned friends' hands
32 because it is really the length of the cross-examination.

33 MR WALLER: Your Honour, can I say we understand the next

1 witness to be Ms McLaren and we would expect her evidence
2 to be short. The next witness is Dr Gillespie who deals
3 with both frogs and we have told our learned friend that
4 we are not in a position to deal with the Giant Frog only
5 the Long Brown Frog and about Ms Poole. We are certainly
6 able to deal with Ms Poole but I understand there might be
7 a problem because she is in Melbourne. Dr Gillespie is
8 here and we don't want to inconvenience experts and we
9 would like to finish him at least in respect of the one
10 frog tomorrow.

11 HIS HONOUR: I think we will adjourn until half-past nine and
12 if we run out of witnesses we will adjourn early.

13 MR WALLER: If Your Honour pleases.

14 ADJOURNED UNTIL FRIDAY 5 MARCH 2010