

1 MS MORTIMER: Your Honour, may I just raise the proposed  
2 arrangements about the production of the photographs  
3 and accompanying documentation from the view, and  
4 outline to Your Honour what we propose and see if it's  
5 suitable for Your Honour.

6 We have now put the photographs into a Powerpoint  
7 with headings on the photographs, and our learned  
8 friends want to have some time to check a couple of  
9 those headings before they finally agree that they are  
10 happy with the headings as an accurate record of what  
11 was said at the view, but we would propose that that  
12 document be - that that USB be tendered, that would be  
13 the first piece of solid evidence in that sense. We  
14 would then prepare a hard copy version of that  
15 Powerpoint, spiral bound, so the photographs were in  
16 hard copy version for Your Honour, one each for the  
17 parties and one for the witness. And then to  
18 accompany that Powerpoint there would be a commentary  
19 that would describe what was said by each of the  
20 commentators at the location where each photograph was  
21 taken. And the fourth thing would be, Your Honour, if  
22 Your Honour requires it, is the original USB from  
23 Mr Brown which he downloaded on to his computer at the  
24 site just at coupe 20. So those would be the four  
25 pieces of records.

26 HIS HONOUR: Yes. There's also the sketch that my  
27 associate made as she was going around with us.

28 MS MORTIMER: Yes, that should be the fifth.

29 HIS HONOUR: I think that should be photocopied for the  
30 parties and perhaps form part of the record.

31 MS MORTIMER: If Your Honour pleases.

1 HIS HONOUR: But you can have a look at it and see what you  
2 think. So we will do that.

3 MS MORTIMER: Perhaps, Your Honour, with the commentary then  
4 we should try and agree to cross-reference the  
5 commentary to the marks on the map if we can.

6 HIS HONOUR: Yes.

7 MS MORTIMER: As Your Honour pleases, we will attempt to do  
8 that.

9 HIS HONOUR: Yes. Has Mr Lincoln returned to the court?

10 MR WALLER: He has, Your Honour, and I will recall him in one  
11 moment. My learned friend Mr Redd has a correction to  
12 the transcript which I think he seeks to do now.

13 HIS HONOUR: Yes.

14 MR REDD: Just one correction, and I have mentioned it to my  
15 learned friend Ms Knowles and it's not a controversial  
16 one.

17 HIS HONOUR: Yes.

18 MR REDD: It's on page 272 of the transcript - - -

19 HIS HONOUR: Just wait a moment, I will make sure I have  
20 got that on the bench.

21 MR REDD: I can hand up my copy.

22 HIS HONOUR: Yes.

23 MR REDD: It's at line 18 and marked. The word "next" I  
24 think should be "last".

25 HIS HONOUR: Yes.

26 MR REDD: I will let Your Honour have a look at that. I  
27 don't have any personal recollection of Mr Lincoln to  
28 be saying next or last, but I can either tidy it up  
29 after by asking him a question in the box or the other  
30 course is that it's a transcript error.

31 HIS HONOUR: No, I think the sense is as you have noted it.

1 I didn't go back to this transcript yesterday evening,  
2 so I haven't been through it myself as yet, but - - -  
3 MR REDD: That was the only matter arising out of the  
4 transcript from our review, Your Honour.  
5 HIS HONOUR: Yes, thank you. I hand this back to you now  
6 for a moment.  
7 MR REDD: Yes.  
8 HIS HONOUR: Yes.  
9 MR REDD: Thank you, Your Honour.  
10 MR WALLER: Your Honour, we seek leave to have Mr Spencer  
11 remain in court as a representative of our client, even  
12 though he is to be a witness.  
13 HIS HONOUR: Well, what is it about his position that means  
14 that it has to be him? Who did you have here yesterday  
15 and who have you got here today?  
16 MR WALLER: We have Barry Vaughan, who is the regional  
17 manager.  
18 HIS HONOUR: Yes.  
19 MR WALLER: He is unavailable today.  
20 HIS HONOUR: I see.  
21 MR WALLER: And that's why Mr Spencer is here. On other  
22 days it's anticipated that Mr Vaughan will be here.  
23 HIS HONOUR: I see. And what's Mr Spencer's exact  
24 position?  
25 MR WALLER: Tactical planning manager.  
26 HIS HONOUR: Yes. Well, perhaps I'd better hear what  
27 Ms Mortimer says.  
28 MR WALLER: If Your Honour pleases.  
29 MS MORTIMER: Your Honour, we oppose it, and Mr Spencer left  
30 yesterday. The defendant is well aware of the order  
31 Your Honour made and complied with it yesterday. Our

1            submission - - -

2    HIS HONOUR:     The defendant sought the order.

3    MS MORTIMER:    Exactly, Your Honour, and then complied with

4            it.

5    HIS HONOUR:     But - - -

6    MS MORTIMER:    Mr Vaughan's been here nearly every day, Your

7            Honour, and VicForests as we understand it has a number

8            of people here, and I ask my learned friend to identify

9            who the other gentleman is in any event sitting next to

10           Mr Spencer.

11   HIS HONOUR:     Yes.    What does Mr Spencer give evidence

12            about?

13   MS MORTIMER:    Mr Spencer gives evidence about the preparation

14            of coupe inventory, timber release plans, and the

15            approval process for the timber release plans.

16   HIS HONOUR:     Yes.    Well, it doesn't seem to me he is going

17            to give evidence about matters that are going to be

18            raised this morning, is he?

19   MS MORTIMER:    We don't know, Your Honour.    And, Your Honour,

20            at the least the other gentleman should be identified.

21            And if he is from VicForests it should be explained why

22            he is not able to give instructions.

23   MR WALLER:     Your Honour, the other gentleman is Mr David

24            Walsh, he is a communications manager.    He joined

25            VicForests in January this year and in that way he

26            doesn't have sufficient background or familiarity with

27            the matters to enable any instructions to be given on

28            matters that might arise.    The particular reason that

29            the order for witnesses out yesterday was sought was

30            because there were to be a succession of witnesses

31            dealing with exactly - or a particular subject, namely,

1 the visual recording of potoroos within various coupes.  
2 There might have been an interaction between Ms Redwood  
3 on the one hand, Mr Lincoln, Ms McLaren, and it was a  
4 sensible course to have each of them give their  
5 evidence untainted by being present or unaffected by  
6 being present whilst others gave evidence.

7 HIS HONOUR: Yes. That might have been your purpose, but  
8 either the case proceeds on the basis of witnesses out  
9 or it doesn't. And if it does, normally you can ask  
10 for that, but you have to abide by the consequences of  
11 what you ask for.

12 Now, can I say to you that there's a sense in  
13 which it doesn't do the credibility of your witnesses  
14 benefit if they are also characterised as the persons  
15 giving you instructions. But it's a matter for you.  
16 I mean, do you follow what I am saying?

17 MR WALLER: Yes.

18 HIS HONOUR: You can say "Well, Mr Spencer is really the  
19 client." Well, that's all right, I accept that. I  
20 am not going to treat - you are not going to treat him  
21 like the other witnesses in the case, and I may accept  
22 that. But it does carry with it potential comment  
23 from the other side, or from me. So I am content in  
24 the absence of Mr Vaughan for you to have Mr Spencer in  
25 court, but I want you to be aware of what I have just  
26 said.

27 MR WALLER: I understand that, and if Your Honour gives me a  
28 moment we will reflect on it and make a decision.

29 HIS HONOUR: Yes. You can't - yes.

30 MR WALLER: I understand what Your Honour said.

31 HIS HONOUR: Yes.

1 MR WALLER: Your Honour, Mr Spencer won't remain.  
2 HIS HONOUR: Yes.  
3 MR NIALL: Your Honour, can I recall Mr Lincoln?  
4 HIS HONOUR: Yes, you can.  
5 MR NIALL: If Your Honour pleases.  
6 <ANDREW STEPHEN LINCOLN, recalled:  
7 HIS HONOUR: Yes, Mr Niall.  
8 MR NIALL: Mr Lincoln, yesterday you were asked if you could  
9 produce a camera or the V-camera that was used to take  
10 the photos of the potoroo, have you made any enquiries  
11 in relation to the camera?---Yes.  
12 And what did you do?---I made a phone call last night to  
13 someone in Goongerah to ask if I could have the camera.  
14 And who did you call?---I called a lady named Anita.  
15 And who is she?---She is someone - a member of the Goongerah  
16 Environment Centre.  
17 Is Goongerah Environment Centre also sometimes called  
18 GECO?---Yes.  
19 And do you know her surname?---Davey, maybe, but I am not  
20 sure.  
21 And does she have any position or affiliation with GECO?---I  
22 assume so but I don't know officially what it is.  
23 And what did she tell you in relation to the camera?---She  
24 said the cameras are out in the field and I couldn't  
25 have them.  
26 They are the only matters I have, if Your Honour pleases.  
27 HIS HONOUR: Yes.  
28 <FURTHER CROSS-EXAMINED BY MR REDD:  
29 MR REDD: Sorry, Your Honour. Just a quick matter of  
30 clarification mainly because I didn't quite hear your  
31 last answer?---Okay

1 Sorry, what was it that the lady told you when you asked for  
2 the camera?---She said they were out in the field and  
3 that I couldn't have them, because they were all  
4 working.

5 Right. And did she tell you when the camera would be back  
6 from the field visit at all?---No, she didn't.

7 No further questions of this witness.

8 HIS HONOUR: Yes, thank you, Mr Lincoln, you are excused.

9 <(THE WITNESS WITHDREW)

10 (Witness excused.)

11 MR NIALL: If Your Honour pleases I call Graeme Gillespie.

12 Your Honour, Dr Gillespie is an expert who is called to  
13 give evidence in relation to the large brown tree frog  
14 and also the giant burrowing frog. In accordance with  
15 Your Honour's direction my learned friend will not  
16 cross-examine on the giant burrowing frog, but if it's  
17 convenient to Your Honour I will adduce all  
18 evidence-in-chief from the witness.

19 HIS HONOUR: Yes. Well, it's a matter for him what course  
20 he follows.

21 MR NIALL: Yes, if Your Honour pleases.

22 HIS HONOUR: Yes. Can I indicate to you that I have read  
23 Dr Gillespie's reports.

24 MR NIALL: Thank you, Your Honour.

25 HIS HONOUR: And I re-read them yesterday evening to  
26 refresh my memory.

27 MR NIALL: If Your Honour pleases.

28 <GRAEME RICHARD GILLESPIE, affirmed and examined:

29 MR NIALL: Dr Gillespie, is your full name Graeme Richard  
30 Gillespie?---Yes.

31 And could you tell His Honour your address?---55 Union

1 Street, Northcote, Victoria.

2 And your current occupation?---I am the Director of  
3 Conservation and Science for Zoos Victoria.

4 And for the purposes of this proceeding, have you prepared  
5 two reports, the first of which is dated 23 February  
6 2010 - I beg your pardon, the first concerns the large  
7 brown tree frog and it is dated 23 February  
8 2010?---Correct.

9 Have you got a copy of the report for the large brown tree  
10 frog?---Yes, I do.

11 Is it dated?---It's got the year on it. There is number  
12 8547 of 2009.

13 Thank you. I thought I'd lost the report but I have found  
14 it, Your Honour. And did that report answer a letter  
15 of instruction provided by Bleyer Lawyers?---Yes, it  
16 did.

17 Do you have a copy of the letter of instruction with you,  
18 Dr Gillespie?---No, I don't.

19 I ask for a copy. It's in the agreed bundle, Your Honour.  
20 Have a look at this document, please?---This looks like  
21 it's pertaining to the long-footed potoroo.

22 Perhaps if you could give that back. Do you have also with  
23 you, Dr Gillespie, a copy of an expert witness report  
24 dated 23 February 2010 which deals with the giant  
25 burrowing frog?---Once again this report is - yes, I  
26 do.

27 Now, if I can take you firstly to - and perhaps if you could  
28 have a look at this document, please, which hasn't been  
29 filed. Is that a copy of a letter of instruction in  
30 relation to your report for the giant burrowing  
31 frog?---Yes, it is.



1 Can I take you back to your first report, that is dealing  
2 with the large brown tree frog, and take you to  
3 appendix 1?---Yes.

4 That's a copy of your curriculum vitae?---Correct.

5 Are the contents of that curriculum vitae true?---Yes.

6 I will just ask you a couple of matters in relation to it.

7 You obtained a PhD in Zoology from the University of  
8 Melbourne in 2002?---Yes.

9 And the thesis title was "The ecology of the spotted tree  
10 frog (*Litoria spenceri*) an investigation of causes of  
11 population decline". Would you give His Honour a  
12 summary of the nature of that thesis?---That thesis was  
13 undertaken in response to the need to gain knowledge of  
14 a threatened species in south-eastern Australia,  
15 predominantly in Victoria. The aim of the work was to  
16 understand the distribution, habitat requirements and  
17 ecology of that species and ecologically similar  
18 species, and to investigate causes of perceived  
19 potential decline. A series of experiments were  
20 undertaken to evaluate potentially threatened processes  
21 such as habitat disturbance and invasive fish, and  
22 conclusions were drawn as to what the predominant  
23 causes of decline were and recommendations were  
24 subsequently made through the thesis and also  
25 scientific papers and also resulted in various  
26 management documents that conservation agencies then  
27 prepared.

28 I want to ask you about your current position. You are the  
29 Director of Wildlife Conservation and Science for Zoos  
30 Victoria. Could you explain to His Honour what Zoos  
31 Victoria is?---Zoos Victoria is a statutory authority

1 of the Victorian Government, it's the body that manages  
2 the three Zoos in Victoria, Melbourne Zoo, Healesville  
3 Sanctuary and Werribee Open Range Zoo.

4 And does it have a particular host government  
5 department?---It does. Its host government department  
6 is the Department of Sustainability and Environment.

7 Yes. Now, in your position as Director of Wildlife,  
8 Conservation and Science, what are the general duties  
9 that you are required to perform in that position?---I  
10 oversee the development and implementation of research  
11 and conservation and other science related activities  
12 of the organisation. I provide advice to the board of  
13 the Zoo on those matters. I also - in our capacity,  
14 in our conservation work we also work in collaboration  
15 with universities, other agencies also undertaking  
16 conservation alert, research-related activities to do  
17 with wildlife.

18 Does it have a technical or scientific component?---It does  
19 have a highly technical component.

20 And in general terms what does that entail?---That entails  
21 both designing and undertaking and supervising research  
22 in relation to wildlife, particularly in relation to  
23 conservation matters, and particularly in relation to  
24 threatened species conservation.

25 And does it also have any supervisory role?---Provides a team  
26 of I think off the top of my head it's currently 8 or 9  
27 staff, and indirectly a much wider range of staff. I  
28 also co-supervise academically a number of Masters and  
29 PhD students.

30 And in relation to supervising staff, does that include  
31 technical and scientific staff?---It does.

1 And you have identified that you have done a PhD in relation  
2 to a spotted tree frog and also that your Masters  
3 preliminary science was in relation to a Blue Mountains  
4 tree frog. Is your work limited to frogs?---Currently  
5 no, it's not. In my professional career I have worked  
6 broadly over reptiles and amphibians in south-eastern  
7 Australia and also internationally. I have also at  
8 times worked on mammals, I have spent some time working  
9 on long-footed potoroos when I was based in East  
10 Gippsland. In my current role I oversee work on  
11 threatened species including a number of birds, several  
12 mammals, amphibians, reptiles, both within Victoria and  
13 overseas. I currently have a PhD student working with  
14 elephants in Borneo and I have a PhD student working on  
15 frogs in Victoria.

16 All right. You have just mentioned Borneo. Does your  
17 position have any international aspect to it?---It does  
18 indeed. We have got conservation and research  
19 projects overseas, mostly in Southeast Asia. I  
20 directly work on projects in Indonesia and Borneo at  
21 the moment.

22 You identify on the third page of your curriculum vitae that  
23 you were senior scientist with the Arthur Rylah  
24 Institute for Environmental Research, Department of  
25 Sustainability and Environment, and you held that  
26 position between 1997 and 2004. Could you explain to  
27 His Honour what the Arthur Rylah Institute is?---The  
28 Arthur Rylah Institute is a subdivision of the  
29 biodiversity and ecosystems services division of the  
30 Department of Sustainability and Environment. It's a  
31 research subdivision. It's a stand-alone institute

1 based in Heidelberg, Melbourne. And it provides  
2 expert advice and research capability in flora, fauna  
3 and fresh water ecology to DSE and other people after  
4 those services.

5 Now, do you have any professional knowledge and experience of  
6 the East Gippsland area?---I do.

7 And could you explain to His Honour what that knowledge and  
8 experience extends to?---In late 1996 I was employed on  
9 the pre logging survey program and I worked on that  
10 program in its various guises between late 1986 and  
11 1991, I think, was when the program started to wind  
12 down. During that time I was involved with numerous  
13 pre logging surveys in East Gippsland and co-authored  
14 quite a number of reports on that work.

15 Could you explain to His Honour what you mean by a pre  
16 logging survey?---In the early 1980s the Minister for  
17 Environment at the time enacted a process whereby any  
18 forest management block that had had less than 50 per  
19 cent of its known timber resource harvested, that it  
20 required to have a pre logging flora and fauna survey  
21 undertaken in it prior to any further logging activity.  
22 This was prior to the current forest management  
23 planning process. As a consequence of that there were  
24 two teams of botanists and zoologists established that  
25 were at that stage based in Melbourne, and these were  
26 multidisciplinary teams. They typically comprised a  
27 mammalogist, a bird biologist and a herpetologist,  
28 that's somebody who knows reptiles and amphibians, and  
29 two botanists. These teams would go out to a  
30 designated forest block. These blocks ranged in size  
31 from some 25 to 50 or 60,000 hectares. They would

1 spend two - up to four weeks at a time, somewhere  
2 between October and April, undertaking a general survey  
3 of the flora and fauna in each of those blocks.  
4 Several blocks were surveyed each spring, some autumn,  
5 and each year another group of blocks was identified by  
6 what was then the forestry department of the  
7 department. This continued into the early 1990s.

8 Did you participate in those?---I did.

9 Thank you. And you did so in your capacity as a specialist  
10 herpetologist?---Initially, and then the program was  
11 restructured and the teams were established based in  
12 Orbost, and I was recruited to supervise one of those  
13 teams. So in addition to my capacity as a specialist  
14 herpetologist I was also the team manager for one of  
15 those teams.

16 Do you know a person by the name of Natasha McLean?---I do.

17 And who is she?---Natasha McLean, I am not sure of her exact  
18 title, but she has a state-wide policy and planning  
19 role in the DSE division of biodiversity and ecosystem  
20 services, she is responsible for threatened species,  
21 recovery and planning.

22 Do you know whether she has any qualifications?---Natasha has  
23 a PhD in Zoology from the University of Melbourne.

24 And have you had any opportunity to observe her from a  
25 professional capacity?---Indeed. I deal with Natasha  
26 on a regular basis through my role in the Zoo because  
27 we consult - we work in close contact with DSE on a  
28 number of threatened species recovery programs,  
29 particularly in relation to our captive breeding and  
30 reintroduction programs.

31 And do you know a Steve Henry?---I do.

1 And do you know whether he has any qualifications?---Steve  
2 Henry has a PhD in Zoology from Monash University.  
3 His PhD was on - I think it was the behaviour and  
4 social organisation of gliding possums.

5 Now, have you got a copy of your report there? The large  
6 brown tree frog?---Yes.

7 Now, to the extent that that report contains opinions, do you  
8 honestly hold those opinions?---I do.

9 And to the extent that the report contains matters of fact,  
10 are those facts true?---Yes.

11 I will provide the letter of instructions, Your Honour, but  
12 my logistics have broken down slightly. But I would  
13 seek to tender the report, if Your Honour pleases.

14 HIS HONOUR: Yes.

15

16 #EXHIBIT 3 - Report of Dr Gillespie relating to the large  
17 brown tree frog.

18 MR NIALL: If Your Honour pleases. I have handed you a  
19 document, can you identify it, please?---Yes, these are  
20 the instructions I was given to provide this report.

21 I tender that, if Your Honour please.

22

23 #EXHIBIT 4 - Letter of instructions to Dr Gillespie.

24

25 MR NIALL: In relation to the report dated 20/3/2010 which  
26 refers to the giant burrowing frog, to the extent that  
27 it contains statements of opinion do you honestly hold  
28 those opinions?---Yes.

29 And to the extent that it contains matters of fact, are those  
30 matters of fact true?---Yes.

31 I tender that, if Your Honour please.

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#EXHIBIT 5 - Report of Dr Gillespie relating to the giant burrowing frog.

MR NIALL: In relation to that report, it answered a letter of instruction. Do you have a copy of that with you?---No, I don't.

Is that a copy of the letter of instruction you received in relation to the giant burrowing frog?---Yes.

I tender that, if Your Honour pleases.

#EXHIBIT 6 - Letter of instruction.

Now, you say in your reports that you undertook a survey of Brown Mountain. Could you just explain what steps you took?---I visited Brown Mountain in late October last year. I spent a day inspecting the area of the two coupes in that area. I walked - I have leg tracked down to the stream and walked back down the stream to the road inspecting the potential habitat for the large brown tree frog. Do you want me to elaborate on that?

Yes, please?---Okay. During that time I observed potential breeding sites for the large brown tree frog throughout the forest. I did not observe any evidence of a large brown tree frog present at the time. The subsequent two days I spent in the general area visiting some of the historic records of the large brown tree frog on the Errinundra Plateau and off the sides of the plateau, sites that I had been familiar with when I had been based in East Gippsland and I didn't find any large brown tree frogs there either.

And had you been to Brown Mountain before this survey?---I'd

1           been past Brown Mountain, I've driven along Errinundra  
2           Road on some occasions many years ago. I have never  
3           done any specific investigations or survey work of that  
4           area.

5       Now, you identify in both your reports that the Brown  
6           Mountain area in which you surveyed was suitable  
7           habitat for each of the two frogs, namely the large  
8           brown tree frog and the giant burrowing frog. His  
9           Honour went on a view of one of the coupes during the  
10          course of the week, some photographs were taken. I  
11          would ask the witness be shown a selection of the  
12          photographs. I will just take the witness through a  
13          selection of the photographs.

14                Having looked at those photographs and your  
15                views, are you able to identify in general terms why  
16                you say in your reports that this is suitable habitat  
17                for the two frog species that you have  
18                identified?---From what we know of these species, both  
19                have been found in association with mature forest  
20                habitats, and both have been found in association with  
21                wet forest, wet sclerophyll forest and damp forest  
22                communities in East Gippsland. The forest habitat  
23                that I observed in the Brown Mountain area is entirely  
24                consistent with habitats that both those species have  
25                been found in previously.

26       Are there any particular features that you observed on the  
27           photographs which assist you in arriving at that  
28           conclusion?---Well, certainly in the case of the nature  
29           of the forest habitat, the photos you have shown are  
30           fairly typical examples of mature, wet sclerophyll  
31           forests associated with mid elevation montane areas of



1 East Gippsland, and it's the type of - one of the types  
2 of habitats that both those species have been found in  
3 previously.

4 Could the witness now be shown the photograph of the  
5 regeneration coupe, please. Now, His Honour was told  
6 on the view that that was a coupe that had been logged  
7 in about 1987 or 1988. Are you able to identify from  
8 the photograph, and also obviously your knowledge and  
9 experience, whether or not that forest at that level of  
10 maturity represents a suitable habitat for the two  
11 species of frog?---At this stage we don't have any  
12 evidence that either of these species inhabits a young  
13 regenerating forest. That's not to say that they  
14 definitely don't, but we certainly don't have any  
15 evidence of it, and the records we do have are  
16 generally associated with mature forest or certainly  
17 much older forest than observed in this picture.

18 His Honour was told that at the conclusion of logging a coupe  
19 is burnt. Does that process have any impact on the  
20 two species of frogs that might be present in a  
21 coupe?---With respect to the large brown tree frog,  
22 these kinds of frogs don't have any adaptations to cope  
23 with intensive fire. The kind of fires that occur on  
24 these kinds of coupes are very intense, they are  
25 designed to be extremely hot to get a very thorough  
26 burn to trigger the regeneration. And because these  
27 species don't burrow, they shelter in vegetation or  
28 under the bark of trees, it's extremely unlikely that  
29 any individuals of that species would survive that kind  
30 of fire event. In the case of the giant burrowing  
31 frog, as the name suggests, it's a burrowing species,

1 and there actually is some scientific evidence for that  
2 species that it can survive or is likely to survive the  
3 immediate temperature associated with a fire, although  
4 that research was done with fuel reduction burning in  
5 lower elevation forest, which is probably nowhere near  
6 as intense in temperature as the coupe burns that would  
7 typically occur in this kind of habitat in wet  
8 sclerophyll forest. Furthermore, what we don't know  
9 is how that species then fairs after the fire when it  
10 emerges to forage and fend for itself, how it copes  
11 with the lack of habitat or the change of habitat  
12 conditions in relation to predation, food availability,  
13 moisture and those sorts of things. So it's not just  
14 the immediate effect of the burn, it's the subsequent  
15 ecological and habitat changes that occur subsequent to  
16 that which have to be taken into account when  
17 considering what the effects of these disturbances are.

18 If you assume, which I ask you to do, that following a  
19 harvesting and burn the individuals that were living in  
20 a logging coupe were killed, of the large brown tree  
21 frog, what is your opinion in relation to the ability  
22 of that frog to reappear or recolonise that particular  
23 area?--As a general rule amphibians, frogs, have  
24 relatively low dispersive capabilities, abilities to  
25 sort of move and migrate. There are extreme cases and  
26 you are familiar with cane toads and their abilities to  
27 move quite considerable distances. But even the large  
28 cane toad in its lifetime might only move a couple of  
29 kilometres. Much smaller frogs that are by their  
30 nature sedentary might only move matters of a few  
31 hundred metres or half a kilometre in their entire

1 lifetime. We don't know anything about the movement  
2 patterns of large brown tree frogs per se, but based on  
3 other similar species, we can assume they probably only  
4 move in that order in their lifetime. So assuming  
5 that there were large brown tree frogs residing in  
6 forest adjacent to the area that was logged and burnt,  
7 it might take quite a considerable time through  
8 reproduction and dispersal for animals to recolonise.  
9 That will also be dependent on at what point that  
10 forest regenerated to the point where the habitat was  
11 suitable for the species to occupy, and we don't know  
12 that.

13 And in relation to the question I just asked you, what is  
14 your opinion in relation to the giant burrowing  
15 frog?---There is data on giant burrowing frogs to  
16 suggest that they move up to sort of 300 metres away  
17 from their breeding areas, which are typically streams,  
18 and a number of the records in Victoria have been found  
19 on ridge tops away from water bodies where they breed.  
20 So we do know something about their dispersal  
21 capabilities, but once again we are not talking about  
22 massive migrations and very fast-moving animals, and so  
23 again subject to the suitability of habitat, it would  
24 be a slow process.

25 Now, His Honour has heard about, and been taken to some  
26 action statements made under the Flora and Fauna  
27 Guarantee Act. Are you familiar with action  
28 statements?---I am.

29 Now, His Honour's heard that some action statements identify  
30 prescriptions by reference to a detection of a  
31 particular member of a species. Is there a

1 relationship between a detection point and suitable  
2 habitat?---It depends. It depends on the nature of  
3 the detection record. In the situation where there  
4 has been a rigorous and systematic sampling and survey  
5 approach to determining where in the landscape, in this  
6 case the species occurs and where it does not occur  
7 with some statistical confidence, then those records of  
8 presence have a significant meaning, because they are  
9 going to be generally speaking representative of the  
10 distribution and, if subsequent analyses are done,  
11 potentially the habitat associations or requirements of  
12 that species. However, if they are ad hoc records or  
13 incidental records, anecdotal observations made by  
14 various individuals at various times in an unplanned or  
15 undesigned way, then they just potentially represent a  
16 random set of encounters with that species. And  
17 whilst they provide evidence that the species was  
18 present at that point, at that time, they don't tell  
19 you anything about where else the species is present,  
20 where it hasn't been found. And for a rare species or  
21 a cryptic species, statistically speaking the  
22 probability of a species occurring elsewhere within its  
23 general range where it hasn't been found under those  
24 circumstances, it is potentially very high, potentially  
25 as equal to the probability that it still occurs at a  
26 site where it was found at some point in time.

27 And in relation specifically to the giant burrowing frog, are  
28 you able to say whether there's a relationship between  
29 detection points which have occurred and suitable  
30 habitat?---Clearly at some point in time, wherever the  
31 giant burrowing frog has been found, it must have

1 provided some form of habitat for that species at that  
2 point in time. But whether that provides an overall  
3 picture of the species' suitable habitat or habitat  
4 requirements is a different matter. I think that  
5 based on my experience with the species, it would be  
6 very difficult to say what its specific habitat  
7 requirements are, or its specific ecological  
8 requirements are based on the records we currently  
9 have.

10 And in relation to specific detection points of the giant  
11 burrowing frog, are you familiar with any of those?---I  
12 am indeed. I have visited with the exception of some  
13 of the more recent records in the last - in the  
14 wildlife atlases that have been made in the last 10  
15 years, I have visited every site in Victoria where the  
16 species has been found.

17 And what have they told you about the species?---Well, they  
18 enable me to document the general forest types that the  
19 species has been found in, and the general nature of  
20 the landscape the species has been found in. But  
21 beyond that, not much. It's a very cryptic species, a  
22 very difficult species to study. So we have a -  
23 there has been - so that's given us a view of the range  
24 of forest types and the general habitat requirements,  
25 it's also given us a view of some of the places where  
26 the species has been found breeding, and some of the  
27 information coupled with work done over the border in  
28 New South Wales has helped us paint a broad picture of  
29 the general distribution of the species in Victoria,  
30 and a broad picture of the kind of habitats that it  
31 occurs in.

1 Are you able to identify any particular detection sites for  
2 His Honour, or the type of place in which they were  
3 found?---The species has been found crossing forest  
4 trails. It's been found crossing major roads. It  
5 has been found calling in small streams. Tadpoles of  
6 the species have been found calling in small streams.  
7 It's been caught in pitfall traps which is a technique  
8 used to trap reptiles and amphibians and small mammals  
9 in the forest which basically as the name suggests you  
10 have a series of buckets embedded in the ground with a  
11 fence passing across them. And we have caught the  
12 species that way traversing the forest.

13 In relation to the giant burrowing frog, have there been  
14 detection sites near Brown Mountain?---Yes, the species  
15 have been detected off the Yalmy Road in the Roger  
16 River Wilderness. It's been detected south of Brown  
17 Mountain on a siding creek track off the Bonang  
18 Highway, and it's been detected in the Coast Range area  
19 to the east of Brown Mountain. That's just naming a  
20 few of the sites that I can recall, off the top of my  
21 head.

22 And in relation to the large brown tree frog, have there been  
23 detection points near Brown Mountain?---Yes. There's  
24 records of large brown tree frogs scattered over the  
25 area and under a plateau in that general area. And  
26 surrounding foothills.

27 Are there any limitations on using detection sites as a  
28 methods of conservation?---There are limitations  
29 because, as I said before, unless you have got an  
30 understanding of what those detections mean in a  
31 broader context, you have to make a lot of assumptions

1 about them. As I said before, for some species if you  
2 haven't got rigorous diary data on where the species  
3 occurs with some confidence and where it doesn't occur  
4 with some confidence, then basing decisions on records,  
5 known records only, is potentially quite erroneous.  
6 For example, there may be quite significant biases in  
7 those records. You might have found that species in  
8 sites where it happened to be easy to find. You might  
9 have found that species only at sites where you  
10 happened to be. The classic example of that would be  
11 finding an animal on a road, you are driving on the  
12 road or you are walking on the road and you see an  
13 animal. So there's an inherent bias. And if you  
14 look at a lot of the records of some of these rare  
15 frogs in the wild like that, you will note that a lot  
16 of them are indeed on roads, because that's where  
17 people happened to be when they saw them. So there  
18 are real biases in that, that doesn't necessarily tell  
19 you much about the true habitat associations or indeed  
20 ecological requirements of the species.

21 Right. Now, could you just identify firstly from that photo  
22 board, I am not sure if you can see it, the two frogs  
23 that are shown in the bottom left-hand corner?---Yes.  
24 The far left-hand species is the large brown tree frog,  
25 and the other one is the giant burrowing frog.

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

27 HIS HONOUR: Yes, thank you, Mr Niall.

28 MR WALLER: Your Honour, Mr Redd will cross-examine.

29 HIS HONOUR: Yes.

30 <CROSS-EXAMINED BY MR REDD:

31 Dr Gillespie, if you could turn to page 18 of your report

1 concerning the large brown tree frog, and I should  
2 mention that the only questions I will be asking you  
3 this morning have to do with the large brown tree frog,  
4 and later on, next week some time, we might arrange for  
5 you to come back and I will ask you questions about the  
6 other frog at that point. So turning to page 18 of  
7 that report, you say in the second dot point that  
8 "retention of hundred metres along the stream will  
9 protect some habitat likely to be important to the  
10 species. However, there is no evidence that this  
11 species uses the actual stream for breeding." What is  
12 your understanding, Dr Gillespie, of the hundred metre  
13 protection that has been proposed for these two  
14 coupes?---My understanding is that it's being proposed  
15 as a reasonable measure to protect riparian habitat  
16 from the impacts of forest management.

17 And what does it consist of, what's your understanding that  
18 the hundred metres consists of, what does that  
19 mean?---My understanding is that it consists of hundred  
20 metres either side of the bank of the stream for its  
21 length through the coupe.

22 Yes, being an area in which no harvesting can occur?---No  
23 harvesting, and I am not sure of this, but I assume no  
24 tree felling into.

25 And that hundred metre buffer on either side of the stream,  
26 you are aware that that would extend both to the north  
27 and to the south of the proposed coupes?---Yes.

28 And in fact that buffer zone would protect, wouldn't it, the  
29 potential breeding sites that you observed in the  
30 pools?---Not necessarily because whilst it would  
31 provide immediate local exclusion of timber harvesting



1 from those pools, there is - I am not aware of any  
2 evidence that a hundred metre buffer is adequate to  
3 protect the hydrological integrity of a sub catchment.  
4 I am aware of evidence from other studies that suggests  
5 that larger buffer widths are necessary to achieve  
6 that. And so if those pools, their retention of water  
7 is dependent on some aspect of the hydrological regimes  
8 and flow regimes of those streams that created those  
9 pools, then it's difficult to say whether or not a  
10 hundred metres would be adequate to protect that in the  
11 long-term.

12 But you accept, don't you, that the hundred metre buffer  
13 either side nonetheless provides a degree of  
14 protection, you would agree with that, wouldn't  
15 you?---I would agree it would provide a degree of  
16 protection, yes.

17 Yes. If I could hand to the witness the second folder of  
18 the exhibits to Cameron MacDonald's affidavit, I think  
19 we have got a copy we can hand up. Dr Gillespie, if  
20 you could please turn to the tab that's marked CM 40;  
21 do you see that on the side of the folder there?---Just  
22 bear with me.

23 Does Your Honour have a copy of that as well handy?

24 HIS HONOUR: Of?

25 MR REDD: Of the second folder to Cameron MacDonald  
26 affidavits?

27 HIS HONOUR: Yes.

28 MR REDD: Behind that tab, Dr Gillespie - actually, I'm  
29 sorry, I have taken you to the wrong tab. CM 42?---CM  
30 42, was it? Okay.

31 And in the last page of that exhibit is a map?---Okay.

1 Now, assuming that in addition to the hundred metre buffer  
2 that you have assumed for the purpose of your report,  
3 assume there are additional buffers of ninety metres on  
4 either side as marked on the streams there, would that  
5 in your opinion provide an additional degree of  
6 protection for the large brown tree frog in this  
7 area?---It may, but it may not. Because we don't know  
8 anything about the biological relationship between  
9 these buffers and the ecological requirements and  
10 habitat requirements of the species.

11 In other words, you are not in a position to offer an opinion  
12 as to whether that would affect the conclusions in your  
13 report? I will clarify that question. Assume that  
14 the ninety metres buffers as marked on that map were  
15 additional to the hundred metre buffers that you were  
16 asked to assume for the purpose of your report, with  
17 that extra assumption does that in any way affect the  
18 opinions you have expressed in your report?---No, it  
19 doesn't.

20 It's the case, though, isn't it, that temporary or  
21 semi-permanent stationary water bodies within these  
22 coupes are more likely than not to be within a hundred  
23 metres of either side of Brown Mountain Creek, isn't  
24 it?---No, that's not.

25 That's not your view?---During the breeding season of the  
26 species, which is typically in the wetter months of the  
27 year, one might find breeding sites on ridge tops,  
28 ridge slope points anywhere, any depressions which  
29 might hold water for a length of time which the species  
30 could utilise to breed.

31 But it's the case, isn't it, that the habitat near the creek

1 or closer to the creek would be the best wet refugia  
2 within these two coupes, would you agree with that  
3 proposition?---No. The available evidence suggests  
4 this species is not associated with riparian zones per  
5 se for its breeding or its habitat, that it occurs in a  
6 wider range of aspects in the forest.

7 It's the case, though, isn't it, at least so far as the  
8 surveys in New South Wales have revealed, that in that  
9 state 30 per cent of the breeding sites for this frog  
10 have been in streams, is that right?---That is the  
11 case, but I also point out in my report that there is  
12 quite significant disjunctions in the distribution of  
13 these populations in New South Wales and Victoria, and  
14 there is some evidence that we may be dealing with  
15 different ecological units, potentially, or in  
16 different taxa. That's not confirmed yet, I might  
17 add.

18 Mr Niall asked you about historical records in this area, but  
19 it's the case that based on your review of the records  
20 there are no historical records for any large brown  
21 tree frogs within the two coupes we are concerned with  
22 here, are there?---Correct.

23 Now, Dr Gillespie, I notice from your CV in your report that  
24 you were with the Department of Sustainability and  
25 Environment, or its predecessor as entitled, for about  
26 20 years or so, is that right?---I think it was 18  
27 years, yes.

28 Okay. You observe at the bottom of page 11 of your report,  
29 if you have that handy?---My report?

30 Yes, the large brown tree frog report. In the bottom dot  
31 point, that most of the known localities of the brown

1 tree frog in Victoria are outside of protected areas  
2 such as national parks. Would it be fair to assume  
3 that the reason for that is that there is more survey  
4 done outside protected areas rather than in them?---I  
5 would need to have a closer look at where surveys were  
6 undertaken and where they haven't been undertaken to  
7 answer that question. I'm sorry, if I can just add to  
8 that, during the pre logging and associated national  
9 estate surveys, whenever forest blocks occurred  
10 straddling national park and state forest, surveys were  
11 undertaken independently of those land management  
12 boundaries.

13 Yes?---And also a number of areas which are now national park  
14 were surveyed prior to being gazetted national park.

15 Yes, I understand, but in your experience of the DSE, were  
16 you aware of surveys that were conducted in areas that  
17 at that time were already designated part of the  
18 reserve system?---I think I just answered that in the  
19 affirmative, yes. There were parts of forest blocks  
20 that were national park, and when those forest blocks  
21 were surveyed the sampling regime was conducted  
22 independent of that park boundary. So indeed there  
23 was sampling done in the park - within park areas.

24 I'm sorry, I understood your earlier question - you will  
25 correct me I am sure - I understood your answer to my  
26 earlier question to be that surveys had been conducted  
27 in areas that were subsequently gazetted as a national  
28 park?---M'mm.

29 I am asking you about surveys that were conducted in areas  
30 that had already been gazetted as national park, that  
31 is, they were already part of the reserve

1 system?---M'mm.

2 And I am putting to you that those sorts of surveys would  
3 have been rather infrequent during your time at the  
4 DSE, would you agree with that?---As I said, I would  
5 need to have a closer investigation of which forest  
6 blocks that were under the (indistinct) program were  
7 surveyed and how they relate to the existing land  
8 tenure boundaries at the time. But my recollection is  
9 that when we did pre logging surveys where part of the  
10 forest block was in a national park, we didn't avoid a  
11 national park, we surveyed both areas.

12 Yes. And is it your experience that most of the records that  
13 you are familiar with in Victoria occurred by reason of  
14 pre logging surveys?---I am not sure of the exact  
15 breakdown, but certainly a large proportion of the  
16 records - - -

17 A large proportion?---Yes.

18 And for the purposes of preparing your report, you have  
19 effectively conducted what could be characterised as a  
20 pre logging survey, would you agree with that? For  
21 instance - do you need me to rephrase that or can you  
22 answer that question as I have phrased it?---Have a go  
23 at rephrasing it.

24 The type of survey that you undertook and that you describe  
25 in your report and described in-chief in answer to  
26 Mr Niall's questions, that is the type of survey that  
27 one would undertake as part of a pre logging survey,  
28 would you agree with that, of this particular  
29 creature?---Not quite. A typical pre logging survey  
30 would involve a team of biologists residing in an area  
31 for a minimum of two weeks and up to a period of four

1 weeks, usually split into two different two-week blocks  
2 definite times of the year, and during those two to  
3 four week periods the herpetologist would be typically  
4 visiting various parts of that forest block on a  
5 repeated basis. And in the case of amphibians would  
6 be optimising their efforts to find amphibians during  
7 the most suitable conditions, which would be for  
8 example on wet nights after rain going out listening  
9 for frogs calling, looking for frogs in the forest.  
10 And so in that sense just a day visit to a site on an  
11 arbitrary day I don't think even equates to the most  
12 basic effort undertaken by pre logging survey.

13 Dr Gillespie, you have given your written opinion that you  
14 believe that the proposed harvesting would be in breach  
15 of a precautionary principle. Now, in reaching that  
16 conclusion, what consideration have you given to the  
17 risk rated consequences of either harvesting based on  
18 the assumed facts you have been asked to assume, or not  
19 harvesting?---If I understand your question correctly,  
20 my opinion is based on the fact that I know that the  
21 knowledge-base of the distribution of large brown tree  
22 frogs in Victoria is inadequate, it's inadequate  
23 because the way those records were acquired, albeit  
24 through the pre logging survey program or otherwise,  
25 was not rigorous and not comprehensive, and that that  
26 data is by and large some 17 years old. This means  
27 that we are not in a position at this point in time to  
28 have any confidence as to where in the landscape large  
29 brown tree frogs are and are not, and we certainly  
30 aren't in any position to have to make any assessment  
31 over which particular parts of the landscape are

1 critical or important for the survival of that species  
2 in Victoria.

3 Dr Gillespie, you haven't given consideration at all, have  
4 you, in reaching that primary conclusion about the  
5 consequences for timber harvesting industries, would  
6 that be correct?---That consideration of mine is based  
7 entirely on the issues concerning the frog species.

8 Yes, in other words - - -?---I am not in a position to  
9 comment on the impacts on the timber industry.

10 Yes. So could I characterise it this way. In undertaking  
11 consideration of risk-weighted consequences, you have  
12 assessed ecological consequences but not consequences  
13 that are not ecological, would that be correct?---It  
14 could be argued that conservation as a philosophy is a  
15 cultural value, and so in that sense - - -

16 Dr Gillespie, I am just asking whether in your report and in  
17 your consideration leading to your conclusion, whether  
18 you in fact gave consideration to consequences that  
19 were non ecological. I accept you have told me that  
20 you have factored in the consequences for this creature  
21 and its habitat, but in reaching your conclusion did  
22 you factor in other consequences such as the effect  
23 that not harvesting in this coupe would have on the  
24 timber industry, for instance?---No, I didn't.

25 Now, if the witness could be shown volume 1 of the agreed  
26 book. There's a witness copy, yes. Dr Gillespie, if  
27 you wouldn't mind turning to page 106, you will see  
28 there's page numbers on the bottom right-hand  
29 corner?---Yes.

30 And you will see there that should be a page which reads  
31 "Code of practice for timber production 2007", is that

1           what you have before you?---M'mm.

2    Are you familiar at all with that document, Dr Gillespie?---I

3           couldn't say I am intimately familiar with it.    I am

4           aware of it and - - -

5    Okay.    If you could turn now, please, to page 0185, and you

6           should see there that's a page from the glossary of

7           that same document, and at the top of that page you

8           have the definition of "Precautionary principle", do

9           you see that, Dr Gillespie?---M'mm.

10   Now, I am going to read that out, and I want to ask you

11          whether you agree with this definition.    It is that

12          "When contemplating decisions that will affect the

13          environment, the precautionary principle requires

14          careful evaluation of management options, to wherever

15          practical avoid serious or irreversible damage to the

16          environment, and to properly assess the risk-weighted

17          consequences of various options.    When dealing with

18          threats of serious or irreversible environmental

19          damage, lack of full scientific certainty should not be

20          used as a reason for postponing measures to prevent

21          environmental degradation."    Would you agree with that

22          definition of the precautionary principle,

23          Dr Gillespie?---It's a little bit different from the

24          definition that I am familiar with, which - - -

25    In what respects is it different?---It's different in the

26          sense of the last sentence, my understanding of the

27          precautionary principle is that if there is uncertainty

28          in the way of evidence about whether or not there is an

29          adverse impact, then precaution - caution should be

30          applied until such scientific evidence is acquired to

31          shift the balance of weight of evidence in favour that



1 the adverse of the impact isn't significant enough,  
2 isn't significant. I haven't worded that very  
3 clearly, but I think you get what I am saying.

4 So in other words in reaching your conclusion about whether  
5 the proposed logging would not be consistent with the  
6 precautionary principle, and you say so on page 19 of  
7 your report, you have directed yourself to the  
8 definition you have just given orally in this court and  
9 not the definition that's contained in the document  
10 before you, is that correct?---Yes.

11 You don't need that volume any more, Dr Gillespie, so you can  
12 get that out of the way if it's easier for you. I  
13 will just be a moment, Dr Gillespie. Now,  
14 Dr Gillespie, have you read a report that's been filed  
15 in this proceeding from Professor Ferguson?---I have  
16 read that report, yes.

17 Okay. I am just going to put a couple of things to you that  
18 Professor Ferguson says in that report. In fact we  
19 have got a spare copy so I will put that before you so  
20 you can be confident that I am characterising it  
21 correctly. So, Dr Gillespie, you have now a copy of  
22 that report before you. If you could turn to page 20  
23 of that report. You will see there that there's a  
24 section at paragraph 4.3: "Sooty owl, powerful owl,  
25 spot-tailed quoll and large brown tree frog." And at  
26 the bottom of that page Professor Ferguson says:  
27 "Given its preferred habitat" - and I should for  
28 clarification, this is the only reference to large  
29 brown tree frog in Professor Ferguson's comments. He  
30 says: "Given its preferred habitat is probably near  
31 water, a special protection zone spanning all these

1 species coincident with the LFP retained habitat in the  
2 proposed SMZ in option 1 would provide ample protection  
3 and meet the requirements of the precautionary  
4 principle in the event that it did occur." Now, does  
5 that sentence make sense to you given that it obviously  
6 refers to some extent to Professor Ferguson's  
7 instructions, but do you understand what Professor  
8 Ferguson is saying in that sentence I have read out?  
9 Because I can clarify matters for you if it's necessary  
10 for you to understand?---Can you clarify what SMZ is  
11 referring to?

12 That's a special management zone, and LFP stands for  
13 long-footed potoroo, and the retained habitat is a  
14 reference to effectively the hundred metre stream-side  
15 buffer in that context. So you can read Professor  
16 Ferguson as referring to the hundred metre stream-side  
17 buffer which he essentially says would provide ample  
18 protection and meet the requirements of the  
19 precautionary principle in the event that it did occur.  
20 And so understanding the professor's opinion expressed  
21 that way, would you agree with it?---No.

22 Do you consider it of any relevance at all that in this  
23 particular area of Brown Mountain there's been recent  
24 additions to the conservation system, are you aware of  
25 that?---Not specifically, no.

26 Okay. I am just going to show you some maps, Dr Gillespie.  
27 I will start at a high level scale for you and then we  
28 will go to a close-up map. You will see the maps are  
29 numbered in the bottom right-hand corner. So for  
30 instance if you look at map number 2, do you have that  
31 before you?---I do.

1 You will see that's the East Gippsland forest management  
2 area, and the various colours on that map are zones  
3 that were in place prior to November of last year, and  
4 you can see that Brown Mountain is marked on it with a  
5 star?---Yes.

6 Are you familiar with those phrases "special protection  
7 zones", "special management zone" and "general  
8 management zone"?---I am familiar with them.

9 Yes. Are you aware that - or would you agree that in a  
10 special protection zone there's no harvesting  
11 permitted, do you understand that?---Yes.

12 Yes. And that in a special management zone there can be  
13 harvesting permitted if there are certain proscriptions  
14 put in place? And a general management zone is  
15 generally available for harvesting, do you understand  
16 that?---Yes.

17 Yes, okay. So map number 2, you will see has Brown Mountain  
18 placed in some general management zone, and there's  
19 some surrounding in pink, the light pink conservation  
20 parks and reserves?---Yes.

21 And then if you turn to the next map, map numbered 3, you  
22 will see there that this is the forest management zones  
23 post November 2009. You will see just to the west of  
24 Brown Mountain in dark pink and with the black border  
25 areas that are described as new parks and reserves, do  
26 you see that?---Yes.

27 And I will take you now to a different scale, which is map  
28 number 11. Now, professor, on that map you can see 15  
29 and 19 coupes marked. And you will see that to the  
30 west of coupe 15 in the sort of middle hue of pink, if  
31 I can put it that way - there are three shades of pink

1 on that map - but the middle one is designated new  
2 parks and reserves 2009, do you see that?---Yes.  
3 Now, were you aware that those new parks and reserves either  
4 had been or would be declared at the time you prepared  
5 your report?---I was aware that there was discussion  
6 about it, but I wasn't aware they'd been confirmed.  
7 Yes. So for the purpose of your report, did you take any  
8 account of the new parks and reserves or not?---No, I  
9 didn't.  
10 And having been now taken to the areas that are new parks and  
11 reserves, you would agree with me, wouldn't you, that  
12 that's relevant to the conservation requirements of the  
13 large brown tree frog?---I guess my point is that we  
14 don't know what the conservation requirements of the  
15 large brown tree frog actually are. We don't have  
16 enough information. The assumption that has been made  
17 before is that setting aside chunks of land, patches of  
18 habitat, is a satisfactory way of conserving the  
19 conservation requirements of various species.  
20 So would you disagree, Dr Gillespie, with the proposition  
21 that the addition of the new parks and reserves is an  
22 additional protection for the large brown tree  
23 frog?---I would go so far as to say that in - if one  
24 assumes that the large brown tree frog occurs in those  
25 areas, then those additional particular areas will  
26 offer some additional protection to the species.  
27 And with those additional areas being additional protection,  
28 you would agree then that factoring that into the  
29 analysis, in addition with the hundred metre  
30 stream-side buffer, you would agree that it's no longer  
31 correct to conclude that the proposed harvesting is

1 inconsistent with the precautionary principle; that's  
2 right, isn't it?---No, I don't think I would agree with  
3 that. Because as I said a minute ago, I think there  
4 are a range of other factors or unknowns in relation to  
5 the conservation of these kinds of species which are  
6 poorly known that we aren't able to take into account  
7 yet. For example, if you look at the distribution of  
8 the large brown tree frog, as we currently know it  
9 based on dated records, the records are scattered over  
10 a number of areas of forest. Now, some of those are  
11 in the existing reserve system, as you say. We also  
12 know that - if you look at the map of the current  
13 reserve system, that these coupes and the surrounding  
14 area, there's also a history of logging, potentially  
15 provides an important link between these areas of  
16 reserves. We don't know what the landscape dynamics  
17 are of these kinds of species over time.

18 Is it your opinion, Dr Gillespie, that the only way  
19 VicForests could act consistent with the precautionary  
20 principle in relation to this large brown tree frog, is  
21 to not log anywhere in East Gippsland?---No, my view is  
22 that there needs to be more adequate research and  
23 survey work done on species of concern to make much  
24 more informed opinions about where conservation effort  
25 should be applied to ensure their conservation. And  
26 in the case of species like the large brown tree frog,  
27 that information currently doesn't exist. Now, if  
28 that had been undertaken, and we had scientific  
29 evidence for argument's sake to say with some degree of  
30 confidence particular areas were going to be adequate  
31 for its conservation, then that would enable logging

1           and other management activities to occur elsewhere.  
2       Your Honour, I have no further questions for this witness.  
3       HIS HONOUR:     Yes.     Mr Niall?  
4       <RE-EXAMINED BY MR NIALL>  
5       Dr Gillespie, you were asked some questions about that map,  
6           if you have map 11.     Are you able to tell His Honour  
7           whether in the new pink reserve, which is the area of  
8           middle pink to the west of the two coupes, and which  
9           contained the two areas of blue, are you able to tell  
10          His Honour whether surveys for the presence of the  
11          large brown tree frog have been conducted in that  
12          area?---I would need to consult information.     It's not  
13          clear from these maps exactly what forest management  
14          blocks those areas occur in and how far south it  
15          actually goes.     I am just trying to orientate myself a  
16          bit in relation to that, the scales are the issue.     I  
17          am just going to go back to one of the earlier maps to  
18          see if that helps.  
19       Yes, if you look at map 6?---Yes.  
20       Which gives you the Brodribb forest block and the area we are  
21          looking at is forest block number 502?---Okay, it's  
22          forest compartment.  
23       Yes?---There was a pre logging survey done in the Brodribb  
24          forest management block.     It was done before my time,  
25          I wasn't involved with that survey, and so I can't  
26          comment on how much work was done on amphibians in that  
27          survey.     I can say that the earlier pre logging  
28          surveys, amphibians were not dealt with very well so  
29          it's hard to say how much work was done specifically on  
30          the large brown tree frog.  
31       And in relation to the surveys that you have just spoken

1 about, and pre logging surveys generally, do they have  
2 a currency in the sense that they are valid for a  
3 certain period of time, or do they tend to remain  
4 valid?---You mean in terms of the records of animals  
5 and things?  
6 Yes?---We don't know, because there haven't been any repeat  
7 surveys to actually validate that.  
8 And in relation to coupes 15 and 19, which you will see on  
9 page 11, you were asked some questions about the survey  
10 you undertook, and you were asked whether that  
11 constituted a pre logging survey. What do you say  
12 would be required in order to determine whether or not  
13 the large brown tree frog - I withdraw that. What  
14 level of survey would be required to exclude the  
15 presence of the large brown tree frog, reasonably  
16 exclude the presence of the large brown tree frog in  
17 coupes 15 and 19?---We would need to undertake a study  
18 in the general area, not just of those coupes but the  
19 general area, probably including sites where the  
20 species was known to have been recorded historically.  
21 And this would require doing what's called repeat  
22 surveys using appropriate sampling techniques over a  
23 period of time. This then enables one to estimate the  
24 detection probability, which is essentially the  
25 likelihood that a species doesn't occur at a site which  
26 has been surveyed. And once that detection probability  
27 has been determined for a particular species, then  
28 specific surveys or investigations can be done in a  
29 particular area and provide some statistical confidence  
30 or scientific confidence the species is not present.  
31 Now, at this point, because we don't know what the

1 detection probability of a large brown tree frog  
2 actually is, that work would need to be done to  
3 determine what that is.

4 You have used the phrase "detection probability"; what do you  
5 mean by that phrase, Dr Gillespie?---What I mean is  
6 that by way of example, if you walk into the forest and  
7 with the view to looking for a particular - in this  
8 case a particular species of animal and you don't find  
9 it, you don't know whether that's because it wasn't  
10 there or whether it's because you just didn't see it.  
11 If you do see the species, then you have got 100 per  
12 cent probability that the species was present. So how  
13 do you interpret the situations when you don't see it?  
14 By undertaking repeated sampling of areas where a  
15 species occurs and doesn't occur, you can actually  
16 develop a model which enables you to estimate the  
17 probability, and therefore determine how many times you  
18 need to visit the site to have statistical confidence  
19 that it's actually not there. So the harder a species  
20 is to detect the more often you need to visit a site  
21 and not find it before you can be scientifically  
22 confident that it's actually not there.

23 And is the term "detection probability" a scientific  
24 term?---Yes, it is.

25 Now, you were asked some questions about pre logging surveys.  
26 Do you know when pre logging surveys ceased in  
27 Victoria?---There was a - there were two phases to the  
28 pre logging survey program. The first phase was  
29 around these forest blocks that had, if I recall  
30 correctly, less than 50 per cent of their timber  
31 resource harvested. That wound down in the late



1 1980s, I think it was '89, and at that stage there was  
2 a shift towards what was called national estate  
3 surveys, and during that time there was a series of  
4 forest management blocks in East Gippsland that had  
5 areas of what was designated national estate land in  
6 them, and the Victorian Government was required to  
7 undertake similar kind of surveys of those forest  
8 blocks. And that finished in 1991, if I recall.  
9 Most of the reports that were undertaken on those  
10 surveys never got published.

11 Now, you were asked - it was suggested to you that the  
12 potential breeding sites in ponds for the large brown  
13 tree frog would be near the creek, and you answered not  
14 necessarily. What volume or volumes of water tend to  
15 be used by the large brown tree frog for the purpose of  
16 breeding?---I have seen the species breeding in forest  
17 - in large pools in the forest, quite large pools such  
18 as fire dams, and we have also found the species  
19 calling and presumably breeding in water filled pools  
20 in hollow logs and in ruts in four-wheel drive tracks.  
21 So quite small through to reasonably sized water  
22 bodies.

23 And you were asked some questions, or it was suggested to you  
24 that the hundred metres buffer would provide a degree  
25 of protection to the large brown tree frog, and you  
26 referred to - in your answer to a study. Are you able  
27 to identify that study for His Honour, a hydrology  
28 study?---I think you are referring to my reference to  
29 the study by Pat O'Shannesy & Associates that was  
30 undertaken in Northeastern Victoria in relation to the  
31 spotted tree frog action statement and the recovery

1 plan development.

2 What did that study establish?---That study recommended,  
3 amongst other things that a 300 metre exclusion zone be  
4 created along all water courses that contained  
5 potential habitat for the spotted tree frog, and also  
6 stipulated much more stringent logging and roading  
7 proscriptions within one kilometre of the water - the  
8 streams within those catchments.

9 And did that study concern a particular species of frog?---It  
10 concerned the spotted tree frog, which is another  
11 threatened species that is a stream breeding species  
12 that occurs in Northeastern Victoria.

13 And is there any relevance to learning in relation to that  
14 species of frog to the understanding of the large brown  
15 tree frog?---Probably limited. I mean, they are  
16 ecologically very different animals. A spotted tree  
17 frog is a stream breeding species, and those  
18 proscriptions were developed specifically to protect  
19 the hydrological and catchment values associated with  
20 the breeding requirements and habitat requirements of  
21 that species, such as water quality, flow rates,  
22 sedimentation run-off and so on and so forth. Now,  
23 those issues don't necessarily apply to the large brown  
24 tree frog because it's not dependent on streams to  
25 breed in, as far as we know, in Victoria.

26 What about the giant burrowing frog?---Certainly in the case  
27 of the giant burrowing frog where the available  
28 evidence suggests that streams are its breeding  
29 habitat, and so the same kinds of - amphibians that  
30 breed in streams have in general very similar  
31 requirements in terms of their breeding biology, they

1 require certain flow regimes that they have adapted to,  
2 they require certain micro habitat to lay their eggs in  
3 and for their tadpoles to develop in. In the absence  
4 of any evidence to the contrary, we can assume that  
5 they would be on a parallel to the spotted tree frog,  
6 which has had a lot more work done on it. There's  
7 also studies from overseas that suggest that 300 metres  
8 is probably the minimum required to protect the  
9 ecological requirements of stream-breeding amphibian  
10 communities.

11 And in relation to that study, do you know when it was  
12 published?---This is Pat O'Shannesy's study?

13 Yes?---I need to check my records, but it was in the late  
14 1990s. '97, I think, if I recall correctly.

15 And are you able to provide a copy of that report?---I can  
16 do. I don't have it with me.

17 You refer to the stream breeding amphibian community. What  
18 does that encompass?---In Victoria, or indeed in  
19 Australia, or indeed in many parts of the world, there  
20 are amphibians comprise a diverse range of species, and  
21 some of them form quite distinctive groups or, as we  
22 say in ecology, guilds of animals, and there's a guild  
23 of amphibians that breed exclusively in streams, and  
24 these species have got specific ecological adaptations  
25 to breeding in streams in terms of their tadpole  
26 morphology, where they lay their eggs and so on and so  
27 forth. Generally speaking those species only breed in  
28 streams and don't breed in non stream habitats. So  
29 they are somewhat more specialised than species which  
30 might be called pond breeding species, for example,  
31 which have got a more generalised ecology.

1 You were asked a number of questions about the precautionary  
2 principle. Could I take you to your report, please.  
3 Have you got a copy of your report?---Yes, I'm sorry.  
4 At page 18?---Yes.  
5 At the bottom of page 18 at paragraph 17, is that where you  
6 set out your understanding of the precautionary  
7 principle?---Yes.  
8 If you just read that paragraph to yourself. And I would  
9 ask you also to look at page 185 in volume 1, which you  
10 were taken to, which I think His Honour's associate  
11 will hand you now. And if you could just read the  
12 precautionary principle as set out there at the top of  
13 page 185; just to yourself. Are there any differences  
14 in the two definitions, that is the definition set out  
15 at page 18 of your report and the definition at page  
16 185, from your perspective?---From my perspective they  
17 diverge in the sense that the definition that I have  
18 put in my report places the onus on having a weight of  
19 scientific evidence that suggests that the proposed  
20 management is okay, is that the level of damage that's  
21 going to be done is acceptable. Whereas in the  
22 definition on this report over here, the wording is  
23 such that the implication is that that isn't necessary.  
24 If you applied the definition on page 185, would that affect  
25 in any way the conclusions you reach in paragraphs 18  
26 and 19 in your report?---If I applied this definition?  
27 Yes, and if you look at the conclusions you reached at  
28 paragraphs 18 and 19 of your report, if you applied  
29 that definition would that change or alter your  
30 conclusions?---The last sentence in this definition  
31 says - that refers to a lack of full scientific

1           certainty. It doesn't say a lack of any scientific  
2           certainty. And in this situation, I would argue that  
3           there's a lack of any scientific certainty, therefore I  
4           don't think I would change my opinion.

5           That's the only matter I have in re-examination, if Your  
6           Honour pleases.

7           HIS HONOUR: I wonder if Dr Gillespie could be shown the  
8           plan that we took on the view, which is in fact one of  
9           the appendices to Professor Ferguson's report. Is it  
10          possible to put that on the screen?

11          MR NIALL: No, Your Honour, but we have got a copy. I will  
12          just hand Dr Gillespie a copy.

13          HIS HONOUR: Dr Gillespie, this is, as I understand it, a  
14          VicForests plan and it has two sorts of numberings on  
15          it. If you look above coupe 19, you will see the  
16          number 1987, 88, and that is on the regenerated forest  
17          which you saw in the photograph and were told was  
18          regenerated in about 1987, '88. The other sorts of  
19          numbers are the long serial numbers that we see for  
20          coupes 15 and 19. If we look at the ones that appear  
21          to have numbers based on years, and we look in the dark  
22          pink area which you were asked about by Mr Redd, we see  
23          1991, '92 as an area that was logged to the west of  
24          Legges Road. Is that the area you were referring to  
25          as having been the subject of some sort of survey in  
26          the Brodribb River area or can you not say, do you see  
27          what I am saying? That this gives you some sort of -  
28          on the face of it appears to give dates as to when  
29          various areas were harvested. Do you know, looking at  
30          that plan and this plan also has contours, whereas the  
31          dark pink plan doesn't, if I can call it the dark pink

1 plan, does that help you in saying where the survey was  
2 that you referred to?---I think I understand your  
3 question, Your Honour.

4 Yes?---The survey was conducted in what's called the Brodribb  
5 forest management block, which is a much larger area  
6 than is captured in this image.

7 Yes?---And without referring to the report, it's not possible  
8 to say where exactly specific points of survey or  
9 wildlife sampling were undertaken. Indeed, most of  
10 those reports were written in a way which was quite  
11 general.

12 I see?---And didn't necessarily provide every point or  
13 location at which a biologist visited and what they did  
14 there.

15 I see, yes. And the other thing that this plan appears to  
16 show is that in terms of the hundred metre buffer, the  
17 southern portion of coupe 15 would in fact have an area  
18 within the hundred metre buffer on the eastern side of  
19 the stream which was logged to within 20 metres of the  
20 stream, and so the hundred metre buffer in part, as I  
21 understand it, includes old growth forest and in part  
22 includes regenerated forest. And likewise if we look  
23 at the suggested 90 metre buffers that were put to you  
24 along the streams on the northern and southern sides of  
25 coupe 15, it appears that they in part would include  
26 regenerated forest as well as old growth forest, can  
27 you see that? Do you see the two streams that run  
28 along the north and south of coupe 15? Remember being  
29 asked about this proposal?---I have this map in front  
30 of me, Your Honour.

31 Yes. And do you see what I am saying, that the stream

1 buffers both in part along the main stream, which  
2 divides 15 and 19, and at the top and bottom of 15,  
3 seem to include in part regenerated areas?---My  
4 interpretation of this map?

5 Yes?---The 90 metre buffer zones are actually within the  
6 coupe.

7 Yes?---And don't appear to include any regenerating forest.  
8 Look where the streams are. The streams are not within the  
9 coupe, are they, on the boundary of the coupe on north  
10 side and to the south of the boundary on the south  
11 side?---This is the boundary of the coupe, I believe.

12 No?---The black - - -  
13 Perhaps you could hold it up. It may be this isn't  
14 useful?---I might be misinterpreting this particular  
15 map, Your Honour.

16 Do you see the two streams, one on the northern boundary of  
17 15?---Yes.  
18 That curves in, the other one next to the southern boundary  
19 of 15 that forks, if I can put it that way?---Yes.

20 Do you see the streams of that form in the 90 metre buffer  
21 plan?---Yes, now I am seeing it correctly.

22 Yes. Well, as I read that, if you look at say the forking  
23 stream, in fact the buffer includes regenerated forest  
24 on both sides, in part; is that right?---Yes, Your  
25 Honour.

26 All right. Well, at some point it may become relevant to  
27 ask is there a difference between buffers that contain  
28 old growth forest and buffers that contain regenerated  
29 forest from your point of view?---Based on available  
30 evidence, we don't know what value regenerated forest  
31 of this age provides to the large brown tree frog. If

1           we assume that unlogged forest is the preferred habitat  
2           of the species.

3       Yes?---Then it's more likely than not that the regenerated  
4           forest will offer little in terms of habitat to the  
5           large brown tree frog.

6       Yes, all right.    If you look at the extent of the logging,  
7           which you see on that plan, including the recent coupe  
8           20 immediately to the south of 19, do you still say  
9           that the probability is that these frogs are in 15 and  
10          19?  Do you see what I am saying to you?  When you see  
11          there's been logging in 20, 1989, '90, 1997, '98, 1993,  
12          '94, and then to the north as well?---Yes.    Given the  
13          quality of the forest habitat and its continuity to the  
14          west, with unlogged forest.

15       Yes?---I see no reason to presume that the species isn't  
16          potentially there.

17       Is there anything arising out of that, Mr Redd?

18       MR REDD:  No, Your Honour.

19       HIS HONOUR:    Yes, thank you, Dr Gillespie.    I think you  
20          may have to come back, we will see what transpires.

21       <(THE WITNESS WITHDREW)

22       MR NIALL:  Your Honour, in relation to Dr Gillespie, if he  
23          could provide a copy of the O'Shannesy article, that  
24          would be convenient.

25       HIS HONOUR:    Yes.

26       MR NIALL:  If Your Honour pleases.

27       HIS HONOUR:    I think we will take a short break before we  
28          call your next witness.

29          (Short adjournment)

30       HIS HONOUR:    Perhaps just before we call the next witness I  
31          should say that I had proposed to fix Tuesday's hearing



1 to start at 12. It seemed to me that that was a  
2 reasonable time given travel times from Melbourne. If  
3 there's a problem about that, you can tell me before we  
4 adjourn. But that's my current intention.

5 MS MORTIMER: If Your Honour pleases.

6 HIS HONOUR: Yes. Yes, Mr Niall.

7 MR NIALL: If Your Honour pleases, I call Shelly McLaren.

8 <SHELLY RENEE McLAREN, sworn and examined:

9 MR NIALL: Ms McLaren, is your full name Shelly Renee  
10 McLaren?---Yes, it is.

11 And could you tell His Honour your address?---RSD Bonang  
12 Road, Goongerah, Victoria, 3888.

13 And your occupation?---My occupation is a part-time  
14 coordinator at the Goongerah school.

15 And for the purposes of this proceeding have you sworn an  
16 affidavit of six paragraphs together with six  
17 attachments? I will ask for the witness to be given a  
18 copy. Three attachments, I'm sorry. No, if the  
19 witness could be given - have you got a copy of your  
20 affidavit in front of you, Ms McLaren?---I do.

21 Now, I would ask that the witness be shown footage which is  
22 SM 1, please. If you would just look at the screen,  
23 Ms McLaren. And I will ask that that be shown again.

24 HIS HONOUR: Yes.

25 MR NIALL: Now, Ms McLaren, when was the first time that you  
26 saw that footage? I'm sorry, where was the first time  
27 that you saw it?---Brown Mountain.

28 And what were the circumstances in which you saw it?---Can  
29 you rephrase that? The weather?

30 No, how did you see it on Brown Mountain?---On a Moultrie  
31 camera, surveying camera.

1 And what did you understand was shown on the footage?---I  
2 believed it was a potoroo.  
3 All right. Did that have any significance to you?---Yes.  
4 What was that?---It was an endangered species.  
5 And what did you do once you'd seen the footage?---I got very  
6 excited. I put it in my backpack - - -  
7 How did you view the footage at the time that you first saw  
8 it?---There's a one inch little screen that shows you  
9 images on the actual Moultrie.  
10 All right. And where were you? When you say you were on  
11 Brown Mountain, where was that?---The Errinundra side  
12 of the gully.  
13 I will come back to that in a minute. What did you do after  
14 you saw the footage?---I finished my work, finished  
15 documenting it and I went straight down to Goongerah  
16 where Jill lives and I put it on the computer.  
17 Right. And how was it put on to the computer, do you  
18 know?---You get - the SIM card goes into a USB  
19 extension and that is plugged into the laptop.  
20 All right. When you described a SIM card, what is  
21 that?---It's like a memory stick.  
22 All right. And was that used in the camera?---Yes.  
23 All right. And what happened to the memory stick?---I left  
24 it at Jill's place.  
25 All right. Now, I want to ask you some questions about  
26 where the camera was located, or the place that you  
27 watched the footage for the first time. You say in  
28 your affidavit that you have lived in Goongerah for  
29 seven years. Are you familiar with the area of  
30 Goongerah?---Yes.  
31 And are you familiar with Brown Mountain?---Yes.

1 The forest area?---Yes.  
2 On Brown Mountain? And are you familiar with the roads in  
3 the area?---Yes.  
4 Could you describe to His Honour how you got to the position  
5 that you were in when you first viewed the  
6 footage?---Yes. I drove from - I was in the car that  
7 drove from Goongerah up to Bonang Road. You turn  
8 right on to Gap Road and then you turn right again on  
9 to Errinundra Road, and a couple of hundred metres up  
10 the road there's a place where we park the car and we  
11 walk in about a hundred metres, and it's on the  
12 east-facing side of the slope.  
13 Now, do you know whether the area of Brown Mountain is  
14 divided up into logging coupes?---Do I?  
15 Do you know whether they are divided up into logging coupes,  
16 the area of Brown Mountain?---Yes.  
17 Do you know - were you in a coupe at the time that you saw -  
18 - -?---Yes, a proposed coupe.  
19 And do you know the number of the coupe?---Not off the top of  
20 my head, it's quite a big number.  
21 Do you know what the number ends in, the last numbers of the  
22 coupe number?---Not off the top of my head.  
23 Now, in attachment SM 1 you have a map in which you have  
24 marked an X on the location of the camera?---M'mm.  
25 And I think you have just described to His Honour that you  
26 have come down Legges Road and then turned into Gap  
27 Road and then down Errinundra Road?---Bonang,  
28 Errinundra, yes.  
29 And how far down Errinundra Road did you travel?---Roughly 4  
30 to 500 metres.  
31 And from the road, Errinundra Road side how far did you walk

1           into the forest?---About a hundred metres.

2           And were there any other cameras located in the area at the

3           time?---Yes, we had six.

4           And where were they situated?---Three on the east side of the

5           gully and three on the west side of the gully.

6           And which way does the gully run having regard to the map

7           that you have there? Does the gully run - in which

8           direction does it run?---It would be parallel between

9           Legges Road and Errinundra Road.

10          And how steep was the area at which the camera was

11          located?---Personally I don't find it that steep.

12          Was it flat land, was it on a rise?---Slight rise.

13          And was there water running in the gully?---Yes.

14          And how far from the water was the camera located?---Roughly

15          a hundred metres.

16          Now, prior to the time that you saw this camera in that area,

17          how many times had you been in the forest area bounded

18          by Legges Road and Errinundra Road?---Numerous.

19          Can you give His Honour some indication of how many

20          times?---20.

21          And are you familiar with the landmarks within the

22          forest?---Yes.

23          Were there any landmarks that you can recall near the

24          location in which the camera was placed?---What's the

25          name of that tree? Giant shining gum.

26          And what was notable about that?---What was noted about that?

27          Yes, why do you recall seeing that?---Because it was one of

28          the biggest trees there, easy to find.

29          And the contents of your affidavit are true and correct, are

30          they?---To my knowledge, yes.

31          That's the evidence of this witness, if Your Honour pleases.

1 HIS HONOUR: Yes, thank you, Mr Niall.

2 <CROSS-EXAMINED BY MR WALLER:

3 Ms McLaren, are you a member of Environment East

4 Gippsland?---Yes.

5 How long have you been a member?---Roughly a few years.

6 And you attend EEG meetings as a member?---No.

7 How long have you been undertaking surveys of native fauna in

8 the East Gippsland area?---Surveying probably as long

9 as I have lived out there.

10 That's seven years, is it?---Yes.

11 And that includes surveying with the cameras?---No.

12 How long have you been doing that?---That's new technology

13 for our organisation, it's probably about the last 6 to

14 8 months.

15 And when you say "new technology for our organisation", you

16 are speaking about EEG?---Yes.

17 Have you done any formal training or technical training to

18 enable you to use the new technology?---Not

19 professional, no.

20 Did you read the manual for the camera before you used

21 it?---No.

22 You mentioned that you took the results from the camera whose

23 location you have depicted on the map, you took the SIM

24 card, you described it, to Jill Redwood?---Yes.

25 And you did that immediately after you viewed it?---Yes.

26 And did you give the results of the survey produced from a

27 camera on any other occasion to Jill Redwood?---Not to

28 my knowledge.

29 Is this the first time you say you detected an animal you

30 thought to be a long-footed potoroo?---Yes.

31 And did you give the results of that particular detection

1           that you say you had to anyone other than Jill  
2           Redwood?---No.

3   Now, when you placed the camera that's marked with an X on  
4           your Exhibit 1, why did you decide to place the camera  
5           there in that particular location?---It was a nice  
6           clear area, not too many ferns to distract the actual  
7           image.   Every time the camera takes an image it can  
8           take images of a shadow moving or a leaf dropping, so  
9           it's a lot more accurate if it's an open space.   And  
10          it was a good backdrop, and quite clear and precise  
11          with the big tree that I was mentioning before.

12   And you mentioned that you placed the camera about 100 metres  
13          from the gully?---Roughly.

14   Yes.   Was that a factor that you took into account in  
15          placing it, that it was proximate to the water and the  
16          gully?---Yes.

17   And why was that?---A good location to find potoroos and also  
18          it was in the proposed coupe.

19   It was in a proposed coupe, did you say?---M'mm.

20   Now, you knew that that coupe was a coupe that VicForests  
21          proposed to harvest from, didn't you?---Yes.

22   You also knew when you placed the camera that proceedings had  
23          been commenced by EEG against VicForests seeking to  
24          stop it harvesting from that coupe?---Vaguely.

25   Sorry?--- Vaguely, yes.

26   Did you use any bait of any kind in conjunction with placing  
27          the camera to attract a long-footed potoroo?---Yes.

28   What sort of bait did you use?---A concoction of peanut  
29          butter and essential oils like, pistachio oil.

30   Right.   You don't mention that in your affidavit, do  
31          you?---No.

1 Why not?---I was trying to make it as simple as possible.  
2 Right. Did you not think that it was an important factor to  
3 reveal to the court through your affidavit as part of  
4 the evidence of the survey that you had conducted and  
5 which you now know, or when you did your affidavit you  
6 knew was to be the subject of litigation?---No.  
7 Before you installed the camera at that particular location  
8 marked with an X on - which you say was marked with an  
9 X on Exhibit 1, did you check the camera to make sure  
10 it was working properly?---Can you rephrase that? It  
11 was working properly because we got the image.  
12 No, no, you knew that after the event. But when you placed  
13 it there - - -?---Sorry.  
14 And left it?---Yes.  
15 Did you check that it was working properly?---Yes.  
16 How did you check?---We go back on a weekly basis and go  
17 through the images and make sure that the batteries are  
18 charged and go through the images that we have  
19 collected.  
20 So in your affidavit - do you have that in front of you?---I  
21 do.  
22 You say that you set this particular camera up on 31 August  
23 2009?---Correct.  
24 How do you know that that's the date you did it?---A  
25 combination of looking at my diary before I leave home,  
26 and checking the GPS that we take out.  
27 That's checking the GPS?---M'mm.  
28 How does that tell you the date?---It does tell you the date.  
29 Oh, because of the logged entry that we put in there.  
30 Right. So you are confident that you set it up on 31  
31 August?---As confident as I can be.

1 During your evidence-in-chief you mentioned that when you  
2 checked the footage on site you got very excited, you  
3 finished documenting it and you put it in your backpack  
4 and you went off to see Jill, remember that?---Yes.  
5 What did finishing documenting it involve?---Writing down the  
6 GPS coordinates, writing down any problems that could  
7 have gone with weather or flat batteries or other  
8 things like that. Writing down the names of the  
9 people, just writing down the GPS recordings and the  
10 fact of where it was, what camera it was, and the date  
11 and then went back down to Jill's.  
12 Why did you see the need to document those matters?---The  
13 date and the GPS readings?  
14 Yes?---So we wouldn't get confused with the other five  
15 cameras that were out there. So we got the correct  
16 location.  
17 And where did you make those notes?---In a log book.  
18 Yes. And where is that log book?---It's in the survey book  
19 in Goongerah.  
20 In Goongerah?---Yes.  
21 Have you provided that document to EEG or its solicitors in  
22 the last few months?---Yes.  
23 You have?---I got it faxed this morning.  
24 I'm sorry?---I got it faxed this morning.  
25 You got a fax this morning?---I got it faxed this morning.  
26 Where did you have it faxed from?---The Goongerah school.  
27 Why did you do that this morning?---Because it seemed  
28 important, I was a bit forgetful and I was going to  
29 bring it but I forgot.  
30 Did someone ask you to fax it this morning, or that was a  
31 decision you took yourself?---No, I thought I should.



1 Now, was that the first time you produced it - I withdraw  
2 that. Who did you fax it to?---This courthouse.  
3 This courthouse.  
4 Right. Had you previously been asked to provide any  
5 documents to lawyers for EEG in relation to your  
6 documenting the detection?---I had been advised to  
7 bring as much evidence as possible.  
8 And were you advised to bring that to court or were you  
9 advised to provide that some months ago?---Both.  
10 Why didn't you provide it when you were asked to provide it  
11 some months ago?---Say that again?  
12 Did you provide it when you were asked to do so some months  
13 ago?---Yes.  
14 Who did you provide it to?---I faxed it to Vanessa.  
15 So you have a fax copy of the document that you have  
16 described in court today with you?---Yes.  
17 Your Honour, I call for that document. While that's being -  
18 - -  
19 HIS HONOUR: Ms McLaren would you like a glass of water or  
20 are you comfortable?---I am okay, thank you.  
21 MR WALLER: Ms McLaren, do you have a copy of that document  
22 in front of you as well?---No.  
23 Are there copies - are there multiple copies in court?  
24 Perhaps I might ask for copies to be made and I will  
25 move on to another topic. Now, when you went to  
26 retrieve the footage, and I think you deal with this in  
27 paragraph 5 of your affidavit, you say "On Thursday 3  
28 September 2009 I attended the location and recovered  
29 the footage." That's the position, is it?---The  
30 position?  
31 That's accurate, an accurate statement?---To the best of my

1 knowledge, yes.

2 Are you sure it was a Thursday?---Off the top of my head, no.

3 You returned therefore to the camera about three days later,

4 according to your affidavit?---After?

5 You left it there on 31 August and you returned to check the

6 footage on 3 September, three days later, is that what

7 happened?---Maybe, I went out there repetitively over

8 the three weeks to make sure the batteries were charged

9 and the images were being collected, that the camera

10 was working.

11 But the first time you set up this camera in this spot was 31

12 August, wasn't it?---Yes.

13 You look a little bit doubtful about these answers?---I am

14 just under pressure, I am trying to answer as correctly

15 as possible. Could you repeat that again, the first

16 time I set up the camera?

17 The first time you set up the camera in question that you say

18 detected the potoroo, in paragraph 4 you say "On about

19 31 August 2009 I set up an infrared and motion sensor

20 camera at Brown Mountain at" and you then set out a

21 particular location with great precision by reference

22 to various coordinates?---M'mm.

23 Is that a true statement?---Yes.

24 Then you say that "On Thursday 3 September 2009 I attended

25 the location and recovered the footage." Is that a

26 true statement?---To the best of my knowledge, yes.

27 You made this affidavit on 15 October, didn't you?---If

28 that's what the document says. I am pretty bad with

29 dates off the top of my head, especially under

30 pressure.

31 Have you got a copy of the affidavit in front of you?---I do.

1 Do you want me to go through it?

2 Perhaps I just want you to be absolutely clear - it's not a  
3 very long affidavit and I am taking you to paragraphs 4  
4 and 5 on page 2?---I will check. Paragraph 4 is  
5 correct.

6 HIS HONOUR: Well, what you say there is "On about 31  
7 August"; so it was on or about that day, is that  
8 right?---Yes.

9 Yes, all right.

10 MR WALLER: But you are more precise about the day you  
11 collected it, Thursday 3 September. Are you more  
12 certain about that date than the first date?---Because  
13 I didn't put the word "about" in it?

14 No, because you have got the day, Thursday?---Well, yes, I  
15 believe 3 September was a Thursday.

16 Yes. Was this the first time that you'd detected a potoroo  
17 in filming on Brown Mountain?---Yes.

18 And have you ever detected a potoroo since that day?---No.

19 So this was a very important occasion in terms of your career  
20 of detecting or seeking to detect potoroos?---You could  
21 say that.

22 Now, I would like you to have a look at Exhibit 3 of your  
23 affidavit?---Exhibit 3. Yes.

24 Do you recognise that photo, Exhibit 3?---I'm sorry, yes.

25 Is that the still photo that you recovered from the  
26 camera?---Yes, it is.

27 When you collected it? And do you understand the notations  
28 at the foot of that photo?---The date of 9/6, yes, I  
29 do.

30 That indicates 6 September, doesn't it?---It does.

31 Your evidence, which you have confirmed to be accurate, says

1           you collected it on 3 September?---It does.

2           Are you able to account for the difference?---The three day

3           difference?

4           Yes?---I guess either the camera was incorrect or I was

5           incorrect.

6           At what time of day did you retrieve the footage, do you

7           recall?---Roughly midday.

8           When did you first become aware that there was a discrepancy

9           between your affidavit and the photo that we have just

10          been looking at?---This morning.

11          How did you become aware of that?---Because the date is

12          written there.

13          But was that brought to your attention by someone or did you

14          discover it yourself?---I was shown by someone else.

15          Who showed you?---My barrister.

16          And being shown that didn't cause you to want to express any

17          doubt about the date that you have listed in paragraph

18          5 of your affidavit?---Can you rephrase that?

19          When you were asked whether your affidavit was true and

20          correct, you said it was?---To the best of my

21          knowledge.

22          Yes.    So being shown the discrepancy in the photograph

23          didn't cause you to think that your affidavit was other

24          than true and correct?---I do believe it was correct.

25          So the photo is wrong?---I still can't decide that.

26          Were you aware that on 1 and 2 September EEG was arguing the

27          injunction application before Justice Forrest in

28          Melbourne?---Was I aware of it?

29          Were you aware at the time on 1 and 2 September that there

30          was an argument going on in the Supreme Court where EEG

31          was seeking an injunction to stop logging in the

1 coupes?---Yes.

2 And you discovered this footage shortly after that, didn't  
3 you?---Yes.

4 And were you aware that the judge had reserved his decision  
5 indicating that he would deliver it some days after 1  
6 and 2 September?---Yes.

7 And you say that after you discovered the footage on 3  
8 September you provided it immediately, or almost  
9 immediately, to Jill Redwood?---As soon as I found the  
10 video footage I took it straight to Jill Redwood's  
11 house, yes.

12 Did you provide the footage to the DSE at any time?---No.

13 Did you inform the DSE - - -?---No.

14 At any time that you had found it?---No.

15 Didn't you think it would be important to do that to alert  
16 them to the existence of a potoroo?---Through my lack  
17 of experience I gave it to a higher authority to deal  
18 with it.

19 And that higher authority was Jill Redwood?---Yes.

20 Now, after you took the footage from the camera, did you  
21 leave the camera there in place or did you take the  
22 camera with you?---No, I left the camera there in  
23 place. Put another SIM card in it.

24 And since giving the SIM card or the memory stick to Jill  
25 Redwood, have you retrieved it at any point, or that  
26 was the last time it was in your hands?---I believe it  
27 was the last time it was in my hand.

28 Now, at any time did you convert what was on the SIM card on  
29 to a DVD or any other memory storage?---Yes.

30 When did you do that?---That day.

31 And what did you transfer it to?---A hard drive on the

1 computer and saved it on to a disk.

2 So you transferred it to the hard drive of a computer?---Yes.

3 And you also saved it separately on a CD?---On a DVD, a disk.

4 Or DVD?---Yes.

5 And whose computer hard drive did you save it on?---Jill

6 Redwood's.

7 Did you understand that upon a sighting of a potoroo being

8 recorded, that the DSE would need to verify that

9 sighting?---Yes.

10 How did you understand that?---I understand that the DSE is

11 the Department of Sustainable Environment and they

12 would have to approve the evidence to clarify that it

13 was a potoroo.

14 They would have to clarify the location too, wouldn't

15 they?---Yes.

16 And what material were you able to provide - would you have

17 been able to provide them to clarify the location of

18 where you put the camera?---Rephrase that?

19 Let me rephrase. The footage didn't say anything about

20 location, did it?---No.

21 The still photo had no record of location, did it?---No.

22 Besides the image and the backdrop.

23 Right. So the only documentary record of location would

24 have been whatever notes you would have made in your

25 log book?---GPS coordinates that I made in the log

26 book, yes.

27 And did you give that information to Jill Redwood on 3 or 4

28 September?---Yes.

29 How did you give it to her? You gave her the whole log book,

30 the original of the log book?---Yes.

31 And you left it with her?---To my memory, yes.

1 And when did you retrieve it?---I didn't retrieve it, one of  
2 the other members did.

3 And gave it back to you?---It's a shared log book.

4 Could I now hand to you a copy of the fax that was sent to  
5 the courthouse today with a copy to His Honour and our  
6 learned friend?---Thank you.

7 Unfortunately the copy doesn't reproduce all of the  
8 information, Ms McLaren, but the original has a  
9 footprint of a fax that on 5 March 2010, today, at 8.49  
10 am, this document was faxed from the Quest in Sale to  
11 the court - to the Quest. So the footprint suggests  
12 that on 23 February 2010 at 5.48 there was a fax from  
13 Goongerah, can you explain that? That was about a week  
14 or so ago. Do you remember faxing a document on that  
15 date?---No. This document was faxed this morning from  
16 the Goongerah school. I can only guess that one of  
17 the machines has got the date wrong.

18 I see. And it was faxed from the Goongerah school to  
19 Quest?---I don't know where Quest is.

20 And you are not aware of what happened to it after you faxed  
21 it from Goongerah, or you had it faxed from  
22 Goongerah?---Yes.

23 Right. Now, if I could ask you to look at the first page  
24 behind the cover sheet. You have got some notation  
25 there, 31 August '09. Is that your handwriting on  
26 that page?---No. I don't even see 31 August - sorry,  
27 at the top left, yes. No, that's not my writing.

28 So nothing on that page is your handwriting?---No.

29 Do you understand any of the notations in relation to  
30 batteries referred to below?---The readings with the  
31 numbers?

1 Yes?---The volts of the batteries while we were checking  
2 them.  
3 But you weren't responsible for making that note?---No.  
4 If you could look at the next page, which is unfortunately  
5 not a very good copy?---It's on the same day.  
6 Is any part of that your handwriting?---No.  
7 If you could look at the next page. Is any part of that  
8 page your handwriting?---Yes, it is.  
9 You have got a description "M1" or "MI" and then some writing  
10 to the right of that. Can you explain what that is  
11 plenty to signify?---Yes. M1 is the camera Moultrie  
12 1. Next to it on the right says "Needs needed to fix  
13 side latch". There was a broken latch and we had to  
14 fix it so it could get strapped to the tree more  
15 permanently.  
16 Yes?---Underneath that is the date that we went back out and  
17 fixed it, and underneath that is the GPS readings of  
18 the Moultrie 1 camera.  
19 Is that the camera that detected the potoroo?---Yes.  
20 If you have a look at the coordinates, they are different  
21 from the coordinates that you refer to in paragraph 4  
22 of your affidavit?---Though on the next page - - -  
23 Yes?---There is the same M1 with new coordinates, and they  
24 should be the one that I put in my affidavit.  
25 There's one digit missing in the second number, but otherwise  
26 it appears to be the same. Whose handwriting is it at  
27 the bottom of the page we are looking at, which is page  
28 5 of 15?---I am not quite sure.  
29 It's not your handwriting?---No, it's not.  
30 Your handwriting records, does it, the relevant coordinates  
31 of cameras that you yourself placed, is that the



1 position?---The numbers that are written here?

2 If we go back to page 4 of 15, that's your handwriting, and

3 you have got two particular locations indicated on that

4 page, M1 and SGZ or SG2?---Yes.

5 And you have got locations indicated by the numbers?---Yes.

6 There doesn't appear to be on that page, or indeed the next

7 page, the location that's referred to in paragraph 4 in

8 your handwriting, does there?---No.

9 So how were you able when you did this affidavit to recall

10 the coordinates where you placed this camera that are

11 referred to in that paragraph?---Can you say that

12 again?

13 When you prepared your affidavit, in paragraph 4 you say you

14 set up an infrared and motion sensor camera at Brown

15 Mountain at a particular location; 55H0655876, and then

16 forward slash, 5875717. How were you able to put that

17 information in your affidavit? I take it you didn't

18 remember it in your head, you had to have regard to

19 some document?---Yes, the GPS.

20 And did you have regard to these notes when you made the

21 affidavit?---Yes.

22 Did you have regard to a GPS as well - - -?---No.

23 No. So you only had regard to these notes when you made

24 your affidavit?---Yes.

25 And that's not your handwriting on page 5 of 15, is it, where

26 that particular location is indicated?---No, it's not.

27 Whose handwriting is it?---I am not 100 per cent certain.

28 So you don't know whether that's an accurate piece of

29 information that's been recorded at the bottom of that

30 page, do you?---I trust my team.

31 But you have no personal knowledge of it because you didn't

1           put in that notation, did you?---No.

2       So you just assumed that it was an accurate location when you

3           did your affidavit, paragraph 4?---I wrote my affidavit

4           to the best of my knowledge, yes.

5       If you scroll through the rest of the document, are there any

6           other notations that have been made by you or anyone

7           else that relate to the camera that you refer to in

8           your affidavit and the particular position you refer to

9           in your affidavit?---Can you ask that again? What am I

10          looking for?

11       I am only looking and interested in asking you about the

12          particular camera that you refer to in paragraph 4 of

13          your affidavit, that's the one you say was set up at

14          that particular location. Now, with that in mind, is

15          there any other notation in these notes that relates to

16          that camera, or is it simply that notation at the

17          bottom of page 5 of 15 that we have been talking

18          about?---With the GPS readings, yes, as far as I can

19          see. I do mention the Moultrie on the next page.

20       Is that the page 6 of 15 with the date 22 October?---Yes.

21       But that was after you'd sworn your affidavit, wasn't

22          it?---I'm sorry, I can't remember.

23       You swore your affidavit on 15 October, so those notes come

24          after you swore your affidavit?---I don't know.

25       Your Honour, I seek to tender this document.

26       HIS HONOUR:     Yes.

27

28       #EXHIBIT C - Extract of log book.

29

30       MR WALLER:     If Your Honour pleases.

31          Are you aware that lawyers for EEG have produced

1 a SIM card or what's described as an SD card in  
2 relation to the camera the subject of your  
3 affidavit?---I hope so.  
4 But were you any part of that process or - - -?---No.  
5 Is that something you just heard about  
6 secondhand?---Something I have heard of secondhand.  
7 The SD card that was produced has a description "Potoroo" on  
8 it, were you responsible for writing "Potoroo on a SIM  
9 card?---I can't remember.  
10 Your Honour, I have no further questions.  
11 HIS HONOUR: Yes.  
12 <RE-EXAMINED BY MR NIALL:  
13 You were asked some questions about paragraph 5 of your  
14 affidavit, and you said that it was true to the best of  
15 your knowledge. Firstly I want to ask you about the  
16 part of that paragraph where you say that you attended  
17 the location and recovered footage. How confident are  
18 you that you did attend the location and recover  
19 footage?---Extremely.  
20 And you were asked some questions about the notation at the  
21 bottom of page 5 of 15, and you were asked if you could  
22 identify the handwriting. Do you have page 5 of  
23 15?---Yes.  
24 The number's on the top right-hand corner?---Yes.  
25 Now, did anyone else attend with you at Brown Mountain when  
26 you went there and recovered the footage?---Yes.  
27 And who are they?---James Black and Jennifer Deruch.  
28 And did anyone else attend when you placed the camera as you  
29 have set out in paragraph 4 of your affidavit?---Yes.  
30 And who was that?---James Black and David Caldwell.  
31 All right. Now, going to the day that you recovered the

1 camera and footage, what did those two people do on the  
2 day?---The same thing I did.

3 Well, can you explain to His Honour the process? You have  
4 given some evidence about driving to the area. Who  
5 was in the car?---Jennifer Deruch and James Black and  
6 myself.

7 All right. And who was driving?---James Black.

8 All right. And when you got to the place what did the three  
9 of you do?---We walked to each camera and checked the  
10 batteries and checked the images on the cameras.

11 All right. And did you go together to check the cameras and  
12 images or did you go separately?---Yes, went together.

13 And at the time - you have told His Honour that you looked at  
14 the footage through the camera player?---Yes.

15 At the site. Were the other two people present with  
16 you?---Yes.

17 Did you observe whether they looked at the footage as  
18 well?---Yes.

19 Now, you indicated to His Honour that one of the reasons the  
20 location was chosen was because it was a proposed  
21 logging coupe, is that correct?---And a well-known  
22 area.

23 Was the area you were in, had that been to your observations  
24 been logged before?---The area that I was in with the  
25 camera?

26 Yes?---I would think so.

27 Now - - - ?---I am not 100 per cent certain, though.

28 You'd been to that area before?---Yes.

29 Could you describe the area to His Honour?---It's gorgeous.  
30 A mixture of gum, ferns, I don't necessarily know what  
31 you need to know. Quite open. Low in - I don't

1 know. I don't necessarily understand what you are  
2 trying to get me to describe.

3 All right.

4 HIS HONOUR: Well, in your notes you have got reference to  
5 the west gully and Legges Road, and the east gully,  
6 Errinundra Road?---Okay.

7 So presumably you go down Errinundra Road, is that  
8 right?---Yes, Errinundra Road and Legges Road are  
9 parallel to each other and there's a slight decrease in  
10 the formation of the ground where there's a gully going  
11 through the centre of it.

12 Yes. So when you say east gully, you have gone into that  
13 gully from Errinundra Road, that is the eastern side of  
14 the gully, is that right?---Yes.

15 All right.

16 MR NIALL: Now, why did you choose to place the cameras in  
17 that coupe rather than other areas within the Brown  
18 Mountain area?---We were trying to cover as much ground  
19 as possible, and that was just one of the locations of  
20 many that we have chosen.

21 And why were those locations chosen? Was there anything  
22 particular about those areas that - those coupes, I beg  
23 your pardon, that influenced the decision as to where  
24 you placed the cameras?---Can you rephrase that, I  
25 still don't understand what you are trying to ask me.

26 Well, how did you come to choose the particular location that  
27 you placed the camera in?

28 MR WALLER: Your Honour, she has already been asked that in  
29 cross-examination. She gave an answer. This doesn't  
30 really form a matter for re-examination, in my  
31 submission.

1 HIS HONOUR: I think it does, Mr Waller. I think it  
2 arises out of the whole flow of the cross-examination,  
3 if I can put it that way.

4 MR WALLER: If Your Honour pleases.

5 MR NIALL: Was there any particular reason why you chose that  
6 location to place the cameras?---Because I believed  
7 that there was endangered animals in there.

8 There's just an additional matter I wanted - Your Honour,  
9 could I just have five minutes, I just wanted to check  
10 one matter before I complete re-examination. It won't  
11 take very long. Not with the witness, Your Honour.

12 HIS HONOUR: I will stand down for five minutes.

13 (Short adjournment).

14 MR NIALL: Thank you, Your Honour, I have no further  
15 re-examination.

16 HIS HONOUR: Thank you, Mr Niall.

17 <(THE WITNESS WITHDREW)

18 (Witness excused.)

19 HIS HONOUR: Unless there's anything else you wish to raise  
20 with me we will adjourn until 12 o'clock on Tuesday.

21 MS MORTIMER: As Your Honour pleases.

22 MR WALLER: As Your Honour pleases.

23 ADJOURNED UNTIL 12 NOON TUESDAY 9 MARCH 2010

24  
25  
26  
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