

1 MS MORTIMER: If Your Honour pleases. I have a few  
2 housekeeping matters to deal with first, and the first  
3 of those, Your Honour, is to tender in whole the  
4 documents arising out of the view, and if I may do that  
5 in sequence. The first document I have to tender is a  
6 folder containing hard copy prints of the photographs  
7 that were taken on the view, and I hand a copy of that  
8 to Your Honour.

9  
10 #EXHIBIT 7 - Photos of view.

11  
12 MS MORTIMER: Your Honour, the second item to tender is a USB  
13 obtaining the slides, which are the hard copy of  
14 Exhibit 7, I tender that.

15 HIS HONOUR: Yes.

16  
17 #EXHIBIT 8 - USB of Exhibit 7.

18  
19 MS MORTIMER: The next, Your Honour, is the USB which was  
20 produced by Mr Andrew Brown, the gentleman who took the  
21 photographs on the view and was downloaded from his  
22 computer at the site of coupe 20 on the day of the  
23 view. And I tender that.

24 HIS HONOUR: Yes.

25  
26 #EXHIBIT 9 - USB (coupe 20).

27  
28 MS MORTIMER: The third document, Your Honour, is the agreed  
29 commentary on the photographs and the map marked by  
30 Your Honour's associate on the day of the view.

31 HIS HONOUR: Yes.

1 MS MORTIMER: And, Your Honour, I will give Your Honour two  
2 copies of that, one which has the original map and one  
3 which has a photocopy.

4 HIS HONOUR: Yes, thank you.

5

6 #EXHIBIT 10 - Agreed commentary on view and map.

7

8 MS MORTIMER: Your Honour, that completes the bundle of  
9 documents which will represent what was seen on the  
10 view.

11 HIS HONOUR: Yes.

12 MS MORTIMER: And, Your Honour, it's perhaps appropriate at  
13 this time - I haven't mentioned this to my learned  
14 friend - that I just make one submission about -  
15 really a legal submission about the - otherwise in our  
16 submission what section 54 of the Evidence Act provides  
17 is that what Your Honour saw on the view is to be  
18 evidence, and Your Honour there are some decisions in  
19 New South Wales which suggest that that provision does  
20 not remove the obligation of procedural fairness that  
21 exists during a trial. So that if the court were to  
22 wish to draw any other inferences or rely on  
23 observations not presently on the record, then that  
24 would be a matter to be raised with the parties. We  
25 see that as probably the only other outstanding issue  
26 from the view, Your Honour.

27 HIS HONOUR: Yes. Well, the other issue may be that both  
28 Mr Squires and Dr Meredith on one view expressed  
29 opinions about things we saw at various points, and  
30 strictly speaking they should confirm those opinions  
31 when they give evidence, because what they have said

1 while we were out there, convenient as it was, wasn't  
2 evidence on oath, as it were, but also went beyond  
3 simply describing to me what I could see to some  
4 degree. So I haven't read the whole of the notes, but  
5 I see that various things - such as Mr Squires  
6 explaining how the hip chain was used, and things of  
7 that nature. Well, that's not something that I could  
8 see for myself, it was explanatory of what I saw. And  
9 it may be that you can simply agree that that's not of  
10 concern to each of you, but I just say to you that  
11 insofar as these notes record those sorts of things,  
12 then as a matter of strictness one would prove them.

13 MS MORTIMER: I accept that, Your Honour. Your Honour, this  
14 is an agreed document, so that in that sense it's put  
15 before the court on the basis the parties agree it to  
16 be an accurate record.

17 HIS HONOUR: Yes.

18 MS MORTIMER: And I had certainly proposed to ask Dr Meredith  
19 to adopt his opinions.

20 HIS HONOUR: Yes.

21 MS MORTIMER: When he gives evidence.

22 HIS HONOUR: Yes, thank you.

23 MS MORTIMER: If Your Honour pleases.

24 Now, Your Honour, the next matter is yesterday  
25 for reasons that we do not need to raise with Your  
26 Honour that arose between the parties, my learned  
27 junior and Dr Meredith attended VicForests' office in  
28 Melbourne, and downloaded some additional maps from the  
29 program that was used to produce the maps attached to  
30 Mr Spencer's affidavit.

31 HIS HONOUR: Yes.

1 MS MORTIMER: And I have copies of those, and they are  
2 documents on which the plaintiff intends to rely in  
3 this proceeding. Now, my learned friend Mr Waller has  
4 not seen these maps, this is just the product of  
5 working on a public holiday, Your Honour, and us not  
6 having a chance to give it to Mr Waller. So what we  
7 have agreed, Your Honour, is that I will tender them  
8 for identification, Mr Waller will look at them and we  
9 will deal with their absolute tender at a later date.

10 HIS HONOUR: Yes.

11 MS MORTIMER: And, Your Honour, again I can hand up two  
12 copies, if that's convenient.

13

14 #EXHIBIT 11(MFI) - Additional VicForests maps.

15

16 MS MORTIMER: Now, Your Honour, the next housekeeping matter  
17 to deal with is that we noted over the weekend that two  
18 reasonably important pages out of the 2009 management  
19 prescriptions which appear in the agreed book of  
20 documents are badly photocopied and not properly  
21 reproduced. So these are Schedule 2 which are the  
22 habitat tree prescriptions. So we would hand up a  
23 copy of agreed document pages 933 and 934 to Your  
24 Honour to replace those pages in Your Honour's copy.  
25 Volume 2, Your Honour.

26 HIS HONOUR: Yes.

27 MS MORTIMER: Now, Your Honour, the next matter is just to  
28 update Your Honour on how we are going in terms of  
29 witnesses and when we are likely to call witnesses.  
30 There's only been one change to the order, but we  
31 thought it might be convenient to hand Your Honour up a

1 calendar of that.

2 HIS HONOUR: Yes.

3 MS MORTIMER: So, Your Honour, today we will deal with  
4 Dr Smith and Dr Meredith, and tomorrow Mr Bilney,  
5 Mr Scotts and the rest, Your Honour, we hope will fall,  
6 out as predicted.

7 HIS HONOUR: I am looking at B2 and I don't quite follow  
8 it.

9 MS MORTIMER: So we are on Tuesday in week 2, Your Honour,  
10 and so we are at PM. So we have got Smith and  
11 Meredith, and then tomorrow, we expect Dr Meredith may  
12 carry over until tomorrow, and then we will have Bilney  
13 and Scotts tomorrow.

14 HIS HONOUR: Yes, thank you.

15 MS MORTIMER: And, Your Honour, there's been - I withdraw  
16 that. Our learned friends informed us they do not  
17 require Ms Triggs for cross-examination, so I will be -  
18 that's why she has disappeared off the list, and I will  
19 simply be reading her affidavit.

20 HIS HONOUR: Yes, thank you.

21 MS MORTIMER: Now, Your Honour, the remaining matter of  
22 housekeeping is some corrections to the transcript, and  
23 my learned junior Ms Knowles will deal with that.

24 HIS HONOUR: Yes.

25 MS KNOWLES: Those are all agreed and they go through from the  
26 beginning of the case. The first amendment is on page  
27 3 of the transcript at line 5. Would you like me to  
28 hand up a copy?

29 HIS HONOUR: Yes, that would be useful, Ms Knowles. I am  
30 not sure quite what we have done in this sea of papers  
31 that I am confronting.

1 MS KNOWLES: I can hand up my copy of the full transcript  
2 which goes through a number of changes, or would you  
3 prefer I hand up the page by page? The transcript is  
4 un-annotated.

5 HIS HONOUR: I think we will retrieve my copy.

6 MS KNOWLES: Okay.

7 HIS HONOUR: Yes.

8 MS KNOWLES: Your Honour, page 3 line 5, "regular tree" should  
9 be "regulatory".

10 HIS HONOUR: Yes.

11 MS KNOWLES: Line 7, "(indistinct)" should be "biodiversity".

12 HIS HONOUR: Yes.

13 MS KNOWLES: The next change is on page 30 at line 24.  
14 "Sneak tracks" should be "snig": "the construction of  
15 sneak tracks and the logging".

16 HIS HONOUR: Yes.

17 MS KNOWLES: At page 80, on, line 7: "Clear fell harvesting,  
18 sea tree harvesting" should be "seed tree harvesting".

19 HIS HONOUR: Yes.

20 MS KNOWLES: Over the page, page 81 at line 16: "I see it's  
21 described as alpine/mountain mixed species pre 1950s"  
22 not "3 1950s".

23 HIS HONOUR: Yes.

24 MS KNOWLES: Over the page at 82 on line 17, "silver culture"  
25 should be "silviculture".

26 HIS HONOUR: That's right.

27 MS KNOWLES: Page 85, the bottom line, 31, "to meet the  
28 objectives of the code" rather than "the objectors of  
29 the code", the bottom line.

30 HIS HONOUR: Yes.

31 MS KNOWLES: To page 137, at line 18: "Another matter that

1 VicForests just have regard to" should be "must have  
2 regard to".

3 HIS HONOUR: Yes,

4 MS KNOWLES: Page 163 line 10, "an Orbost Spiny Crayfish but  
5 was in fact a biduala spiny crayfish", at line 10 on  
6 page 163, is Bidawalus B-I-D-A-W-A-L-U-S".

7 HIS HONOUR: Yes.

8 MS KNOWLES: And then into day 5, page 287, line 9, "V  
9 camera", "video camera".

10 HIS HONOUR: Yes.

11 MS KNOWLES: Page 296 line 17, from Mr Gillespie, the text is  
12 "- I have leg tracked". From discussion with my  
13 learned colleague, Mr Redd, we agreed that it's "I have  
14 walked from Legges Road", so it should have read "I  
15 have walked from Legges Road down the stream".

16 HIS HONOUR: Yes.

17 MS KNOWLES: Page 303 line 17 "siding creek track" should be  
18 Sardine Creek track".

19 HIS HONOUR: Yes.

20 MS KNOWLES: Page 310 line 6, the (indistinct) should  
21 reference "pre logging survey", which is clarified by  
22 the comment at line 9 "we did pre logging surveys".

23 HIS HONOUR: Yes.

24 MS KNOWLES: So it will read "the forest blocks that were  
25 under the pre logging survey program". Page 311,  
26 lines 1 and 2 "definite" should be "at different times  
27 of the year".

28 HIS HONOUR: Yes.

29 MS KNOWLES: Also on the same page line 17, "the risk rated  
30 consequences" should be "the risk weighted".

31 HIS HONOUR: Yes.

1 MS KNOWLES: Page 316 line 13 "proscriptions" should be  
2 "prescriptions".  
3 HIS HONOUR: Yes.  
4 MS KNOWLES: Similarly the reference to proscriptions on page  
5 323 at line 7 and line 18 should be prescription.  
6 That's the totality of our current suggested changes.  
7 HIS HONOUR: Yes, thank you.  
8 MS KNOWLES: As Your Honour pleases.  
9 MS MORTIMER: Now, Your Honour, while we are tendering  
10 matters, it's probably appropriate, Your Honour, if I  
11 tender the agreed book of maps which hasn't yet been  
12 tendered.  
13 HIS HONOUR: Yes.  
14 MS MORTIMER: I do that, if Your Honour pleases.  
15 HIS HONOUR: Yes.  
16  
17 #EXHIBIT 12 - Book of maps.  
18  
19 MS MORTIMER: Now, if Your Honour pleases, I call Dr Andrew  
20 Smith.  
21 HIS HONOUR: Yes.  
22 <ANDREW PETER SMITH, affirmed and examined:  
23 MS MORTIMER: Dr Smith, your full name is Andrew Peter Smith,  
24 is that right?---That's correct.  
25 And your address is 35 Albany Lane, Currumbin, in  
26 Queensland?---Yes.  
27 Is that right? And your occupation is?---Ecologist.  
28 Now, Dr Smith, you have produced two reports in this  
29 proceeding, and I will just take you through those to  
30 identify them. I first hand you a letter of  
31 instruction dated 28 October 2009. I ask you to



1 identify that. Is that the letter of instruction you  
2 received from Bleyer Lawyers?---Yes, that's correct.  
3 Your Honour, I tender that.

4

5 #EXHIBIT 13 - Letter of instructions to Dr Smith.

6

7 MS MORTIMER: Now, in response to that letter of instruction,  
8 Dr Smith, did you produce a report dated 27 January  
9 2010?---Yes, that's correct.

10 Do you have a copy of that with you in the witness box?---I  
11 do have a copy of it.

12 Dr Smith, are the facts stated in that report, do you believe  
13 them to be true?---Yes, I do.

14 And are the opinions stated your opinions?---Yes.

15 And are they honestly held?---Yes.

16 I tender that, if Your Honour pleases.

17

18 #EXHIBIT 14 - First report of Dr Smith.

19

20 MS MORTIMER: Now, Dr Smith, I now hand you an email from my  
21 instructing solicitor dated 10 February 2010 and ask  
22 you whether that's the email you received in relation  
23 to Dr Ferguson's report?---Yes, that's correct.

24 I tender that, if Your Honour pleases.

25

26 #EXHIBIT 15 - Further instructions to Dr Smith.

27

28 MS MORTIMER: And, Dr Smith, in response to those  
29 instructions, you produced your report dated 12  
30 February 2010, is that correct?---Yes, that's correct.

31 Do you have a copy of that with you in the witness box?---I

1 do.

2 So far as there are facts stated in that report, do you

3 believe them to be true?---Yes.

4 And are the opinions expressed in that report your

5 opinions?---Yes.

6 And are they honestly held?---Yes.

7 I tender that, if Your Honour pleases.

8

9 #EXHIBIT 16 - Second report of Dr Smith.

10

11 MS MORTIMER: Now, Dr Smith, can I ask you to go to your

12 first report, so that's Exhibit 14, and go to page 4 at

13 item 2.4. You will see there a reference you make to

14 asking Dr Bilney to do some surveys for you, and I want

15 to show you two documents. I show you those

16 documents, Dr Smith. Now, are those copies of the

17 surveys that Dr Bilney sent to you?---Yes, that's

18 correct.

19 And, Dr Smith, you will notice - before I ask the next

20 question I tender those, if Your Honour pleases.

21 HIS HONOUR: Yes.

22 MS MORTIMER: And I will just have the witness handed a

23 second copy so I can ask another question.

24 HIS HONOUR: Yes.

25

26 #EXHIBIT 17 - Surveys by Dr Bilney.

27

28 MR WALLER: Your Honour, we have no difficulty with those

29 being marked for identification subject to Dr Bilney

30 confirming those surveys.

31 HIS HONOUR: Yes.

1 MS MORTIMER: I accept that, Your Honour.

2 HIS HONOUR: Marked for identification.

3

4 #EXHIBIT 17(MFI) - (Amended) Surveys by Dr Bilney.

5

6 MS MORTIMER: Now, Dr Smith, can I direct your attention on  
7 those two documents to the first heading on each of  
8 them, which says "Coupe 15 survey along Valley of  
9 Giants walking track", and you will see at the end it  
10 says at that heading "Distance of transect 700  
11 metres"?---Yes.

12 See that?---M'mm.

13 And then on the second document you see the same heading but  
14 the distance of transect has been changed to 650  
15 metres?---Yes.

16 Can you explain to His Honour that change, please?---Yes.

17 The first set of data was sent to me before I did a  
18 site inspection, and after I'd carried out my spotlight  
19 inspection with Dr Bilney on site I observed that the  
20 first portion of that transect was log regrowth and was  
21 unsuitable habitat for gliders, and shouldn't have been  
22 counted, in my view, in the transect assessment, and I  
23 asked Dr Bilney on what basis he'd calculated the  
24 transect length and arrived at a figure of 700 metres,  
25 and he explained to me he'd used his GPS. I asked him  
26 if he'd included the logged area at the start of  
27 transect, and he said yes he had, and I said to him  
28 "Look, in my view if I was doing this I would have not  
29 included that section, I would have calculated the  
30 length on the area that passes through the old growth  
31 and uneven aged unlogged forest." And I asked him to

1           recalculate the length and send me a revised set of  
2           data, and that was the second set of data.  
3       Which of those two sets of data is your report based  
4           upon?---My report is based on the second set, which has  
5           a transect length of 650 metres instead of 700 metres.  
6       Now, Dr Smith, when your report was completed and before you  
7           sent it to my instructing solicitors, did you send it  
8           to anyone else?---Yes, I sent a copy of my draft report  
9           to Dr Bilney with a specific instruction to check that  
10          I'd correctly transcribed his transect filled data.  
11       Was there any other purpose that you sent it to  
12          Dr Bilney?---No.  
13       Now, I want to show you now, Dr Smith, a series of  
14          photographs and ask you to identify those.     And  
15          perhaps I hand a copy up for Your Honour.     Now,  
16          firstly, Dr Smith, can you tell His Honour the occasion  
17          on which these photographs were taken, please, and who  
18          took them?---I took all these photographs, and I took  
19          them during my site inspection.     The first - - -  
20       I will ask you about them - - - ?---Sorry.  
21       Sorry, all right.     Now, photographs 1, 2 and 3, are you able  
22          to tell His Honour of what coupe they are  
23          photographs?---Yes, those photographs were taken on the  
24          eastern end of the track marked in my figure 1, the  
25          white transect shown going through coupe 27.  
26       Can I then ask you to go to photographs 4 and 5 and tell His  
27          Honour where they were taken and the coupe number,  
28          please?---Yes, those photographs were taken in coupe 20  
29          during a walk from the road down through the centre of  
30          the coupe.  
31       And can I ask you to look at page 11 of your first report,

1 Dr Smith, and tell His Honour whether these are the  
2 same photographs as those that appear on page  
3 11?---Yes, they are the same photographs.

4 There are then three further photographs numbered 6, 7 and 8.  
5 Can you tell His Honour, please, where they were taken  
6 and in which coupe?---Those photographs were taken  
7 during my walk around the transect line shown in my  
8 figure 1 as a white dotted line in coupe 19, starting  
9 from the eastern end.

10 Now, Dr Smith, if we look at photograph 6, we can see two  
11 figures in that photograph. Can you identify those  
12 figures for yourself, please?---Yes, the first figure  
13 looking towards the camera is my wife, Dr Elizabeth  
14 Simpson, and the second figure is the back of Dr Rohan  
15 Bilney.

16 And in photograph 8, can you identify the person that's in  
17 that photograph?---Yes, that's also my wife,  
18 Dr Simpson.

19 Now, is your wife - you have given her the appellation of  
20 doctor. What kind of a doctor is she?---She's a dental  
21 surgeon, but she's got considerable experience through  
22 assisting me in my field surveys over the past 30  
23 years, including a lot of work while I was a doctoral  
24 student, and she is a very experienced spotlihter.

25 Now, can I ask you about photograph 7, please, and ask you to  
26 have that to hand, and then have the photograph that's  
27 on page 14 of your report. Is that the same  
28 tree?---The tree on the left of photograph 7 with the  
29 scarring on it is the same tree as shown in my figure  
30 5.

31 Thank you. If Your Honour pleases, I tender those

1            photographs.

2

3        #EXHIBIT 18 - Photographs by Dr Smith.

4

5        MS MORTIMER: Now, Dr Smith, can you look at the board,  
6            please, that's to your right where you see a number of  
7            species, and you will see a photograph with the label  
8            "greater glider". Are you able to confirm to His  
9            Honour whether that is a photograph of a greater  
10           glider?---Yes, that's a photo of a greater glider.

11        And below that you will see a photograph that's got the label  
12            "yellow bellied glider", are you able to confirm to His  
13            Honour that that is a yellow bellied glider?---Yes, I  
14            can confirm that.

15        Now, Dr Smith - can Dr Smith please be shown Exhibit 12,  
16            which is the agreed book of maps. And can I ask you -  
17            does Your Honour have a copy of the agreed book?

18        HIS HONOUR: Yes, I do.

19        MS MORTIMER: Can I ask you to go, please, Dr Smith, to map  
20            9?---Is that on page 9?

21        On page 9, yes. Page 9 of the agreed book. And you will  
22            see there in the legend, I direct your attention in  
23            particular to the coupes with which we are concerned,  
24            the legend discloses that the species there is  
25            described as alpine mountain mixed species pre 1950s  
26            uneven aged. Can you tell His Honour, please, whether  
27            there is any significance in terms of the  
28            classification of uneven aged so far as gliders are  
29            concerned, whether as to their habitat or their  
30            feeding?---Yes, uneven aged forests are those which  
31            have been subject to a number of disturbance events

1 over time, usually fires, wild fires in pre European  
2 times, and after those fires or disturbance events  
3 there has been some regeneration of trees. So that at  
4 intervals of time between disturbances you have forests  
5 of different size and age which creates a forest with  
6 what we call mixed or uneven age. So it is not a  
7 forest that was created after a single disturbance  
8 event, like one massive fire or one massive clear  
9 felling event; it's a forest that has developed its  
10 structure from a series of disturbances. And the  
11 research data we have on gliders indicates that they  
12 prefer, they reach peak abundance in uneven aged  
13 forests with an old growth component, or in old growth  
14 forests.

15 Why is that?---It's most probably because of the structural  
16 diversity provided by that forest. The large tall  
17 trees provide hollows and provide a platform for  
18 gliding. These are both large gliders we are talking  
19 about. And the smaller trees provide an abundance of  
20 young regrowth foliage for the greater glider in  
21 particular, which is known to prefer feeding on the  
22 younger leaves which are thought to have a higher  
23 protein and nutrient content in them. So a mixed aged  
24 forest gives a mixture of large trees for hollows and  
25 structure, and smaller trees for feeding. In the case  
26 of yellow bellied gliders, the structural - reasons for  
27 structural preferences are less clear, but they  
28 certainly prefer the uneven aged and old growth  
29 structures.

30 Now, may I ask you to turn to page 18 of your report and also  
31 have to hand page 3 of the agreed map book, please.

1 Now, on page 18 of your report, in those three dot  
2 points on page 18, in the second dot point you make the  
3 point that the shape of existing reserves is  
4 inappropriate with large indentations and a large edge  
5 to area ratio. Now, can I ask you, please, to look at  
6 the map on page 3 and explain that opinion to His  
7 Honour by reference to that map?---Yes, okay. It's a  
8 broadly accepted principle of reserve design that the  
9 best design for reserves is one which has a small edge  
10 to area ratio, that is the length of the edge relative  
11 to the area enclosed by the edge is low, and this is -  
12 the highest edge to area ratio is achieved in a circle,  
13 and as you deviate from a circle to a reserve pattern  
14 which has a lot of indentations around it, you get an  
15 increasing edge to area ratio. And the reason for  
16 this is that edges are known to be sources of invasion  
17 from weeds, disturbance events, fire, wind storm,  
18 logging activities, whatever activities are carried  
19 out. An adjoining reserve tends to encroach on the  
20 reserve and the effect of a - and an edge effect may be  
21 anything from a few centimetres to many kilometres,  
22 depending on what edge effect you are looking at. If  
23 to you are looking at foxes it might be many  
24 kilometres, if you are looking at weed invasion it  
25 might be hundreds of metres, if you are looking at wind  
26 storm events it might be hundreds of metres. Fire  
27 events could be kilometres again - - -  
28 Can you indicate to His Honour on that map on page 3 which  
29 part of the reserve your opinion is directed  
30 to?---Well, if you look at the reserve to the east -  
31 to the southeast of the star showing Brown Mountain,



1 which is essentially the Errinundra reserve system, you  
2 can see that there are substantial indentations of  
3 green running up into that reserve which gives it a  
4 poor shape. There's reserve - there's indentations  
5 running up almost on all sides, whereas if you look to  
6 the west of that star, you can see a large area of  
7 pink, which I think is the Snowy River National Park,  
8 which has a lot less indentation and a much smaller  
9 edge to area ratio. So that the design we would  
10 prefer is the one on the left rather than the one on  
11 the right.

12 Also in that dot point, Dr Smith, the second sentence of that  
13 dot point on page 18, you express this opinion: "The  
14 study area forms an inlier enclosed whole, an important  
15 infill area within the corridor length between the  
16 proposed icon reserves to the southeast and west."  
17 May I ask you to look, please, at the map on page 8 and  
18 explain by reference to that map your opinion to His  
19 Honour?---You can see on the map on page 8 that what I  
20 refer to as the study area, which is the four  
21 compartments in the area of loggable forest and green  
22 around it, that it forms a whole within a patch of  
23 reserve, and it's almost unheard of, in my experience,  
24 or until this event it is unheard of in my experience  
25 that you would have, you were carrying out logging  
26 activities inside, wholly inside a reserve. It's an  
27 undesirable practice because you have got to transport  
28 your logging equipment, personnel, vehicles, people  
29 across a reserve to get in there, and when you are in  
30 there you create an internal edge effect. So you have  
31 got an exterior edge effect and an internal edge

1 effect. So it's just not done, in my experience.  
2 You wouldn't normally have a reserve of this design.  
3 If you had have found yourself in a situation like  
4 that, you would infill the reserve, would be the normal  
5 procedure.

6 Now, can I ask you now to go to page 7 of your report, which  
7 is figure 2, and page 15 of your report, which is  
8 figure 6, and Your Honour we have prepared some  
9 slightly bigger copies of this so that they are easier  
10 to see. I hand two copies up, one for Your Honour and  
11 one for the witness, and I ask you to look at those,  
12 Dr Smith, together with page 2 of the agreed maps. Or  
13 actually I'm sorry, Dr Smith, page 3. Now, looking at  
14 your figures which plot the records of both the yellow  
15 bellied glider and the greater glider in East  
16 Gippsland, and then looking at the reserves post  
17 November 2009 that you see on page 3 of the maps, is  
18 there any observation you would make about where you  
19 see the densities of gliders and where you see the  
20 reserves?---Yes, I think if you refer to the greater  
21 glider figure first, which is my figure 2, and you look  
22 at the distribution of records of greater gliders in  
23 this area, and you compare that with figure 3, you will  
24 see that the cluster of greater glider records is  
25 generally in middle of the line which forms the  
26 boundary between New South Wales and Victoria of this  
27 region. And if you use that to relocate yourself to  
28 figure 3, you can see that that cluster of points falls  
29 predominantly within areas that are forests available  
30 for timber harvesting, with the exception of a small  
31 area of Errinundra plateau which occurs just below the

1 point. But I would add that the Errinundra plateau  
2 itself is dominated by a lot of rain forest which is  
3 unsuitable for gliders. The point is I can see fairly  
4 clearly from this comparison is that the big national  
5 parks to the west of the star correspond with an area  
6 of a low number of records of greater gliders and the  
7 big national park to the east corresponds - similarly  
8 corresponds with an area of no or few greater glider  
9 records. And the reason for this, in my opinion, is  
10 that the habitat in the national park areas that I have  
11 referred to is generally of low site quality, so it's  
12 generally less suitable for agriculture and less  
13 suitable for (indistinct), it's probably on poorer  
14 soils, lower rainfall, shorter more stunted trees, and  
15 this is the pattern we see throughout Australia.  
16 National parks include the land that nobody else  
17 wanted, the low value land. Greater gliders in  
18 particular, and to a lesser extent yellow bellied  
19 gliders favour the higher site quality forests which  
20 occur on the more fertile, more productive soil, so  
21 there's a direct conflict of interest between forestry  
22 and conservation. So you would expect the gliders to  
23 occur in the areas where timber production is  
24 potentially the highest.

25 Can I ask you now to look at page - if Your Honour please,  
26 I tender those enlargements of Dr Smith's - the figures  
27 in Dr Smith's report.

28 HIS HONOUR: Yes.

29  
30 #EXHIBIT 19 - Enlargements of figures in Dr Smith's report.

31

1 MS MORTIMER: Now, Dr Smith, finally in this agreed bundle I  
2 ask you to go to the map on page 9. This is a map  
3 which again shows species classes as we understand it  
4 for forestry purposes. And I ask you to look at the  
5 classifications given to the block 502, or the  
6 compartment - pardon me, Dr Smith - compartment 502 to  
7 the west, do you see that?---Yes.

8 And you will see a great amount of that is coloured in blue,  
9 and the blue in the legend says it's mixed species pre  
10 1950s low merchantability. Does that classification  
11 tell you anything about the significance of that area  
12 so far as densities of gliders are concerned?---Yes,  
13 based on that information alone I would expect most of  
14 the area in blue, and a lot of the area in green, which  
15 is the coastal foothill mixed species, to carry - to  
16 lack or carry a low density of greater gliders, and to  
17 have on average a lower density of yellow bellied  
18 gliders, though it's a little bit more difficult to  
19 predict the yellow bellied gliders because they are  
20 more site specific. It depends on which particular  
21 tree species occur at which locality and it's a little  
22 hard to tell from forest types. But generally I would  
23 expect yellow belly glider density to be lower here,  
24 greater glider density to be much, much lower or  
25 largely absent, particularly from the blue area.

26 Finally, Dr Smith, can Smith be shown, please, Exhibit  
27 (MFI)11, which are the additional maps, the new maps.  
28 So it looks like - and, Dr Smith, can I direct your  
29 attention first to the map which is numbered in the top  
30 right-hand corner 16, so that's towards the back of the  
31 bundle. And, Dr Smith, this is a map which has as one

1 of its layers, if you look at the legend, and I ask you  
2 to assume this is what it means, "modelled old growth  
3 2003", which are the diagonal hatched areas?---Yes, I  
4 can see that.

5 Now, in terms of this map showing the modelled old growth for  
6 the areas in and around the coupes with which we are  
7 concerned, what if anything does this map tell you  
8 about likely habitat in and around Brown Mountain for  
9 these two species of gliders?---Well, as I explain in  
10 my report, and as I said briefly, both of these species  
11 are regarded as being old growth or uneven aged old  
12 growth forest dependent, so we would expect them to  
13 occur predominantly in the cross-hatched areas. And  
14 if you look at this map, you can see that there's a  
15 lack of old growth in quite a large part of the  
16 conservation parks and reserves to the southeast, and  
17 in the new additions to the southwest about a third of  
18 the area that I understand has recently been added to  
19 the reserve system is old growth and the rest is not.  
20 So it's quite likely that a high proportion of this new  
21 addition is not suitable structurally for gliders; for  
22 these gliders.

23 Now, bearing that in mind, can I then ask you to go to the  
24 map which is numbered 4 in this bundle, the top  
25 right-hand corner model numbered 4. And map number 4  
26 shows, amongst other things, threatened fauna records  
27 for a number of the species with which we are  
28 concerned, and in light of your report and your opinion  
29 that these gliders are prey for the powerful owl, the  
30 sooty owl and the spot-tailed quoll, I direct your  
31 attention to the distribution of records that this map

1 demonstrates and ask you what if anything that tells  
2 you about the distribution of those species that prey  
3 on greater gliders and sugar gliders?---Okay - - -

4 Map 4, Your Honour.

5 HIS HONOUR: Yes.

6 WITNESS: I assume you mean greater gliders and yellow  
7 bellied gliders?

8 MS MORTIMER: Yellow bellied gliders, yes, I'm sorry,  
9 Dr Smith?---Look, normally I would do a statistical  
10 analysis and overlay these points on to their  
11 substrates and get some precise figures, so I can only  
12 estimate by the general pattern I see here visually  
13 which is consistent with me to what I would expect,  
14 which is an association between powerful owl, sooty owl  
15 records and the wetter more - where the wetter more  
16 productive old growth forests are likely to occur.  
17 That pattern isn't consistent with respect to the  
18 spotted-tail quoll, and that's probably because the  
19 spotted-tail quoll has a much broader habitat  
20 preference, it's not restricted to these wetter forest  
21 types, it's more broader ranging and has a greater  
22 diversity of prey, as I understand it. So again, it  
23 tends to confirm what was evident from the greater  
24 glider and yellow bellied glider distribution records  
25 is that they are under represented in the national  
26 parks and appear to be over - relatively over  
27 represented in areas of production forest.

28 If Your Honour pleases, I have no further questions for  
29 Dr Smith.

30 HIS HONOUR: Yes.

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

1 HIS HONOUR: Yes, Mr Redd.

2 <CROSS-EXAMINED BY MR REDD:>

3 Now, Dr Smith, you are aware that the DSE conducted a survey  
4 on Brown Mountain in January to March of 2009, and  
5 indeed I think you refer to that in your first  
6 report?---Yes, I refer to a survey which was conducted  
7 at that time, I recall.

8 Yes. If the witness could be handed volume 3 of the agreed  
9 book. So, Dr Smith, there should be a tab B in that  
10 folder, do you have that, at page number 1052 will be  
11 the report I have just referred to?---Yes, that looks  
12 to be the report that I used.

13 And you are aware, then, that - I will give you the page  
14 reference so you can have it before you. At page 1063  
15 of the agreed book, being page 10 of that report, the  
16 authors there set out their conclusions based on the  
17 survey program, and relevantly for the two gliders we  
18 are concerned with, they state at paragraph 1:

19 "Sufficient greater gliders and yellow bellied gliders  
20 were detected to achieve the threshold for a high  
21 density population of these species as stipulated in  
22 the conservation guideline, arboreal mammals, within  
23 the East Gippsland Forest Area Management Plan." Do  
24 you see that conclusion there?---I do.

25 Now, if I could take you now to the applicable conservation  
26 guideline. The witness will need volume 1 of the  
27 agreed book, which has - Dr Smith, at page 0410, it  
28 should be in easy to read size, page 30 of the East  
29 Gippsland Forest Management Plan. I will just wait  
30 until you get that before you?---Yes.

31 And so, Dr Smith, you would agree with me, would you, that

1 the threshold referred to in the DSE Brown Mountain  
2 survey report is the threshold described in the box at  
3 the top of page 30 of the forest management plan being  
4 conservation guideline, arboreal mammals?---Yes, I  
5 assume that's correct.

6 Now, you are also aware, aren't you, that it's the DSE that  
7 has the power to vary or amend the forest zoning scheme  
8 such that its the entity that has the capacity to  
9 declare an SPZ, are you aware of that?---No, I wasn't  
10 aware of that.

11 You are not suggesting, are you, that it's VicForests that  
12 has the power to amend the zoning scheme, are you?---I  
13 haven't put my mind to the question of who has the  
14 authority to amend the scheme.

15 Okay. You are aware though, aren't you, that the DSE  
16 considered whether it would or would not create an SPZ  
17 based on the elevated levels of arboreal mammals, and  
18 that it decided not to create an SPZ, are you aware of  
19 that?---No, I am unaware of that.

20 Okay. I am going to hand the witness a document, and I will  
21 hand up a copy to Your Honour. This is a document we  
22 have already referred to in our opening, Your Honour,  
23 and it will be an exhibit to the witness statement of  
24 Lee Miezis, which is being copied as we speak.

25 HIS HONOUR: Yes.

26 MR REDD: And this is the full document. There was a  
27 question, Your Honour might recall, when we took Your  
28 Honour to this document earlier about the attachments.  
29 Our instructions are that the copy that's been handed  
30 to the witness, my learned friends and Your Honour,  
31 contains all attachments that appear with the original



1 of it, even though the number of attachments to this  
2 document is not as many as the number of attachments  
3 described in the briefing note. In other words, this  
4 is all there is, Your Honour.

5 Dr Smith, the document that's been handed to you  
6 is titled "Briefing for the Minister For Environment  
7 and Climate Change", and it's a document that on its  
8 face has been endorsed by the executive director of  
9 forests and parks at the DSE. This document relates  
10 to the Brown Mountain survey that the DSE conducted  
11 that I earlier took you to. And if you could note  
12 that paragraph 2 of the recommendations on the front  
13 page there says that "After the following consideration  
14 of all relevant matters, the Department of  
15 Sustainability and Environment does not intend to  
16 create a special protection zone at Brown Mountain.  
17 Timber harvesting will be allowed under modified  
18 prescriptions." I then want to take you, Dr Smith,  
19 to the paragraphs that identify the department's  
20 reasoning about that decision described in paragraph 2  
21 on the first page?---Okay.

22 So if you could turn to paragraph number 49 and following - -

23 -

24 HIS HONOUR: Number?

25 MR REDD: 49, Your Honour, which is on page 5 of the briefing  
26 note. Dr Smith, at paragraph 49 it reads: "The  
27 intention of the conservation guideline for arboreal  
28 mammals is to ensure that suitable habitat is protected  
29 to support high density populations by including it in  
30 a special protection zone." Pausing there, you would  
31 agree with that statement, wouldn't you?---In a general

1           sense.

2       In a general sense. I might also ask: are you familiar  
3           with the East Gippsland Forest Management Plan?---I  
4           have read through sections of it for the purpose of  
5           preparing my report.

6       Right. But prior to reading through it for the purposes of  
7           preparing your report, was it a document with which you  
8           were generally familiar or - - - ?---No, my own  
9           research, investigative work in East Gippsland ceased  
10          prior to 1995, which I think is around the time that  
11          plan was prepared.

12       Yes, I understand. I am going to put a series of  
13          propositions to you, Dr Smith, based on these  
14          paragraphs. If I could move to paragraph 50. There  
15          it says that "Suitable habitat to support high density  
16          population of greater gliders and yellow bellied  
17          gliders is extensively represented in areas in close  
18          proximity to the Brown Mountain that are already  
19          excluded from timber harvesting, including in the new  
20          and expanded conservation reserves, and the creation of  
21          a special protection zone will have a material impact  
22          on timber production in the area." Now, there's  
23          nothing in that paragraph with which you disagree, is  
24          there?---I disagree with all but the last section,  
25          which says the special protection zone will have a  
26          material impact on timber production. I think that's  
27          fairly self-evident, if you can't cut the trees down  
28          you are going to have a reduction in timber production.  
29          With respect to the first statement, I simply haven't  
30          seen any data to support that conclusion, and the data  
31          that I was able to gather for myself as I think I

1           previously explained by reference to maps, tends to  
2           suggest that the best habitat for these two species is  
3           not within the existing nature reserves, and that in my  
4           opinion most of it is likely to reside within all the  
5           remaining old growth and uneven aged forest with old  
6           growth components - - -

7    Yes, but - - - ?---- - - area.

8    You would agree with me, wouldn't you, that some of the  
9           reserve area to the west of Brown Mountain does in fact  
10           contain old growth?---I seem to recall there was some  
11           old growth hatching to the west, patchy, but there was  
12           some, but I would need to look at the forest type there  
13           before I could be certain that that would be suitable  
14           for these gliders.    And the forest type does tend to  
15           get dryer as you go to the west.

16   All right.   Well, we might return a bit later to that  
17           question.    In paragraph 51 it states:  "A decision to  
18           not create a special protection zone at Brown Mountain  
19           (and to allow further timber harvesting) will impact on  
20           the high density population of greater gliders and  
21           yellow bellied gliders."    Do you agree with that  
22           statement, Dr Smith?---Yes.

23    "However, it will not affect the conservation status of  
24           viability of either species as both are common  
25           throughout East Gippsland."    You would agree with  
26           that?---No, I don't agree with that at all.    I think  
27           that statement is very wrong.

28   All right.    At paragraph 52:  "Considering all relevant  
29           matters, the department does not intend to create a  
30           special protection zone at Brown Mountain.    In this  
31           case the application of conservation guideline for

1 arboreal mammals would not allow the strategic intent  
2 of the East Gippsland Forest and Management Plan to be  
3 achieved which is to conserve natural values but allow  
4 for a viable timber industry." So you would agree,  
5 Dr Smith, with the sentence beginning "In this case"  
6 and finishing with "viable timber industry"?---No,  
7 look, this seems to be an argument based on timber  
8 supply arrangements. I haven't addressed myself to  
9 timber supply issues, I am not a party to that data.  
10 Yes?---So I can't comment on that statement.  
11 I see. I understand. Your two reports that you filed don't  
12 factor in, as you have described, timber supply  
13 arrangements or indeed any impact on the timber  
14 industry?---I was not asked to consider that in any  
15 detail.  
16 No, I appreciate that. Paragraph 53: "To better achieve  
17 this balance", and there I think the author is  
18 referring to the balance described in paragraph 52, "To  
19 better achieve this balance and minimise impacts on the  
20 high density population of greater gliders and yellow  
21 bellied gliders at this site, the department intends to  
22 allow timber harvesting to occur at Brown Mountain  
23 under modified prescriptions, namely, 100 metre buffer  
24 along Brown Mountain Creek where most animals were  
25 found during the survey that was conducted, and the  
26 protection of hollow bearing habitat trees identified  
27 by biodiversity officers of the department where it's  
28 safe to do so." So would you agree that the balance  
29 required by the guidelines and described in paragraph  
30 52 is in fact better achieved by allowing the  
31 harvesting to occur on the conditions described in

1 paragraph 53?

2 MS MORTIMER: I object to that question on the basis it  
3 contains an assumption that that guideline involves a  
4 balance, but I have no objection if the witness is  
5 asked to assume that. That will be a matter for Your  
6 Honour to decide.

7 MR REDD: Well, Your Honour, I am content to accommodate that  
8 objection by rephrasing the question this way:  
9 assume, Dr Smith, for the purpose of this question that  
10 the East Gippsland Forest Management Plan requires the  
11 balancing act described in paragraph 52. Having made  
12 that assumption, do you agree that to better achieve  
13 that balance and to minimise impacts on the high  
14 density population of the greater gliders and the  
15 yellow bellied gliders at the site, timber harvesting  
16 ought be allowed on the two conditions described in  
17 paragraph 53?---Look, I don't agree with that. With  
18 respect to the first amelioration measure, the 100  
19 buffer along Brown Mountain Creek where most animals  
20 were found during the survey that was conducted, I  
21 haven't seen any evidence that most mammals were found  
22 within a hundred metres - - -

23 No, in fact on that point, just so we are clear, you are not  
24 in a position to agree or disagree with that assertion  
25 about the animals being - most of the animals in the  
26 DSE survey being found within a hundred metres of the  
27 creek, is that right?---I haven't seen their distance  
28 data, all I have got is my own observations.

29 Yes. So in other words the answer to my question is yes,  
30 isn't it?---If I assume that the DSE found that most  
31 animals occurred within a hundred metres of the creek

1 line, is that what you are asking me to assume?

2 No, I am suggesting that you are not in a position to agree  
3 or disagree with the assertion that most of the gliders  
4 in the DSE survey were found within a hundred metres of  
5 Brown Mountain Creek?---Look, I think I am in a  
6 position to agree or disagree, because there have been  
7 a lot of survey and habitat studies of greater gliders  
8 and yellow bellied gliders in southeast New South Wales  
9 in particular where people have looked at the  
10 statistical correlation between topographic factors and  
11 the occurrence of these animals, and position in gully  
12 does not occur to my knowledge as a reliable predictor  
13 of the density of these species. The best predictors  
14 are hollows, sometimes aspect, old growth forest  
15 structure, site productivity. If gully were to fall  
16 out on the odd study it would probably be way down the  
17 list of predictors. So there may be slightly higher  
18 density in some gully areas, but I wouldn't consider it  
19 a major fact to be taken into account when planning  
20 areas to be reserved or - - -

21 Doctor, just so we are not at cross-purposes, the department  
22 is here asserting that in its survey that it conducted  
23 in January to March of 2009, most of the gliders that  
24 it detected were within a hundred metres of Brown  
25 Mountain Creek. I am asking whether you have any  
26 knowledge to state whether you agree with that as a  
27 fact or disagree with that as a fact? In other words  
28 - - - ?---I don't have access to their data, so I can't  
29 assess to the reliability of their fact, but I can  
30 comment on the likelihood of that fact being typical or  
31 representative of what would be expected to occur.

1 Now, Your Honour, I am not sure what time Your Honour wanted  
2 to sit at this stage, whether we are continuing on.  
3 It's 5 past 1, or whether it's convenient to pause now  
4 and continue after a break. Whatever is Your Honour's  
5 preference.

6 HIS HONOUR: Well, how long are you going to be, Mr Redd?

7 MR REDD: At least probably 30 to 40 minutes and maybe a bit  
8 more, but that's my best guess.

9 HIS HONOUR: Yes. Can you tell me, when I look at court  
10 book 1060, where it states in respect of the surveys:  
11 "The attached maps indicate the locations of  
12 detections", whether I have those maps, because I  
13 haven't been able to find them. They don't seem to be  
14 in the court book.

15 MR REDD: No, Your Honour's right, they are not in the court  
16 book, and we have been making enquiries about this, so  
17 let me just see if there's any update on the status of  
18 that enquiry. Our instructions, and we can lead this  
19 through Lee Miezis if necessary, are that the copy of  
20 the report that Lee Miezis received, which is the one  
21 that's been produced, does not have any maps as  
22 attachments. That's all I can tell you at this point,  
23 Your Honour.

24 HIS HONOUR: So the author - the action officer who  
25 prepared this briefing and wrote the paragraph you have  
26 just been cross-examining about didn't have those maps,  
27 is that what you are saying to me?

28 MR REDD: Well, I don't know the precise answer to that  
29 question, all I am saying, Your Honour, is that we have  
30 asked for the attachments based on the document that  
31 was produced under - I think this version was produced

1 under subpoena, and we are told that it doesn't have  
2 the attachments to it. But there will be a note that  
3 on the briefing note, as Your Honour has no doubt  
4 noted, it says "The action officer is Lee Miezis", and  
5 he will be a witness in the proceeding and perhaps that  
6 issue can be explored through him, Your Honour.

7 HIS HONOUR: Yes. We will adjourn until a quarter past  
8 two.

9 <(THE WITNESS WITHDREW)

10 LUNCHEON ADJOURNMENT

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1 UPON RESUMING AT 2.15 PM:

2 <ANDREW PETER SMITH, recalled:

3 HIS HONOUR: Yes, Mr Redd.

4 MR REDD: Now, Dr Smith, have you got amongst your folder  
5 there folder 3 of the book of agreed documents? Yes,  
6 that's - - - ?---Volume 3?

7 Yes. If you could turn to page 1043 of that  
8 volume?---"Media release"?

9 Yes. Now, apologies for the fact that the font size is  
10 rather small on that copy, but you will note - I mean  
11 you are aware, obviously, of the new reserves that were  
12 added in November 2009, as I understand you produce a  
13 map in your report where you identify those  
14 areas?---Yes.

15 And this media release is related to those additions. You  
16 will see in the top paragraph of that release, the  
17 minister says that "a further 400 hectares of the Brown  
18 Mountain area including the mountain summit is part of  
19 the establishment of old growth and icon reserves in  
20 East Gippsland." Sorry, it doesn't make sense without  
21 reading the very beginning of it: "The Brumby Labor  
22 Government will protect a further 400 hectares of the  
23 Brown Mountain area including the mountain summit as  
24 part of the establishment of old growth and icon  
25 reserves in East Gippsland." The minister goes on to  
26 say that - in that same paragraph: "The inclusion of  
27 the large area around Brown Mountain would form part of  
28 a significant unbroken link between the Errinundra and  
29 Snowy River National Parks." Now, you would agree  
30 with that statement, wouldn't you?---It certainly links  
31 up those two areas to a degree. But I wouldn't

1 necessarily call it unbroken because the habitat for  
2 these two gliders is not continuous right through that  
3 link.

4 Well, you have explained in paragraph 3.1.3 of your report  
5 the dependence of the greater glider on old growth  
6 forest?---Yes.

7 Now, you are aware, aren't you, that the areas for the  
8 proposed coupes in Brown Mountain did not meet the  
9 government standard of old growth for inclusion in the  
10 recent additions to the reserve system, are you aware  
11 of that?---Can you refer me to a particular document?

12 Well, staying with the minister's media release, if you have  
13 that still before you?---I do.

14 About, almost halfway down but not quite, there's a paragraph  
15 that reads this: "Mr Jennings said an area containing  
16 a number of contentious timber harvesting coupes around  
17 Brown Mountain Creek to the east of Brown Mountain  
18 would remain available to harvesting as they did not  
19 meet the standard of old growth warranting inclusion in  
20 the reserve"?---Can you point me to the particular  
21 paragraph where that's - - -

22 I'm sorry, I will show you my copy so you can just see the  
23 paragraph I have got highlighted yellow where it  
24 appears?---Okay. I can see the statement.

25 Yes. So would you accept, Dr Smith, that the area  
26 immediately adjacent to proposed coupe 15 to the west  
27 contains large areas of forest that have never been  
28 logged and provides adequate protection for these  
29 populations of gliders?---No, I wouldn't agree with  
30 that. I would need to re-examine the mapping and the  
31 floristic mapping in a lot more detail to be able to

1 draw any conclusions about the adequacy of the area to  
2 the west. My recollection is that it has some patchy  
3 old growth and that it gets drier as you go to the  
4 west.

5 I will just show you a map. If the witness could have the  
6 agreed maps before him. He might already have them.  
7 Dr Smith, if you could get the bundle of agreed maps  
8 Ms Mortimer took you to earlier in your evidence, being  
9 Exhibit number 12, and if you could just turn to map  
10 11, you will see there it's a map that sets out the  
11 logging history in this area, and to the west of coupe  
12 15 we can see some portions have been logged from  
13 between 1990 to 1999, but there's also a large area of  
14 that new park and reserve that doesn't have any logging  
15 history. Do you see that?---Yes, I can see it's  
16 mapped in new parks and reserves, but just because it's  
17 mapped as not having a logging history doesn't mean  
18 that it qualifies as old growth, it still has to have  
19 an uneven aged or old growth structure with large old  
20 growth stems in it. As my understanding of - this is  
21 a particular process to identify and map old growth, it  
22 won't necessarily occur in here.

23 So do you accept that that area which is shaded in the sort  
24 of middle hue of pink of the three pinks on that map,  
25 that area which I have taken you to is part of the new  
26 park and reserve that the minister announced in his  
27 release?---I will just have a look at my own figure to  
28 try and put that in - page 11 into perspective.

29 I think your figure has it on a different scale?---Yes. It  
30 looks to this as though the area of pink between the  
31 study coupes and the road in blue and the next narrow

1 line of greens is part of the additional areas, is that  
2 correct?

3 And would you accept that those areas, that is the additional  
4 areas we have been talking about immediately west of  
5 coupe 15, contain more old growth trees than the area  
6 that actually constitutes coupe 15?---I honestly can't  
7 answer that without a look at the old growth map and I  
8 think there is an old growth map covering this area.  
9 And I would need to consider the floristics as well as  
10 the old growth.

11 All right, I will move on. You can for the moment put those  
12 maps away, if you like. Now, you are aware of the  
13 proposed harvesting prescriptions to be applied to the  
14 Brown Mountain coupes, in fact I think you are told to  
15 assume that they will be in the letter of  
16 instruction?---Are you referring to the special  
17 prescriptions that applied - - -

18 Yes, indeed, the - - - ?---To apply - - -

19 The stream side buffer and the modified habitat tree  
20 descriptions?---Yes.

21 Now, you can assume that those prescriptions are now  
22 contained in the relevant management procedures dated  
23 2009, but I want to show you the management procedures  
24 that were in force prior to the 2009 management  
25 procedures coming into force, and you will find them at  
26 agreed book volume 2. Would you turn to page 0724.  
27 Sorry, Dr Smith, I will just get my version in front of  
28 me. Now, I want you to assume for the purpose of this  
29 question that this document contained the management  
30 procedures that were in force at the time coupe 20 was  
31 harvested, and if you would turn to page 0745, you will

1 see that under the subheading streams and catchments,  
2 1.4.2 - - - ?---Yes.

3 That there's no requirement in this document for 100 metre  
4 buffers to be applied either side of the stream, Brown  
5 Mountain Creek, whereas you can assume that in the 2009  
6 version there's a subparagraph (g) that's additional  
7 and does contain the stream side buffer  
8 prescription?---There's a reference in part B to water  
9 quality risk being determined in accordance with  
10 schedule 5, which I haven't read. If you are correct  
11 in - if I am correct in assuming that that doesn't  
12 specify 100 metre buffers.

13 Yes?---I am happy with that assumption.

14 And also if you turn to page 0750, there's a section  
15 1.4.5.3?---Yes.

16 East Gippsland FMA and Tambo FMA. I want you to assume that  
17 that is the relevant habitat tree prescription that was  
18 in force at the time coupe 20 was harvested. Now, on  
19 that assumption, would you agree that the habitat tree  
20 prescription to be applied to the Brown Mountain coupes  
21 is materially different to that that was applied to  
22 coupe 20?---Could you say that again?

23 The habitat tree prescriptions that are going to be applied  
24 to the proposed Brown Mountain coupes, coupe 15, 19,  
25 would you agree that those prescriptions are materially  
26 different to the prescriptions in force for coupe  
27 20?---We haven't actually been through the additional  
28 prescriptions, but I assume these are those in part D  
29 in my table 1 of my report, is that correct?

30 They are the prescriptions that you were asked to assume in  
31 your letter, but I can take you to them in the 2009

1 management procedures if you would like?---Would you  
2 like to just check if they are the ones I have  
3 reproduced in my table 1?

4 I will just check that?---Page 12.

5 Yes, that's right, that's exactly the prescriptions I am  
6 talking about. So would you agree, having your table  
7 on page 12 of your report before you, and also page  
8 0750 of the agreed book before you, would you agree  
9 that those two sets of prescriptions are materially  
10 different?---Yes.

11 And you would agree then, wouldn't you, that the harvesting  
12 shown in your figures 3A and B on page 11 of your  
13 report is not an example of habitat tree protection and  
14 retention achieved after guidance by DSE staff with  
15 expertise in biodiversity management?---So the question  
16 is my photographs on page 11 are not after supervision  
17 with DSE staff - - -

18 Yes? I am putting to you that the prescriptions that applied  
19 for coupe 20, which as I understand it is what your  
20 photos are of on page 11?---Yes.

21 Are the prescriptions contained on page 750 of the agreed  
22 book?---I haven't applied myself to determining when  
23 exactly what date the new requirements came in, but I  
24 am happy to accept a statement that says that at the  
25 time this coupe was logged the prescriptions on page  
26 0750 were the ones that applied, if the dates are such  
27 then that's correct.

28 Yes. Would you agree that one of the important differences  
29 in the two sets of prescriptions is that the ones you  
30 have described on page 12 of your report, if I could  
31 call them the 2009 prescriptions, there's a requirement

1 to clear debris away from the base of the trees to  
2 allow them to survive the regeneration burn, would you  
3 agree that's a significant difference between the two  
4 sets of prescriptions?---I think it just spells it out  
5 a little more clearly. I think to a degree that's  
6 covered by C in the old prescriptions. Habitat trees  
7 should be preferably retained in small clusters which  
8 include younger growth and understorey. I mean, it  
9 seems obvious to me that if you are going to protect  
10 and retain the understorey, you have to protect it from  
11 regeneration burn. So that you would either need to  
12 put in a firebreak anyway under the old prescription,  
13 or you would need to use a lesser intensity burn.

14 You would agree, wouldn't you, that the 2009 prescriptions  
15 contain extra protection for retained habitat trees  
16 within the coupes compared to the 2007 prescriptions,  
17 would you agree with that?---It says all trees over 250  
18 centimetres will be retained. So it's possible that  
19 if you have got a stand that's got an unusually large  
20 density of trees over 250 centimetres, that you might  
21 get a higher retention level than you would under the  
22 previous stand. But again, that's not necessarily so  
23 because the density of trees of that size is in nature  
24 quite low anyway, and may be approaching the sort of 4  
25 to 8 per hectare by itself. I recognise these as an  
26 attempt to qualify the previous ones and improve them.

27 Yes. If I could take you now to page 16 of your report,  
28 Dr Smith. You state at paragraph 2 that - at the  
29 bottom of the second paragraph on that page: "Unlike  
30 greater gliders, there is no evidence that yellow  
31 bellied gliders reoccupy regrowth forests after

1 intensive timber harvesting (clear felling) such as  
2 that proposed in the study area, even where retained  
3 trees with hollows are present"?---Yes.

4 Now, you are aware, aren't you, that the timber harvesting  
5 proposed for the Brown Mountain coupe actually is not  
6 clear felling but seed trees?---It's clear felling with  
7 retention of seed trees, yes.

8 And I am going to hand up to you a report - we will just get  
9 our copies in order. I have handed you a report - a  
10 copy is being handed up to His Honour - the reference,  
11 a joint CSIRO and Conservation and Environment Report  
12 Management of Eucalypt Regrowth in East Gippsland.

13 Are you familiar with that report, Dr Smith?---I don't  
14 recall having seen this report, no.

15 You will see that this report concerns a fauna study that was  
16 conducted in 1988, and I am reading that from (i) under  
17 the summary subheading. On page 1, or the first page  
18 numbered 1, it explains where the study sites for this  
19 particular report were. The first is called Dyers  
20 Creek, do you see that, have you got the figure?---Yes,  
21 I can see it.

22 It says - it's a 32 hectare site covered predominantly with  
23 24 year old post clear felling regrowth?---Right.

24 If you turn over the page, another site is "Stare Track", or  
25 "Stare Track", I am not sure how that's pronounced.  
26 That site is said to be a 44 hectare site of 19 year  
27 old post clear felling regrowth?---Yes.

28 If I could now take you to page 6 of that report. This is  
29 under a section that begins on page 5, for  
30 clarification, headed "Results". The subheading  
31 "mammals", and then you will see the authors set out a



1 list of various mammals. Relevantly halfway down page  
2 6 there's the yellow bellied glider, do you see  
3 that?---I do.

4 Yes. The authors assert that was the most common arboreal  
5 mammal recorded, found at all plots at Dyers Creek and  
6 Stare Track?---I can see that.

7 So would you now accept that the statement in your report  
8 that there's no evidence that yellow bellied gliders  
9 reoccupied regrowth forests after intensive timber  
10 harvesting such as that proposed in the study area, is  
11 actually inaccurate?---No, I wouldn't accept that at  
12 all. I would have to study this document in a lot  
13 more detail, but the size of these plots, one of them  
14 is 32 hectares, the other is 44 hectares, the home  
15 range of one yellow bellied glider is anywhere between  
16 20 and 60 or 70 hectares, so these plots are anywhere  
17 up to a third only of the home range of one yellow  
18 bellied glider. So I would need to look at the  
19 context of all the surrounding vegetation. It's known  
20 that yellow bellied gliders will pass through logged  
21 areas. If there are retained habitat trees in a  
22 logged compartment, yellow bellied gliders will use  
23 them as a gliding pathway.

24 Yes?---So to actually just say that they are there, I am not  
25 even sure whether it's calls, feeding scars, what the  
26 evidence is, and any suggestion that yellow bellied  
27 gliders are moderately abundant or common in regrowth  
28 forest of this age in clear felled forest is  
29 inconsistent with all the published scientific  
30 literature that I have read.

31 But do you accept that your statement that there's no

1 evidence that yellow bellied gliders reoccupy regrowth  
2 forests after intensive timber harvesting is  
3 inconsistent with the findings recorded on page 6 of  
4 the report I have handed to you?---No, I don't accept  
5 that at all because to reoccupy means to reside there,  
6 live there, breed there. That's probably not the case  
7 with respect of these records, in my opinion.

8 Your Honour, I tender a copy of that report.

9 HIS HONOUR: Yes.

10  
11 #EXHIBIT D - Conservation and Environment and CSIRO technical  
12 report number 8.

13 MR REDD: Sticking with page 16, Dr Smith, you say in the  
14 bottom paragraph, in about the middle of the bottom  
15 paragraph: "It has been estimated that reserves should  
16 contain 18,000 to 35,000 hectares of forest in order to  
17 sustain viable populations of yellow bellied gliders."  
18 And you cite in support of that a Goldingay and  
19 Possingham 1995 report. Now, I have a copy of that  
20 report, or at least you can tell us if it's the copy of  
21 the report that you have referred to. So I will have  
22 a copy handed to you and one to His Honour. Dr Smith,  
23 is that the - Dr Smith, the copy of the report handed  
24 to you headed "area requirements for viable populations  
25 of the Australian gliding marsupial", is that a copy of  
26 the report that you have referenced in the bottom  
27 paragraph of page 16 of your first report?---Yes, that  
28 looks to be the same paper.

29 If you could turn to page 165 of that report, you will see on  
30 the right-hand column there's a subheading towards the  
31 bottom titled "Habitat areas required for a minimum

1           viable population"?---Yes, I can see that.

2   And if you read the paragraph that begins right at the  
3           bottom, that is two lines from the bottom in that  
4           column, it reads: "The minimum habitat areas that have  
5           been estimated include 9,750 hectare where all the  
6           forest is suitable, but between 18,000 and 35,000  
7           hectare where only a proportion is suitable"?---That's  
8           correct.

9   And I take it that's the part of the report you rely on in  
10          support of your comment that it's been estimated that  
11          reserves should contain 18,000 to 35,000 hectares of  
12          forest in order to sustain viable populations of yellow  
13          bellied gliders?---It's the part that I have referred  
14          to.

15   Yes.    Why is it that you didn't think it was relevant to put  
16          in your report the complete estimation, which is as I  
17          have read out, a minimum habitat area of 9,750 hectare  
18          where all the forest is suitable but between 18,000 and  
19          35,000 hectare where only a proportion is  
20          suitable?---The reason I didn't use the 9,000 hectare  
21          figure is that I would consider it misleading, because  
22          it's typical for this species to only occupy a small  
23          percentage of forests because of its specific  
24          requirements for floristic structure.    So I consider  
25          the 18,000 to 35,000 to be a reasonable practical  
26          estimate.    And if you read the rest of the paper here  
27          you will see that that figure was based on some survey  
28          data where they considered the percentage of sites  
29          which did and didn't have yellow bellied glider records  
30          in the area that they were studying.

31   And that analysis that you have just described for us, you

1 didn't consider that that was relevant to put in your  
2 report despite the fact that there's a qualification to  
3 the estimation that you have cited in your  
4 report?---No, that's not true. I could have gone into  
5 a lot more detail in this, I am happy to do so orally.  
6 There's another view of this as well. You could take  
7 a figure of 9,000, which is what you might use if you  
8 had habitat like we have on this site, uniformly over  
9 the whole area, or you could use the figure of 18 to  
10 35, which is the figure they derived based on survey  
11 data I think in southeast New South Wales. Or you  
12 could take another figure to the right of this which  
13 would range from somewhere perhaps from 50,000 to  
14 100,000 or 200,000 hectare, which is the figure that I  
15 would use if I was looking at conservation of these  
16 species in an area which was subject to clear felling,  
17 or a long history of clear felling such as you get in a  
18 lot of East Gippsland. There's a big difference  
19 between a history of logging in New South Wales where  
20 this study was largely based and a history of logging  
21 in Victoria. So if you want me to spell it out in  
22 detail, I agree with the statement that if you have -  
23 if you had continuous high quality habitat, you could  
24 have as little as 9750 to meet their target. If you  
25 had habitat that's probably typical of southeast New  
26 South Wales, 18 to 35. If you had habitat that was  
27 typical of clear felled moist forests in East Gippsland  
28 and central Victoria, in my view you would need  
29 somewhere of 50 to 100 plus.

30 Your Honour, I tender a copy of that report.

31 HIS HONOUR: Yes.

1  
2 #EXHIBIT E - Area requirements for viable populations of the  
3 Australian gliding marsupial (*Petaurus australis*).  
4

5 MR REDD: Dr Smith, if you could turn now to page 18 of your  
6 report. You will see at the first dot point there you  
7 say that "the current size and extent of large reserves  
8 in the area is limited (Errinundra National Park) and  
9 well below estimated requirements for maintenance of  
10 viable populations of the yellow bellied glider over  
11 the long-term." Now, you don't there mention in your  
12 brackets either the rather large Snowy River National  
13 Park or the new reserves linking the Errinundra and  
14 Snowy River National Parks. Why is it that you didn't  
15 consider it relevant to there mention them?---You may  
16 recall that in my earlier evidence, oral evidence, I  
17 pointed out that if you look at the distribution maps  
18 of yellow bellied gliders and greater gliders, that  
19 there's a general absence of records from the Snowy  
20 River National Park to the west, and a general absence  
21 or gap in records in the national park to the east of  
22 Errinundra plateau. In my view that's due to the fact  
23 that the forest types there are less productive,  
24 shorter and generally less suitable such that the  
25 gliders are either likely to be scarce or in low  
26 density in most of that area.

27 Isn't it also possible that the reason for the records being  
28 that way is that a lot of the records occur in the  
29 course of pre logging surveys, and pre logging surveys  
30 of their nature are not going to be necessary in a  
31 national park where no logging is to occur, would you

1 agree that's another possibility?---It's a possibility  
2 that I considered before I made my statement, because  
3 it's certainly one that arises commonly in my work.  
4 We have to look at the intensity of harvesting and how  
5 it's been distributed before interpreting data. But  
6 in this particular case, I based my conclusions on the  
7 different - broadly the differences in forest type and  
8 site quality. You are looking at a much lower site  
9 quality area, much less productivity, and I consider  
10 that that's consistent with the lack of records, and my  
11 understanding of pre logging surveys in Victoria is  
12 that they tend to be very detailed over a small portion  
13 of the area. So I wouldn't expect them to be as  
14 widely distributed throughout the state forest as they  
15 might be in New South Wales, for example.

16 But you would agree, wouldn't you, Dr Smith, that when one  
17 takes into account not only the Errinundra national  
18 park but also the Snowy River National Park, also the  
19 additional reserves announced by the minister last  
20 year, that the harvesting with the 2009 prescriptions  
21 will not affect the conservation status or viability of  
22 either of the gliders, would you accept that?---Are you  
23 asking me to assume that the additions to the park  
24 offset the loss from logging?

25 Well, I am asking you to consider that as a factor when  
26 assessing whether the proposed harvesting will affect  
27 the conservation status or viability of either of the  
28 glider species?---In effect you are asking me to  
29 consider that, so I would need to look more closely to  
30 see what area of old growth habitat of the right  
31 floristic type occurred in the new additions, and from

1 my brief visual examination of the maps, I don't think  
2 there is a great deal there. But I haven't surveyed  
3 it on the ground, and so I can't really give a precise  
4 answer. Certainly there would be some habitat there  
5 that I would expect to be equivalent to what's in some  
6 of these compartments, but on the other hand there may  
7 not because there seems to be concentration of big  
8 trees in a compartment area, and there may not be  
9 equivalent large trees in the old growth in the other  
10 areas without me examining it.

11 Yes. I have no further questions of Dr Smith.

12 <RE-EXAMINED BY MS MORTIMER:

13 Dr Smith, just picking up on that last bit of evidence you  
14 gave, can you tell His Honour what in your opinion is  
15 the likely effect of harvesting these coupes on the  
16 viability of the glider populations you observed in  
17 those coupes?---Well, obviously I stated quite clearly  
18 in my report that I consider areas that are logged even  
19 with the prescriptions, even with the new  
20 prescriptions, are not sufficient to predict old  
21 growth-dependent fauna like yellow bellied gliders and  
22 greater gliders because of the short rotation that  
23 clear felling is carried out under, and the intensity  
24 of the harvesting. So that I would view this proposed  
25 logging activity as a net loss of habitat. So to the  
26 extent that you are proposing somewhere around the  
27 order of 40 to 80 hectares of logging, there will be a  
28 reduction in extent of habitat to that amount. Now,  
29 whether or not - how that affects the viability of  
30 these two species depends on the size of the population  
31 that they are a part of which would require an exercise

1 of mapping all the habitat that's continuous with this  
2 patch, and my best estimate of that is that it's  
3 currently below viability levels already, so that we  
4 are simply making the situation worse by taking more  
5 out. I would - if I had the discretion here to do  
6 something about it I would not log these areas and I  
7 would improve connectivity with other areas.

8 And what about the viability of the actual family groups that  
9 you observed?---I think - I am trying to answer that  
10 question because the viability of the family groups  
11 depends on the viability of the population of which  
12 they are a part. So you can't just look at the  
13 viability of that population in isolation.

14 I see?---The habitat that's been removed is sufficient to  
15 take out a family home range.

16 You were asked in that same set of questions, you were asked  
17 about the conservation status of each of the gliders.

18 Are you aware of what the conservation status of the  
19 yellow bellied glider is in New South Wales?---Yes.

20 What is it?---It's listed as vulnerable in New South Wales.

21 Are you aware of what the conservation status of the greater  
22 glider is in New South Wales?---My understanding is  
23 it's not listed as vulnerable.

24 Thank you. Now, you were asked some questions about  
25 engaging in a comparison between the prescriptions for  
26 the logging of coupe 20 and the prescriptions for the  
27 logging of these proposed coupes. And you said in  
28 answer to a question from my learned friend that you  
29 accepted there was I think a material difference, and  
30 you said words to the effect that you recognised this  
31 as an attempt to qualify previous prescriptions and



1 improve them. Can I direct your attention to your  
2 conclusion at paragraph 5.11 of your report?---Yes.  
3 Do the prescription differences affect the conclusion that  
4 you have expressed in that paragraph?---No, no, I think  
5 I have made it quite clear in my report that the  
6 greater glider and the yellow bellied glider, all the  
7 scientific evidence points to these species being old  
8 growth-dependent, so it really doesn't matter if you  
9 improve the habitat pre prescriptions, that's not going  
10 to be particularly beneficial to these species. But  
11 it is going to be beneficial to the 90 per cent of  
12 arboreal mammals, the 60 per cent of bats, the 20 per  
13 cent of - 60 per cent of birds and the 12 per cent of  
14 reptiles - I am sorry, 20 per cent of birds and 12 per  
15 cent of reptiles that use hollows. So I see these  
16 prescriptions as being there for hollow-dependent fauna  
17 that aren't also dependent on old growth. For old  
18 growth-dependent fauna, as I have said in my report,  
19 you really have to look at either some form of  
20 reservation or a totally modified form of logging  
21 that's of very low intensity.

22 Now, you were asked some questions about the reserves and the  
23 amount of old growth in the reserves and how they may  
24 or may not accommodate these two species of gliders,  
25 and as I understood your answer you said you needed to  
26 look at an old growth map and consider floristics of  
27 the area. Can you just explain to His Honour what you  
28 meant by considering the floristics of the area?---By  
29 floristics I mean the tree and shrub species  
30 composition, it's particularly important for yellow  
31 bellied gliders because they do seem to be - their

1 abundance locally or density locally does seem to be  
2 determined by the occurrence of eucalypts that flower  
3 in winter when they are particularly - the food is  
4 particularly scarce. So the availability of winter  
5 flowering eucalypts provides pollen and nectar in  
6 winter. Also the occurrence of - also the yellow  
7 bellied gliders do not sap-feed on all tree species and  
8 not all individuals, so we know that they target  
9 particular species and particular individual trees  
10 within species. So again you need to consider what  
11 species are there before you can determine whether it's  
12 likely to be suitable for sap-feeding. Also they do  
13 do a little bit of gum feeding, which is dependent on  
14 the presence of acacias, and they seem to favour tree  
15 species that have a lot of what we call candlebark or  
16 shedding bark that harbours invertebrates and they can  
17 feed on in winter. So you really need to look closely  
18 at tree species composition and local knowledge of  
19 what's important to gliders in that area to come to  
20 some conclusion about whether or not habitat is or is  
21 not likely to be suitable.

22 Thank you. Now, you were asked some questions about the  
23 minister for the environment's media release. The  
24 agreed document is at page 1043. Do you still have  
25 that in front of you? Can I just ask you to go back to  
26 it, please? Volume 3, 1043?---Yes, I have found it.

27 And your attention was directed to the statement about five  
28 or six paragraphs down where the minister said that the  
29 contentious timber harvesting coupes would remain  
30 available as they did not meet the standard of old  
31 growth warranting inclusion in the reserve. Now, I

1 just want to ask you about that phrase "standard of old  
2 growth". To your knowledge, is that a phrase that has  
3 a scientific meaning or an ecological meaning?---No, I  
4 think there's a lot of political debate about when you  
5 include a forest structurally in old growth or not.  
6 Ecologically there's also some debate. So there's  
7 certainly scope for somebody to take - or to put a  
8 position that what I would call old growth is not old  
9 growth.

10 Can I ask you what is your opinion about the standard of old  
11 growth in the coupes that you observed?---I would  
12 classify them as uneven aged forest with old growth.  
13 And I use an ecological criteria, so I would see these  
14 forests as being ideal for old growth-dependent fauna  
15 like yellow belly gliders and greater gliders. So  
16 therefore it satisfies my definition.

17 Can Dr Smith be shown the briefing note to the minister for  
18 the environment and climate change that my learned  
19 friend asked him some questions about. It doesn't  
20 appear to have been tendered, Your Honour, but it's a  
21 document that looks like that.

22 HIS HONOUR: Yes.

23 MS MORTIMER: You may have a copy there in the witness box,  
24 Dr Smith, if you ferret around underneath all that  
25 stuff?---"Briefing to the Minister For Environment and  
26 Climate Change"?

27 That's it, that's it. Now, you were asked some questions  
28 about paragraph 53, the first dot point there. I draw  
29 your attention to that. And to a similar statement -  
30 I will just get you to refresh your memory, read that,  
31 and there's a similar statement in brackets in

1 paragraph 47, where there's an assertion that most  
2 animals were located in the particular part. See  
3 those two matters?---Yes, I have just re-read 53, I am  
4 just re-reading 47.

5 In the surveys that you undertook, and in the data supplied  
6 to you by Dr Bilney, was that the result that was  
7 revealed by your surveys and Dr Bilney's surveys?---I  
8 don't think I can comment with respect to Dr Bilney, I  
9 don't recall. But with respect to my own data, no,  
10 there was quite clearly yellow bellied gliders occurred  
11 on the mid slopes, the upper part of the transect as  
12 well as the lower transect.

13 Is there an ecological explanation for that?---The only  
14 reason I would see that you might get a slighter higher  
15 density in gully would be that gullies are often  
16 slightly more productive, there's more alluvium there,  
17 it's more moisture. So the trees are taller, you  
18 might get an overall higher production of food and  
19 nectar. But generally because of the seasonal  
20 requirements of yellow bellied gliders, you might  
21 expect them in the gully when trees there are  
22 flowering, you might expect them on the ridge there  
23 when trees up there are flowering. So I would expect  
24 them to move around. And as I think I said in my  
25 evidence earlier, from the modelling studies we'd done  
26 where we have related survey records to topographic  
27 features, we haven't really found that gully is an  
28 important predictor, so I would not assume for the  
29 purposes of planning that protecting gullies is going  
30 to conserve these species.

31 If Your Honour pleases, no further questions.

1 HIS HONOUR: Mr Smith, while you have got that document in  
2 front of you, do you see at paragraph 20 it refers to  
3 the tree harvesting surveys undertaken between 1983 and  
4 1993, and approximately 1200 sites were surveyed in  
5 state forest areas, a number of which have since been  
6 added to the conservation reserve system. "While the  
7 species were found to be common, high densities of  
8 greater gliders were found on only five occasions." I  
9 take that to be 5 out of 1200? And it would seem that  
10 what the forest management plan does is pick up on this  
11 notion of high density, which seems to reflect a  
12 relatively rare occurrence, if that is in fact the  
13 background to its selection, is that right?---That  
14 seems to be a fair interpretation to me.

15 Yes. Is that consistent with your understanding of the  
16 evidence relating to these gliders in East Gippsland,  
17 that the densities which have been measured here are  
18 unusually high?---Yes, I am not aware of a great deal  
19 of data specifically for East Gippsland, but I can  
20 speak in relation to my knowledge of greater glider and  
21 yellow bellied glider density in eastern Australia  
22 generally, and I would have to say that densities like  
23 these in my experience are extremely rare. I think I  
24 could say that out of the 30-odd years I have been  
25 periodically spotlighting in tall mountain forests on  
26 and off, that I would have encountered populations like  
27 those that I encountered on my night in the study area  
28 maybe in two other places in 30 years.

29 Is that both the gliders or the greater glider?---That's both  
30 the gliders. They were both high here and I can think  
31 of one other place where I have once found higher

1 greater glider densities, and one other place where I  
2 experienced a similar call rate of the yellow bellied  
3 gliders. But that's it.

4 Yes. Is there anything arising out of that, Mr Redd?

5 MR REDD: Not for my part, Your Honour.

6 MS MORTIMER: No, Your Honour.

7 HIS HONOUR: Thank you. You are excused.

8 <(THE WITNESS WITHDREW)

9 (Witness excused.)

10 MS MORTIMER: Now, Your Honour, I might deal with the  
11 affidavit of Ms Triggs now.

12 HIS HONOUR: Yes.

13 MS MORTIMER: If Your Honour pleases. Your Honour, on behalf  
14 of the plaintiff I read the affidavit of Barbara Ellen  
15 Triggs dated 10 February 2010, and that has two  
16 exhibits which I hand up to Your Honour.

17 HIS HONOUR: Yes.

18 MS MORTIMER: Now, if Your Honour pleases, I call Dr Charles  
19 Meredith.

20 HIS HONOUR: Just wait a moment. Yes, so you propose to  
21 tender the affidavit of Ms Triggs, is that so?

22 MS MORTIMER: Yes, if Your Honour pleases.

23 HIS HONOUR: Yes. And can you just explain to me which  
24 coupe's the hair tubes were productive in?

25 MS MORTIMER: Your Honour, the evidence will show - this  
26 affidavit needs to be read with the evidence of  
27 Ms Redwood.

28 HIS HONOUR: Yes.

29 MS MORTIMER: And I am now working from memory, Your Honour,  
30 but I believe it to be coupe 19. But I may be wrong  
31 about that. But it's to be read with that evidence.

1 HIS HONOUR: Yes, thank you.  
2  
3 #EXHIBIT 20 - Ms Triggs' affidavit.  
4  
5 HIS HONOUR: I think we might just take a 5 minute break  
6 before we call Dr Meredith.  
7 (Short adjournment)  
8 MS MORTIMER: Your Honour, may I just give you the reference  
9 to Ms Redwood's evidence. It's her third affidavit of  
10 19 February 2010 paragraph 12. It doesn't actually  
11 have a coupe number in there, it's got a location.  
12 That's the state of the evidence at the moment, Your  
13 Honour.  
14 HIS HONOUR: Yes.  
15 MS MORTIMER: If Your Honour pleases, I call Dr Charles  
16 Meredith.  
17 <CHARLES WILLIAM MEREDITH, affirmed and examined:  
18 MS MORTIMER: Dr Meredith, your full name is Charles William  
19 Meredith, is that right?---That's correct.  
20 And your business address is 38 Bertie Street, Port  
21 Melbourne, is that right?---Yes.  
22 And you are a director of Biosis Research Pty Ltd?---Yes.  
23 Is that right? And how do you describe your occupation,  
24 Dr Meredith?---Environmental consultant in the area of  
25 ecology.  
26 Now, Dr Meredith, I show you a letter of instruction dated 9  
27 February 2009 and ask you to identify whether that's  
28 the first letter of instruction you received from  
29 Bleyer Lawyers?---That's right, that's the first one.  
30 And in response to that letter of instruction you produced a  
31 report - I hand you a copy of that report - is that

1 correct?---That's right.

2 And insofar as that report contains matters of fact, do you

3 believe them to be true?---I do.

4 And insofar as that report contains matters of opinion are

5 they your opinions?---They are.

6 And are they honestly held?---They are.

7 I tender that and the letter of instruction, if Your Honour

8 pleases.

9 HIS HONOUR: Yes. Does not Dr Meredith's report in fact

10 set out his instructions?

11 MS MORTIMER: It does, yes, it does, Your Honour. But we

12 thought it would be best to tender the actual letter as

13 well.

14 HIS HONOUR: Yes.

15

16 #EXHIBIT 21 - Letter of instructions to Dr Meredith.

17

18 #EXHIBIT 22 - Report of Dr Meredith.

19

20 MS MORTIMER: Now, Dr Meredith, I show you a second letter of

21 instruction dated 7 July 2009, and that is a second

22 letter of instruction you received from Bleyer Lawyers,

23 is that correct?---That's correct, yes.

24 And did you produce a separate report in relation to - in

25 response to that letter, Dr Meredith?---In response to

26 this one?

27 Yes?---Yes.

28 And can Dr Meredith be shown again Exhibit 21, which is the

29 report I have just tendered - 22. Is Exhibit 22,

30 Dr Meredith, a compilation of your responses to both

31 those letters?---22, I will just check that to make



1           sure, and compare it to my copy - yes.  
2   And, Dr Meredith, that report bears a date of April 2009.  
3           Are you able to say whether that was the date on which  
4           it was supplied to Bleyer Lawyers?---No, that date is  
5           my error, incorrect.   In our reports the cover is a  
6           separate part of the document, I didn't update that.  
7           I believe it was around about July that the report was  
8           actually tendered.

9   Thank you.   Now, I show you a third letter of instruction  
10           which is dated 9 November 2009.   No, Your Honour, I  
11           don't think I tendered that letter of 7 July 2009.   I  
12           tender that.

13  
14   #EXHIBIT 23 - Second letter of instructions 07/07/2009.

15  
16   MS MORTIMER:   I show you a letter dated 9 November 2009.  
17           Those are the instructions you received from Bleyer  
18           Lawyers on or about that date?---That's correct, yes.  
19   And in response to that did you produce a report dated 1  
20           February 2010?   I will show you a copy?---That's right,  
21           yes.

22   And, Dr Meredith, insofar as that report contains statements  
23           of fact, do you believe them to be true?---I do.  
24   Insofar as it contains matters of opinion are they your  
25           opinions?---Yes.

26   And are they honestly held?---They are.  
27   I tender that, if Your Honour pleases, with the letter of  
28           instruction.

29   HIS HONOUR:    Yes.

30  
31   #EXHIBIT 24 - Third letter of instructions of 09/11/2009.

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#EXHIBIT 25 - Report of Dr Meredith of 01/02/2010.

MS MORTIMER: If Your Honour pleases.

I show you now, Dr Meredith, the letter of instruction dated 21 December 2009. Those are the instructions you received on or about that date from Bleyer Lawyers?---Yes.

And I show you a copy of a report dated 2 February 2010. Is that the report that you prepared in response to those instructions?---It is.

Insofar as that report contains matters of fact, do you believe them to be true?---I do.

In so far as it contains matters of opinion are they your opinions?---They are.

And are they honestly held?---They are.

I tender that, if Your Honour pleases.

HIS HONOUR: Yes. So there's a letter of instructions of 21 December 2009, is that right?

MS MORTIMER: Yes, Your Honour.

HIS HONOUR: And then a further report?

MS MORTIMER: Yes, Your Honour, of 2 February 2010.

HIS HONOUR: Of 2 February 2010.

#EXHIBIT 27 - Further letter of instructions and further report.

MS MORTIMER: Now, can Dr Meredith please be shown Exhibit 10 which is the view commentary. We have a copy for the witness, if that might be handed up, Your Honour. Now, Dr Meredith, that document contains records of comments made by you on the view which took place on 3

1 March 2010. I understand there is a correction you  
2 want to make to paragraph 21, is that right?---That's  
3 correct. It's a minor correction.

4 So paragraph 21 on page 4, Your Honour.

5 HIS HONOUR: Yes.

6 MS MORTIMER: What's the correction, Dr Meredith?---The  
7 second sentence, if there is a "mono group of trees  
8 they will be close". I don't believe I used the word  
9 "mono", I possibly may have said mono age, but my  
10 recollection was I said "single aged" rather than  
11 "mono".

12 Now, with that correction, Dr Meredith, are the observations  
13 and opinions attributed to you in this document your  
14 opinions?---Yes.

15 And are they honestly held?---They are.

16 And insofar as any of those statements refer to matters of  
17 fact, do you believe them to be true?---That's correct.

18 If Your Honour pleases, I have no further questions of  
19 Dr Meredith.

20 HIS HONOUR: Thank you.

21 <CROSS-EXAMINED BY MR WALLER:

22 Now, Dr Meredith, you don't consider yourself to be an expert  
23 in relation to the long footed potoroo, do you?---I  
24 don't consider myself to be the expert, if you like,  
25 but I have expertise in the species greater than most  
26 mammal ecologists in Australia, but there are other  
27 people who are more expert.

28 All right. You have published no detailed studies  
29 concerning the long footed potoroo, have you?---No.

30 And your experience that you refer to as relevant experience  
31 in relation to the long footed potoroo goes back 20

1           years to your work on the very fast train project,  
2           doesn't it?---Yes.  
3    Nothing since then?---No.  
4    Your report on the long footed potoroo, and in particular I  
5           am now referring to the one you published on 2 February  
6           this year, is substantially based on the work of  
7           others, isn't it?---That's correct.  
8    In particular the work of Saxon and others?---I wouldn't  
9           single Saxon out, I think there's a range of work in  
10           there.    But certainly his work is quoted.  
11   And you also rely on the work of amongst others Dr Henry, and  
12           Mr Chick, don't you?---Yes, I think there's one paper  
13           by Mr Chick, a number of papers into which he  
14           contributed, several papers by Henry, and a range of  
15           other people as well.    Ken Green is in there and - - -  
16   Now, in your recent report of 2 February, you describe the  
17           long footed potoroo as "one of the rarest mammals in  
18           Australia", don't you?---I do.  
19   And that's a direct quote from the 1993 action statement,  
20           isn't it?---I don't know if it's a direct quote, but  
21           it's certainly - similar words are used in the action  
22           statement.  
23   Yes.    And that reference in the action statement was based  
24           on Saxon and others 1990 work, wasn't it?---The  
25           reference in the action statement was.  
26   Yes.    And in particular I am now referring to the expression  
27           "one of the rarest mammals in Australia".    That can be  
28           traced, can't it, back to Saxon's 1990 work, do you  
29           agree?---My view is it's a reasonable description of  
30           the species' status, and it's fairly self-evident.  
31           That other people have said it before doesn't mean it's

1           traced back to there, in my view.

2   Right.    I want to suggest to you that that statement's about  
3           20 years out of date?---No, I don't believe it is.  
4           Certainly since the Saxon work the estimated numbers  
5           have increased, but it's still a rare and highly  
6           localised mammal, and by standards of endangered  
7           mammals in Australia it is one of the rarest.

8   Yes.    You prepared a report in April 2009 which was tendered  
9           as Exhibit 22.    In fact it's dated April 2009 but your  
10          evidence is that you provided it in about July  
11          2009?---Yes.

12   Is that the case?---That's the case.

13   Yes.    And in that report you describe the long footed  
14          potoroo as "one of the rarest mammals in the world",  
15          didn't you?---Yes, I did.

16   Yes.    I suggest to you that that was a gross exaggeration,  
17          wasn't it?---I don't think it's a gross exaggeration.  
18          It was - - -

19   Would you accept that it's an exaggeration?---It's at the  
20          rarer end of the scale, but it's probably somewhat of  
21          an over-statement to say one of the rarest in the  
22          world.

23   So why did you say it?---In the Australian context it's an  
24          endangered mammal, and I took that as the numbers for  
25          the revised recent numbers as indicating that it was in  
26          the numbers of hundreds which would make it very rare  
27          in the world.

28   So just to be clear, that April report that I refer to, that  
29          was a report written in support of your submission that  
30          the area of Brown Mountain be declared a critical  
31          habitat, is that correct?---That's right.

1 And I suggest to you that it served the purpose that you were  
2 contending for, namely, that that area be declared  
3 critical habitat by exaggerating the rarity of the long  
4 footed potoroo as a species?---No, I don't think it  
5 does. The report doesn't use that argument, the  
6 report uses distributional arguments in relation to the  
7 constrained distribution of the species which has not  
8 changed and which is well understood, and the  
9 connectivity of that distribution within the area of  
10 proposed critical habitat.

11 Yes. Giving evidence to the court today, do you stand by  
12 your statement that the long footed potoroo is one of  
13 the rarest mammals in the world?---I would say that's a  
14 slight overstatement, but it's still a very rare  
15 mammal, by world standard.

16 Well, your counsel asked you when that report was tendered  
17 whether the matters of fact referred to in it were  
18 true, and whether the matters of opinion were your  
19 opinion honestly held, and you answered in the  
20 affirmative. Do you wish to qualify that answer  
21 now?---No, my opinion at that stage prior to the  
22 revised numbers was honestly held, and it was based on  
23 numbers in the hundreds.

24 In your April 2009 report, you also said, didn't you, that  
25 the current long footed potoroo population in East  
26 Gippsland is thought to consist of 150 animals, but the  
27 numbers are in decline, didn't you?---That's correct.

28 Did you believe that to be a true statement when you made  
29 it?---At the time on the information I had that was a  
30 correct statement.

31 Yes. Do you still believe it to be a true

1 statement?---There is new data since then which is  
2 reflected in my more recent reports.

3 Yes. So why when you were asked by your counsel whether the  
4 opinions and facts in your April or July report were  
5 true and opinions honestly held did you not qualify  
6 that statement?---Because at the time that was the  
7 state of knowledge of the specie. Certainly the state  
8 of knowledge available to me given that much of the  
9 work was unpublished until the revised action statement  
10 came out.

11 Yes. But your counsel - I shouldn't say your counsel - the  
12 plaintiff's counsel tendered that report for the  
13 purposes of the plaintiff's case. Are you suggesting  
14 that that report is of no use because it's been  
15 superseded by more recent data?---I am suggesting that  
16 that part of the report that relates to the population  
17 estimates for the species has - those estimates have  
18 changed. Now, I am not saying that I agree with the  
19 new estimates, I think they are probably  
20 over-estimates, so that we had two set of estimates  
21 available from people working on population numbers of  
22 the species, one which has been revised upwards,  
23 another one which is yet to be confirmed, but I believe  
24 it's probably too high.

25 Right. Well, have you got a copy of your April or July  
26 report in front of you?---I do.

27 This is the assessment of critical habitat for the six  
28 species, and in particular I wanted to ask you to look  
29 at the section on the long footed potoroo which begins  
30 at page 18 of that report?---I have that.

31 And just to be clear, in preparing this report you conducted

1 no surveys yourself, did you?---No, this report was  
2 always intended to be by me a survey of the available  
3 information to assess it against the criteria of  
4 critical habitat.

5 All right. So to the extent that you are relying on  
6 information - I withdraw that. You didn't conduct any  
7 site visits either to any of the areas the subject of  
8 this report in preparing the report, did you?---I  
9 didn't conduct site visits at the time, I had visited  
10 many of the areas within that critical habitat area and  
11 around it in the course of my work over the last  
12 several decades.

13 Yes. But I think you gave evidence earlier that the last  
14 report of relevance that you prepared in relation to  
15 the long footed potoroo was in 1990, would you  
16 agree?---There's a difference between visiting a site  
17 and doing a report. I have been involved in other  
18 reports in the area not to do with the long footed  
19 potoroo, their habitats. Nonetheless, potoroo  
20 habitats, some of those areas.

21 Yes, but when you conducted those reviews or those surveys or  
22 site visits, your focus wasn't on the long footed  
23 potoroo, was it?---As a good ecologist you take note of  
24 the whole ecology that you are looking at and the  
25 habitat which is all you can see in relation to  
26 potoroos.

27 Right, so when you conduct a site visit you keep in mind the  
28 whole panoply of threatened species, do you?---That  
29 would be a pretty accurate summary.

30 I see?---Thank you.

31 In relation to that April or July report, you say on page 18



1 in the third paragraph under the heading "Threats to  
2 survival", second sentence: "The current population in  
3 East Gippsland is thought to consist of 150 animals but  
4 numbers are in decline with the species no longer being  
5 detected at some sites." What was the source of that  
6 statement?---I think that was from the first action  
7 statement, I don't recall exactly. But it's quoted as  
8 being re 2000, so let's have a look.

9 I want to show you a document - - -

10 HIS HONOUR: Well, just wait a moment, Mr Waller. Page 47  
11 lists the reference, is that right?---That's right, on  
12 page 47 it's the draft revision, flora and fauna  
13 guarantee action statement number 58.

14 MR WALLER: Did you bring a copy of that into court  
15 today?---Not the old action statement, no.

16 Yes. If we can go to the agreed book?---M'mm.

17 Have you got volume 2 of the agreed book of documents, and if  
18 you have a look at page 535?---535, yes.

19 And you think that you got that statement from this document,  
20 do you?---That's correct.

21 Could you tell the court where in that document that  
22 statement is referred to?---I can't see the 150 in  
23 there.

24 HIS HONOUR: On page 536 it says approximately 40 per cent  
25 of the 150 acceptable records of the long footed  
26 potoroo are from remains in canid scats. Is that it  
27 or is it somewhere else?---That's the bottom of page 2,  
28 first column.

29 Yes.

30 MR WALLER: Are you saying that the reference there to 150  
31 acceptable records is the same as the current

1 population in East Gippsland? Are you saying that the  
2 number of detections equals the population of the  
3 species?---No, I am not. But that is how it reads.  
4 You agree, don't you, Dr Meredith, that there's a clear  
5 distinction between the number of detections of the  
6 species on the one hand and the actual population of  
7 the species on the other?---I do.  
8 Yes. And I want to suggest to you that your statement in  
9 your April or July report is clearly expressed in terms  
10 of the current population in East Gippsland, isn't  
11 it?---That's right.  
12 Right. And I suggest to you that the reference in the  
13 action statement to the 150 acceptable records on page  
14 536, is a reference to detections, isn't it?---It's a  
15 reference to detections, yes. The minimum population.  
16 Yes. And if you look at page 535, in the second column,  
17 about five lines down, or three lines down, there's a  
18 statement: "Although the number of confirmed  
19 populations is small, a reasonable estimate of total  
20 numbers may be 1,000 to 2,000 based on predictions from  
21 suitable habitat", do you see that?---I do.  
22 Why didn't did you refer to that in your April or July  
23 report?---Because that doesn't distinguish the East  
24 Gippsland population.  
25 I see. I want to hand you - just bear with me one moment.  
26 Having now reflected on that action statement, is that  
27 the reference you think you referred to in support of  
28 your statement on page 18 of your April report  
29 referring to 150 animals?---If I can just move back to  
30 this. That reference in my recollection refers to the  
31 fact that the population is in decline, the species no

1 longer detected at some sites rather than 150 animals.  
2 However, I think it's likely that the figure of 150  
3 animals came to my mind from this document.  
4 But you accept that that is a clear error in your report?---I  
5 would accept that that's not the estimated population  
6 for East Gippsland at that time.  
7 Yes. When you say "at that time", you mean when you did  
8 your report in July?---That was available to me in  
9 July, yes. Publicly available.  
10 Yes. Now, you have had regard in relation to your 2  
11 February 2010 report to more up to date data, haven't  
12 you, in relation to the long footed potoroo, would you  
13 agree?---I would.  
14 And in particular you have had regard to the action statement  
15 that was released in August 2009, haven't you?---Yes.  
16 Now, if I could ask you to look at that statement - -  
17 -?---The action statement?  
18 Yes, you will find it in the same volume of the court book  
19 but beginning on page 542?---Okay, I have a copy.  
20 Now, do you see that on page 542, which is the first page of  
21 that action statement, under the heading "A  
22 distribution", it states that "In Victoria two sub  
23 populations have been recorded, one in East Gippsland  
24 and the other straddling the Great Dividing Range in  
25 the Upper Ovens, Buckland, Buffalo and Wonnangatta  
26 catchments"?---Yes.  
27 And it goes on to say that in East Gippsland the "long footed  
28 potoroo is known from more than 60 separate sites  
29 within an area of approximately 160,000  
30 hectares"?---Yes.  
31 Now, those 60 sites, that's an increase, isn't it, from the

1 number of sites that were referred to in the earlier  
2 action statement, isn't it?---That is, yes.

3 Because in the earlier action statement at 535, again on page  
4 1 of that statement, it says "In Victoria the long  
5 footed potoroo has been recorded in East Gippsland at  
6 about 40 sites within an area of approximately the same  
7 area, 1600 square kilometres". Now, I put it to you  
8 that that's a significant increase, isn't it, in the  
9 number of sites at which the long footed potoroo has  
10 been located?---That's an increase in the number of  
11 sites.

12 Yes, it's an increase of 50 per cent in the East Gippsland  
13 area between 1994 and 2009, do you agree?---Yes, there  
14 have been some sites where it hasn't been recorded  
15 again and other sites that have been variously  
16 disturbed since then, so sites are once off records.

17 We will come to that. Did you consult this action statement  
18 in relation to the population of the long footed  
19 potoroo as well?---Yes.

20 And what were you able to glean about population from this  
21 action statement?---Well, the action statement says  
22 that - I think it's 8 to 10,000 from memory.

23 If you look at page 4 of the action statement, at the bottom  
24 of the second column?---Yes, could be no more than  
25 about 10,000 distributed across the three areas.

26 Yes. And it goes on to say "With the largest of the sub  
27 populations in East Gippsland comprising perhaps  
28 two-third of the total", do you see that?---Yes.

29 So on those figures a population of up to, say, 6,500 could  
30 be located in East Gippsland?---On those figures?

31 Yes. You don't dispute these figures, do you?---I think

1           they are probably a bit of an over-estimate.    I am not  
2           privy to exactly how they have been derived, but as an  
3           order of magnitude I don't dispute them.

4    Yes.    And it's wildly greater than the 150 that you stated  
5           as the population in your July report, isn't  
6           it?---That's true.

7    Now, where in your 2 February 2010 report do you refer to the  
8           population of the potoroo?---I am not sure that I  
9           specifically do.    There are - there's the indirect  
10          reference where it talks about on page 19, at the top,  
11          immediately below the box, the first paragraph there,  
12          it says, the second sentence "There will now be a  
13          network of protected areas of primary habitat in East  
14          Gippsland comprising more than 40,000 hectares.    This  
15          area is considered sufficient by DSE to support more  
16          than 2,000 individuals."    So it's referring to a  
17          subset of the total population area, and therefore a  
18          subset of the population.    But that's the only  
19          reference to population size in this document as I  
20          recall.

21   Now, it would have been relevant I suggest to you,  
22          Dr Meredith, to set out the latest data on the  
23          population of the potoroo, long footed potoroo, in East  
24          Gippsland for the purpose of this report, wouldn't it  
25          have been?---I think that's been very well set out in  
26          the updated action statement.

27   Yes, but you referred in the course of your report to other  
28          parts of the action statement, didn't you?---I did, but  
29          I don't - in the production of this report I didn't  
30          have any need to refer to the total population.    If I  
31          did, I would have.

1 Well, on page 9 of your report dealing directly with the  
2 issue of distribution, you stated that the long footed  
3 potoroo only occurs in eastern Victoria and  
4 south-eastern New South Wales and you refer to figure  
5 1B from your 2009 report showing the total distribution  
6 of the long footed potoroo?---That's right.  
7 That is the April or July report we have been talking about,  
8 isn't it?---Yes.  
9 And that report was predicated on your statement that there  
10 were 150 - - - ?---No, no, we are talking about  
11 distribution, not numbers in that. Distribution has  
12 not changed in any appreciable extent apart from the  
13 Cape Conran record. In any species the individual  
14 dots representing survey records are not the only  
15 locations they occur, obviously, as everyone realises,  
16 there are individuals in between in areas of suitable  
17 habitat, and the surveys in the last decade or so have  
18 filled in some of those gaps, but they have not  
19 significantly or even more than in a very minor way,  
20 apart from the single record at Cape Conran, expanded  
21 the population range of the species in either East  
22 Gippsland or the central highlands, those two clump  
23 distributions still remain essentially the same.  
24 But you are now talking about distribution rather than  
25 population, aren't you?---But that's what that refers  
26 to.  
27 Yes. And - - -?---It's headed "Distribution".  
28 So no reference, no express reference in your most recent  
29 report to the court on the actual population of the  
30 long footed potoroo in East Gippsland, do you  
31 agree?---I agree.

1 And you go on to give opinions about the precautionary  
2 principle in your 2 February 2010 report, don't  
3 you?---Yes.

4 And in giving an opinion on the applicability of the  
5 precautionary principle, I suggest to you the very  
6 first thing to do is to identify the - with scientific  
7 substantiation, whether or not there is a serious or  
8 irreversible threat to the species you are  
9 considering?---Yes, that would be a good start, yes.

10 And I suggest to you that that step cannot be taken without a  
11 clear statement in the report of the absolute  
12 population numbers of the species in the location you  
13 are talking about?---I don't agree with that. I think  
14 that's widely available information set out very nicely  
15 in the recent action statement.

16 Yes. But you provided this report to assist the court,  
17 didn't you?---Yes.

18 And I suggest to you that you in preparing your report sought  
19 to gather from relevant sources relevant material so  
20 that the court would have in one convenient location  
21 all of the relevant data that you thought it needed to  
22 consider, do you agree?---No, I didn't consciously  
23 intend to do a complete literature review, I set out to  
24 answer a series of questions.

25 Were you under pressure of time in preparing this  
26 report?---You are always under the pressure of time as  
27 a consultant. But I had a number of extensions so I  
28 was able to prepare it in reasonable time.

29 Yes. You were only asked to prepare this report on 21  
30 December, weren't you? I am talking now about the  
31 February report?---The long footed potoroo?

1 Yes?---On or about that date, yes.

2 Yes. And were you advised or informed that that was the  
3 date on which the court had ordered expert reports to  
4 be filed?---No, no.

5 You had no idea about it?--- Sorry, the expert's reports to  
6 be filed on the 21st?

7 Yes, of December, the day you were briefed to give the  
8 report?---Look, at some stage I was told when the  
9 reports would be required for the previous hollow -  
10 the hollow-bearing report, which I think was around  
11 about then, but I don't recall a conversation on that  
12 other than that I would have time to do it after  
13 Christmas, because they clearly couldn't do it before  
14 Christmas.

15 And you had all the time you needed, did you, to do that  
16 report? You didn't need any more time?---You could  
17 always do with more time, I was on leave for much of  
18 that period.

19 You were asked in the instructions to conduct site visits and  
20 do surveys, weren't you?---I was.

21 And you didn't have time to do that, did you?---I didn't.

22 Right. You would have preferred to have done that?---I  
23 would have preferred to, but at the same time I had an  
24 extremely good series of photos and I knew the area  
25 well, and when I was able to make my site visit it  
26 merely confirmed what I had expected to see.

27 Right. But the report that you prepared, in fact both  
28 reports you prepared, could be described as desktop  
29 reports without any element of field assessment  
30 included?---In relation to the specific coupes, yes,  
31 they are desktop reports.



1 Now, in the course of preparing this report, that is the  
2 2010, February 2010 report, you have referred in the  
3 reference section to those reports you have had regard  
4 to?---Yes.

5 And one of the records you had record to was a report by  
6 Mr Chick and others published in 2006, isn't it?---Yes.

7 And you are familiar with that report?---I am.

8 You have read the report?---I have.

9 You don't state anywhere in your report that you take issue  
10 with anything in that report?---I don't state that.  
11 In fact I don't think there's anything I take issue  
12 with of a substantive nature.

13 Yes. Now, you have got your February report there. If you  
14 go to page 12, at the top of page 12 you deal with  
15 habitat disturbance and impacts on food sources, see  
16 that?---Yes.

17 And this is all under the heading, the general heading  
18 "Conservation status"?---M'mm.

19 You say in the first sentence that the effects of land  
20 management practices and other forms of disturbance on  
21 hypogean fungi, the food source of the long footed  
22 potoroo is not well understood and often contradictory,  
23 and you refer to Saxon and DSE 2009?---Yes.

24 You don't refer there to Chick 2006, do you?---No, I don't,  
25 but DSE 2009 refers to Chick, and the updated action  
26 statement contains a good distilling of most of the  
27 research done so I chose quite consciously to rather  
28 than fill the document with multiple references to use  
29 that as a sort of cover-all in most cases.

30 Yes?---But certainly Chick's work is in there and I am  
31 familiar with it.

1 Right. Then if you go on, you talk about logging and fire  
2 and various other matters, but then in your last  
3 paragraph in that section you say: "Overall logging is  
4 an on-going impact on the LFP's habitat in both East  
5 Gippsland and the Great Dividing Range sub  
6 populations." And in the next sentence you say:  
7 "While the impacts of logging on the species are not  
8 clear cut" - - - ?---That's right.

9 "And it clearly can survive in some areas after timber  
10 harvesting, it is likely that there are overall  
11 negative impacts on the species from logging as  
12 compared to areas of unlogged habitat." Now, I want  
13 to put to you that that last statement of opinion about  
14 the likelihood of overall negative impacts is mere  
15 conjecture on your part, isn't it?---No, not at all.  
16 There's a number of facets there, but the Chick report  
17 itself along with the work that's been done in the  
18 central or central highlands, the Barry Range area and  
19 so on, clearly suggest that (a) the data that's  
20 available on logging impacts for the long footed  
21 potoroo has very little statistical strength, and Chick  
22 and others conclude that it is very hard to interpret  
23 if there is an effect from logging positive or  
24 negative. Every paper, including Chick, nonetheless  
25 suggest that a priori there appears to be indications  
26 that there are negative effects. Chick for instance  
27 talks about the - in every case the radio tracked  
28 animals increased their home range after logging, which  
29 suggested that there will be reduced resources. The  
30 unlogged areas in the central highlands have much lower  
31 home range sizes which has been widely interpreted by

1 Chick and others as meaning that the unlogged areas are  
2 - the animals can live more efficiently, there's a  
3 higher resource availability and it's therefore better  
4 habitat. So, no, it's not conjecture. There's a  
5 range of factors that point towards that, and the best  
6 that can be said from Chick or any other paper is that  
7 the difficulty of using the past techniques to catch  
8 and study these animals has meant that time series  
9 studies of post logging effects have been essentially  
10 meaningless, but there are a number of areas of  
11 inference to do with comparing particularly the  
12 populations away from major logging impacts that  
13 suggest that it is likely that logging has a negative  
14 impact.

15 Right - - - ?---So no, I wouldn't agree with your contention.  
16 Okay. You would agree - let's take in it stages - that in  
17 terms of short-term impacts, the evidence is favourable  
18 in terms of the survivability of the species?---No, I  
19 think at Bellbird Creek roughly half the population  
20 didn't survive logging. There were - a short-term  
21 increase in detectability, that doesn't mean in  
22 population, and they say that in the Chick report.  
23 Certainly some individuals did survive logging, and you  
24 would expect most Australian fauna can survive a once  
25 off disturbance event; multiple disturbance events are  
26 much less certain, particularly in relatively high  
27 frequencies. But the short-term impacts - there's no  
28 question that there's an impact, an impact being a  
29 change. There's no question that the home range has  
30 got bigger and in every case I think with the possible  
31 exception of one tracked animal, there's no question

1           that some animals were lost, so there was mortality.  
2   Right.   Just so we can make sense of references to the Chick  
3           report, you understand, don't you, that the Chick  
4           report was aimed at considering the effects of timber  
5           harvesting on the long footed potoroo in forests of  
6           East Gippsland between 1998 and 2002, in a particular  
7           - - - ?---That's its title, essentially, yes.  
8   And the focus of the report - - - ?---In a particular  
9           location.  
10   Was a particular location being Watchmaker Creek near  
11       Bellbird in East Gippsland?---That's section A of the  
12       report, or section 1, and then section B has a  
13       different focus.  
14   Yes.    What do you say the focus of section B was?---Section  
15       B was to look at different aged forests within East  
16       Gippsland and to see if there was a detectable pattern  
17       of post logging population change.  
18   And I suggest to you that the Chick report revealed in  
19       relation to the short-term effects of timber  
20       harvesting, that in the 18 months after harvest the  
21       number of potoroos detected on the grid and the overall  
22       trapping success increased with 13 new individuals  
23       captured in the period, and a number known to be alive  
24       at any one time reaching 12, and only four of those  
25       were present before harvesting?---That's right.   And  
26       Chick doesn't believe his own graph and mentions that  
27       this seems counter-intuitive and likely represents a  
28       growth in movement of animals either within the area or  
29       from outside the area, potentially reflecting a  
30       reduction in resources unless sufficient feeding is  
31       also reflected in the larger home ranges.

1 Yes. He did state, didn't he, that the short-term impacts  
2 of the disturbance by timber harvesting on the  
3 population of long footed potoroos in this area was  
4 difficult to discern, but there was a substantial  
5 increase in potoroos detected about 18 months after  
6 harvest, but this appears to have been a temporary  
7 phenomenon and the reasons are unclear. Do you agree  
8 with that, that that's what - is that what you take  
9 from the report?---Well, I think he says a little bit  
10 more than that in that he provides some possible  
11 reasons, but overall the reasons are unclear. There's  
12 very little that can be drawn, and no criticism of the  
13 research, it's a reflection of dealing with this  
14 difficult species to research on. But there's very  
15 little that can be drawn in terms of conclusions from  
16 much of the report.

17 And in terms of the long-term effects of timber harvesting,  
18 the report concluded that it could not discern any  
19 relationship between the occurrence of long footed  
20 potoroos and forest age, that the species was found  
21 across a range of age classes of regenerating forest as  
22 well as old forest. This does not mean that timber  
23 harvesting has no effect on the species in the  
24 long-term, only that no effect was evident in the  
25 study?---That's what he says, yes.

26 So in your report, when you say it's likely that there are  
27 overall negative impacts on the species from logging as  
28 compared to areas of unlogged habitat, do you rely on  
29 the Chick report or on some other data to support your  
30 statement in that sentence?---Well, a range of data.  
31 The Chick report clearly doesn't provide a great deal

1 one way or the other. The work by Ken Green on fungal  
2 availability, which is referred to in the DSE 2009,  
3 clearly suggests that fungal availability and fungal  
4 quality, if you like, food quality is reduced post  
5 logging. The comparison's made in the DSE 2009 and in  
6 papers quoted therein between the unlogged areas where  
7 home ranges were smaller and the populations denser  
8 suggests that the impact of logging is to make the  
9 habitat less suitable.

10 So you are relying on the 2009 action statement for that  
11 statement in your report?---Well, every report that's  
12 addressed the issue, as I have just said, we don't know  
13 or there is evidence for an impact, particularly on the  
14 fungal availability or on the level of food  
15 availability either inferred or assessed from range  
16 sites.

17 And the fungal availability - - - ?---- - - '94 as well.

18 The fungal availability is likely to be greater in wet areas  
19 closer to streams, do you agree?---Generally, yes.

20 The action statement, the most recent action statement on  
21 page 6, if I could take you to that, 0547, under the  
22 heading "Effects of habitat disturbance" in the  
23 right-hand column, reference there is made to Chick's  
24 research in the third line, isn't it?---Yes.

25 And in the last sentence of that paragraph reference is made  
26 to no correlation between forest age and long footed  
27 potoroo presence?---That's right, that's straight from  
28 the Chick report.

29 You don't refer to that statement anywhere in your report, do  
30 you?---No, I don't.

31 Because that statement suggests, doesn't it, that potoroos

1 are likely to be habiting or inhabiting logged areas or  
2 unlogged areas and that there's no correlation between  
3 the presence of the animal and the fact that logging  
4 has occurred, do you agree?---No, I don't agree. I do  
5 acknowledge in my report that potoroos are found in a  
6 variety of aged forest, including areas, some areas  
7 since logging. I can take you to that if you want,  
8 but you quoted it earlier so I will assume that you are  
9 aware of that. The Chick report just did not find a  
10 correlation and indicates that the lack of data in  
11 terms of - or the inability to get statistically sound  
12 data because of the difficulty of detecting potoroos  
13 means that essentially those results are fairly  
14 meaningless. So I don't infer anything from that.  
15 Chick doesn't infer anything from that. DSE may have  
16 chosen to infer something from that, but I don't  
17 necessarily agree with that. But there are a range of  
18 other papers that indicate effects, and there is data  
19 in the Chick paper that indicates an effect.

20 And which of the other papers do you say indicate negative  
21 effects from logging?---Saxon at 1994, and then there's  
22 - if I can just make myself a little bit of room here  
23 - - -

24 Certainly?---There's a number of papers quoted that are  
25 quoted in the action statement, but Green, Tory,  
26 Mitchell, Tennant and May, 1999, the diet of the long  
27 footed potoroo.

28 Just stopping there. Where do I see that referred to in  
29 your references?---That's not referred to in my  
30 references.

31 Why not?---Because I believe it's referred to in the action

1 statement.

2 Right?---So it's there under the rubric of DSE 2009. Here  
3 it is, Green, Tory, Mitchell, Tennant and May 1999, the  
4 reference are on page 11.

5 The Chick 2006 report, that's referred to in the 2009 action  
6 statement too, isn't it?---Yes.

7 And yet you saw fit to refer separately to that in your  
8 report, didn't you?---I selected some reports at  
9 certain stages, but I wouldn't attach any great  
10 significance to that. The action statement coalesces  
11 virtually all the reports of any significance in  
12 relation to the species, and so it's been a great  
13 service to us all in doing that, and I have tended to  
14 go for that one, but not in every case.

15 I see. Could I ask you to look at the Chick report just so  
16 we can identify what we have been talking about, with a  
17 copy to His Honour and my learned friend. Now, is  
18 that the report we have been talking about and  
19 referring to as the Chick report?---That's right.

20 And that's the report that you reference explicitly in your  
21 report?---Yes.

22 And you refer to it several times in the body of your report  
23 too, don't you?---Yes.

24 And that's also the report referred to in the action  
25 statement several times as well, isn't it?---Yes.

26 Your Honour, I tender that report?

27 MS MORTIMER: I object to that, Your Honour. Mr Chick is on  
28 my learned friend's witness list under a subpoena, we  
29 assume particularly to prove his opinion in this  
30 report, and in my submission that's the appropriate way  
31 for it to be done, because it's said on behalf of the



1           defendant that this report stands for certain  
2           propositions, this witness has not agreed with that.  
3           And if it's said that they stand for certain  
4           propositions, then that should be adduced through the  
5           author, in my submission.

6   MR WALLER:   Your Honour, first of all this witness when I  
7           asked him if he took issue with any aspect of the  
8           report he said he didn't, to begin with.   Secondly, he  
9           has referred to it explicitly in his report.   Thirdly,  
10          the action statement refers to it explicitly.  
11          Fourthly, a number of other reports have been tendered  
12          on the basis that they are referred to by either  
13          Dr Gillespie or more recently Dr Smith.   If we are to  
14          call the authors of every report referred to in every  
15          reference, then this will be a very long trial indeed.

16   HIS HONOUR:   I understand that, but that's not really the  
17          basis on which you want to put it in.   You say that  
18          it's been sufficiently adopted by this witness, is that  
19          right?

20   MR WALLER:   Yes.

21   HIS HONOUR:   Yes.   Yes, I am prepared to admit it.

22   MR WALLER:   If Your Honour pleases.

23

24   #EXHIBIT F - Chick report 00/06/2006.

25

26   MR WALLER:   Your Honour, would this be a convenient time?

27   HIS HONOUR:   Yes.   We could go on for another 10 or 15  
28          minutes if you wish, but if this is convenient we can  
29          adjourn now.

30   MR WALLER:   I am happy to go on, but I certainly have much  
31          more than 15 minutes for Dr Meredith, and it may be

1 more convenient to resume in the morning.

2 HIS HONOUR: All right. I take it that you will complete  
3 Dr Meredith tomorrow?

4 MR WALLER: Yes, tomorrow.

5 HIS HONOUR: Probably tomorrow morning?

6 MR WALLER: Yes, before lunch.

7 HIS HONOUR: On that basis I am prepared to adjourn. We  
8 will adjourn until - and you want me to adjourn until  
9 10.30, is that right? That was what counsel asked for  
10 last week?

11 MR WALLER: It may be safer to adjourn until 10 so that I can  
12 make good on that guarantee, without any problem.

13 HIS HONOUR: Yes, I think that's appropriate. We will  
14 adjourn until 10 o'clock tomorrow morning.

15 MR WALLER: If Your Honour pleases.

16 <(THE WITNESS WITHDREW)

17 ADJOURNED UNTIL 10.00 AM WEDNESDAY 10 MARCH 2010

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