

1 MS MORTIMER: If Your Honour pleases, I call Dr Stephen John
2 Debus.

3 <STEPHEN JOHN STEWART DEBUS, affirmed and examined:

4 MS MORTIMER: Have a seat, Dr Debus. Your full name is
5 Stephen John Stewart Debus, is that right?---That's
6 correct.

7 And you reside at 6 Holloway Street, Armidale, in the State
8 of New South Wales, that's right?---That's correct.

9 And how do you describe your occupation, Dr Debus?---I am a
10 biologist or a zoologist. I am an Honorary Research
11 Associate at the University of New England, and I work
12 as a consultant ecologist nowadays, yes.

13 Thank you. Dr Debus, I will show you a letter from my
14 instructors to you dated 4 February 2010, and ask you
15 to identify that, whether those are the instructions
16 you received in relation to this proceeding?---That's
17 correct, they are the instructions I received related
18 to this.

19 I tender those, if Your Honour pleases.

20

21 #EXHIBIT 43 - Instructions to Dr Debus.

22

23 MS MORTIMER: And I show you this document, which appears to
24 be a copy of the report you prepared. Is that a copy
25 of the report you prepared in response to the
26 instructions?---That is the copy of the report, yes.

27 And, Dr Debus, insofar as there are facts contained in that
28 report, do you believe them to be true?---I do believe
29 them to be true, yes.

30 And insofar as there are opinions expressed in that report,
31 are they your opinions?---They are my opinions, yes.

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

2 I tender that, if Your Honour pleases.

3

4 #EXHIBIT 44 - Report of Dr Debus.

5

6 MS MORTIMER: Now, Dr Debus, in that report you refer to a
7 report you were given by Rohan Bilney. Can Dr Debus
8 be shown Exhibit 32, please. Now, Dr Debus, that is
9 an affidavit by Mr Bilney, and I ask you to turn to the
10 exhibit to the very last page of that affidavit. Have
11 you seen that document before?---Yes, I have. I have
12 received that document and read it, yes.

13 Is that the report you refer to in your report?---It is, yes,
14 that's the report I refer to.

15 Now, thank you, Dr Debus, you can put that to one side.

16 Now, can I ask you to go to paragraph 15 of your
17 report, please?---Yes, I have paragraph 15.

18 You see that? And you commence the answer to that question
19 by saying "Based on the relevant map Exhibit VEB 8",
20 and I may show you this document. Is that the map to
21 which you refer in that paragraph?---That is, that's
22 the map so labelled, yes.

23 Your Honour, I will tender that. Just to explain to Your
24 Honour, that acronym is the exhibit to one of my
25 instructor's affidavits which was filed for other
26 purposes earlier on in this proceeding.

27 HIS HONOUR: Yes.

28

29 #EXHIBIT 45 - Map VEB 8.

30

31 MS MORTIMER: Now, can Dr Debus be shown, please, Exhibit 18,

1 which are the photographs taken by Mr Smith on his
2 visit to some of the relevant coupes - Dr Smith. Now,
3 Dr Debus, there's a bundle of eight photographs there,
4 and I just want you to have a look, please, at the
5 first three, and I want you to take it from me that
6 they are photographs of coupe 27, which is the northern
7 most coupe that's in issue in this proceeding. Have a
8 look at those for the moment?---Yes, yes.

9 What is your opinion about whether, as far as you can see
10 from those photographs, that kind of forest is suitable
11 habitat for the nesting of square tailed kites?---Yes,
12 it appears to be, because the trees are large and they
13 have substantial horizontal or near horizontal branches
14 that could support a large stick nest, and they have
15 the sort of canopy structure, an open sort of canopy
16 structure, that would permit the kites to manoeuvre and
17 so on. So they appear to be suitable nesting habitat
18 for the kite.

19 And now can I ask you to skip over the next two photographs
20 and go to the last three photographs, and I ask you to
21 assume for the purposes of answering these questions
22 that the evidence shows they are photographs of coupe
23 19, one of the other coupes in issue in this
24 proceeding. And can you tell His Honour whether in
25 your opinion so far as you can see from those
26 photographs the habitat provides suitable nesting
27 habitat for the square tailed kite?---Yes. I mean,
28 again they are large trees that would support the
29 nesting habits, like a large stick nest on a near
30 horizontal limb with a fork, so the trees are suitably
31 large and the canopies appear to be sufficiently open

1 to be suitable nesting habitat for the kite.

2 Now, you say the canopies are open, what's the importance of
3 that?---Well, manoeuvrability for a long winged bird
4 like the kite, and its style of flight, they manoeuvre
5 slowly around in between tree crowns and so on, and
6 take things from the outer foliage, and they also build
7 nests by taking sticks and leaves and so on from the
8 tree canopy. So they need room to manoeuvre.

9 And does that mean - is it possible to see these nests from
10 the air or not, Dr Debus?---Well, they would be smaller
11 than eagle nests, so I haven't actually ever done any
12 aerial surveys, but I imagine that they would be less
13 easy to spot from the air just because they are smaller
14 than, say, a wedge tailed eagle nest or a sea eagle
15 nest, and they would be below a leafy canopy, probably,
16 so - at least with overhanging foliage, so that they
17 may not be as visible from the air. But it may be
18 possible to detect indicative breeding behaviour, and
19 so on, if the birds were airborne around the nest site.

20 And how easy is it to find the nests from the ground?---It
21 depends on the terrain. Sometimes - - -

22 Can I ask you to just confine yourself to this kind of
23 terrain, please?---Well, unless by chance you found one
24 along a road or a track, it would be difficult to find
25 a nest without spending a lot of time observing flight
26 paths of the birds from say some sort of vantage point
27 in similar habitat nearby, I have not found one.

28 Thank you, Dr Debus. Can I ask you, please, to go to the
29 maps that are appended to your report which show at a
30 number of different scales the records for the square
31 tailed kite?---Yes, I have those maps.

1 Now, can you just tell be shown, please, from where you
2 obtained those records?---These are records from the
3 Victorian Wildlife Atlas held by DSE.

4 And if you look at the second one, the one with the red,
5 yellow, blue, purple and so forth squares on it, and
6 the reproduction is not very clear, Dr Debus, but do
7 you - - -

8 HIS HONOUR: Can I say, Ms Mortimer, I don't have that in
9 coloured format in the copy that I have.

10 MS MORTIMER: I do apologise, Your Honour, and I will hand up
11 a coloured one.

12 HIS HONOUR: I did have some difficulty in following.

13 MS MORTIMER: I can understand why, Your Honour.

14 HIS HONOUR: Yes, thank you.

15 MS MORTIMER: Now, Dr Debus, can you just explain on the
16 legend, what the legend records for each colour?---They
17 are records in different time periods. The later ones
18 appear to be by decade, the earlier ones maybe lumped -
19 yes, the earliest ones it looks like pre 1900, then
20 1900 to about 1950, and then after 1950 they are by
21 decade.

22 All right. And what's the last entry?---2000 to 2005.

23 Do you know why the entries stop at 2005?---When I asked for
24 these records, the brief explanation given in the email
25 to me in return was that the data hadn't been entered
26 since 2007, and there's probably a lag, or there's two
27 possible explanations, and I don't know which is the
28 correct, is that there's either a lag in the entry of
29 data or there aren't many or any records since 2005 in
30 the DSE database.

31 Do you personally know of any known active square tailed kite

1 nests in the State of Victoria, that have been
2 identified?---Not in the Atlas, no - not recent ones.
3 There are two old ones in a previous version of that
4 Atlas. There was a known nest site near Blackwood,
5 and there was a known nest site near Orbost some years
6 ago.

7 But in earlier of the current state of knowledge about
8 currently active square tailed kite nests in the State
9 of Victoria, what is your understanding of that?---In
10 reference to the DSE - - -

11 No, no, without reference to the maps?---A colleague of mine
12 knows of one nest, it's Wombat State Forest, which I
13 believe is northwest of Melbourne somewhere. That was
14 a personal communication a couple of years ago.

15 Is that the only one you are aware of, Dr Debus?---It's the
16 only nest I am aware of at the moment in Victoria, yes.

17 HIS HONOUR: If I look at that map in terms of East
18 Gippsland, what does that tell me about the
19 situation?---There's - - -

20 In recent years, relatively recent years?---Yes, Your Honour.
21 There are clusters of records for the 1980s and the
22 '90s, and a few since 2000 in various parts of East
23 Gippsland. It looks like, if I compare the two
24 scales, the clusters are around Mallacoota and Orbost,
25 and then down towards the Lakes, and then there's a
26 scattering through the foothills up towards the border,
27 yes, back into the hills.

28 MS MORTIMER: And, Dr Debus, just to clarify, are these all
29 records of nests?---No, the only record of a nest would
30 be the Orbost one that David Hollands photographed back
31 in about 1980, thereabouts, yes.

1 So on your understanding what kind of records are these,
2 records of what?---They are just sightings, as far as I
3 am aware these would be sightings of the birds.

4 And taking into account those answers you have given about
5 the age of the records, the nature of the records, and
6 taking into account what Dr Bilney reported about his
7 record and the 8 minutes that he observed the kite, how
8 significant, if at all, Dr Debus, in your opinion is
9 that sighting by Dr Bilney?---Well, it's one of the few
10 in recent years in East Gippsland, and the information
11 with Dr Bilney's sighting was descriptive of foraging
12 behaviour which would suggest a kite resident in the
13 area during the breeding season, if I recall the date
14 of that record, yes. So there's likely to be a sparse
15 breeding population in East Gippsland.

16 If Your Honour pleases, I have no further questions.

17 HIS HONOUR: Dr Debus, in your report you refer to these
18 birds as I think "apparently migratory in
19 Victoria"?---Yes.

20 Does that mean that they fly to northern Australia, or does
21 it mean migratory in Victoria, what does that
22 mean?---It appears that most of them probably leave
23 Victoria for the winter and migrate north. There have
24 been no band recoveries that I am aware of, but there's
25 a corresponding influx into the tropics in the dry
26 season.

27 Yes?---So it looks like there's some fairly continent-wide
28 movement happening.

29 Yes. So does that mean that when I look at the plan and I
30 see sightings along the River Murray, it's possible
31 that in fact they are sighted as they migrate rather

1 than being resident there?---If I recall the analysis I
2 did of those records, or some of them that existed at
3 the time, in Victoria as a whole there was a general
4 absence in the autumn and winter, but one of the few
5 areas that - the occasional autumn/winter record was in
6 that area, was sort of inland and north. And the same
7 pattern repeats in New South Wales. There's a retreat
8 from the south and inland, and tablelands generally,
9 and the north coast there's a few stay, Your Honour,
10 north coast of New South Wales. So I think the more
11 climatically sort of mild the part of the country or
12 state, the more likely you might get a few birds still
13 there in autumn and winter. But there's a definite
14 decline in abundance throughout Victoria in winter, as
15 in southern New South Wales.

16 Yes, thank you. Is there anything arising out of that,
17 Ms Mortimer?

18 MS MORTIMER: If Your Honour pleases, no. But I had
19 neglected to ask Dr Debus to identify the kite, so if I
20 might have leave to do that.

21 HIS HONOUR: Yes.

22 MS MORTIMER: Dr Debus, can you look at that picture, please,
23 in the top left-hand corner, and tell His Honour what
24 that bird is, please?---Well, that bird - there's no
25 question about that being a square tailed kite. It
26 has all the characteristics of the kite, including the
27 sort of white cap on the head and the pale windows in
28 the wings and the banded wingtips and so on, and it's
29 general shape and long tail and so on, it's definitely
30 a square tailed kite, there's no question about it.

31 If Your Honour pleases.

1 HIS HONOUR: Mr Waller.

2 <CROSS-EXAMINED BY MR WALLER:>

3 Dr Debus, you have never actually visited Brown Mountain,

4 have you?---I haven't, no.

5 In fact you have never actually observed the square tailed

6 kite in Victoria, have you?---Not in Victoria.

7 You have got no personal experience of threats to the square

8 tailed kite in Victoria?---Not in Victoria.

9 No. So your experience and research relating to the square

10 tailed kite has focused on the presence of the square

11 tailed kite in New South Wales, hasn't it?---Yes,

12 that's true. And if you want me to elaborate on

13 where, it's immediately over the border in the Eden and

14 Bombala area.

15 Yes. You would agree that the species has a diverse habitat

16 range?---Yes, a range from coastal forest to sort of

17 inland riverine woodland, yes.

18 And it hunts primarily over open forest, woodlands and Mallee

19 communities?---And heathland, yes, and coastal heath,

20 yes - - -

21 It's not - sorry?---Wooded and low heath, yes.

22 And it's not primarily old growth forest-dependent, is

23 it?---Not in the sense of its prey or it requiring

24 hollow trees or old trees, but mature trees. But they

25 don't have to be old growth in that sense.

26 Yes. But you would agree that it appears to prefer a

27 landscape that might be described as structurally

28 diverse?---That's true, yes, yes. Structurally

29 diverse, yes.

30 Could I show you a document, with a copy for His Honour,

31 perhaps a couple of copies for His Honour and for our

1 learned friends. Dr Debus, do you recognise this
2 document?---I do, yes. I am familiar with that.
3 And do you know where this comes from?---It's from the Action
4 Plan for Australian Birds 2000 by Stephen Garnett and
5 Gabriel Crowley?---Yes.
6 And your work is cited in various places in this short
7 summary, isn't it?---It is, that's true, yes.
8 And if I could take you to the heading, the box, I should
9 say, item 4, "Conservation status, least concern", do
10 you see that?---I do, yes.
11 Do you accept that the square tailed kite's conservation
12 status at the Federal level has been assessed as of
13 least concern?---The category is "lower risk, least
14 concern", yes, that's correct. It's lower risk than
15 say vulnerable, which is the next category up. So
16 yes, that's nationally, yes, "lower risk, least
17 concern".
18 And this is according to the IUCN, or International Union of
19 Conservation of Nature Classifications?---That's
20 correct, yes.
21 And that particular classification is the lowest
22 classification that's available?---That's true, yes.
23 I correct myself- near threatened is the next one up.
24 And then vulnerable?---Yes, that's correct, yes.
25 HIS HONOUR: Near threatened?---Well, that's between least
26 concern and vulnerable.
27 I am just checking the term. Yes, thank you?---Near
28 threatened, yes.
29 MR WALLER: So after "least concern", then an animal would
30 simply fall off the scale and not be regarded as being
31 subject to classification on IUCN standards, is that

1 it?---I think that's correct. What "least concern"
2 means, it was assessed and found to be of the lowest
3 risk, yes.

4 And so you accept that at a national level the species is
5 secure?---Yes, that's the current assessment and a
6 subsequent publication, I think, as I pointed out in my
7 report, a subsequent publication also predicts
8 nationally that to be holding until I think 2050.

9 Yes. If you look now at the section on ecology, item
10 9?---Yes.

11 You will see that it describes the square tailed kite as
12 being "a specialised predator of the canopy taking
13 small birds and their eggs and nestlings as well as
14 insects." You would agree with that statement?---Yes,
15 I do.

16 "It hunts primarily over open forest, woodlands and Mallee
17 communities that are rich in passerines as well as over
18 adjacent heaths and other low scrubby habitats and in
19 wooded pounds", you would agree with that
20 statement?---Yes, that's correct.

21 And your work, the work that you co-authored in 1989 is cited
22 in support of that proposition?---M'mm.

23 Do you agree also, and I think you have already, that it
24 appears to prefer landscapes that are structurally
25 diverse?---Yes, yes. The qualifier on that is of
26 course a lot of this information has come from places
27 like southern Queensland and so on, northern New South
28 Wales, that are in the sub tropics so that prey is a
29 lot more abundant up there. But yes, as a general
30 rule it does like diverse habitats.

31 Dealing more closely with its diet, you would agree that the

1 square tailed kite mostly eats small birds, some
2 insects, frogs and reptiles?---A few reptiles, perhaps
3 an occasional frog, but mostly birds, small birds, and
4 the contents of their nests. It's a specialist
5 predator of eggs and nestlings and so on, which it
6 finds in the tree canopy. It finds well hidden prey
7 in the tree canopy mainly.

8 Yes. But it can also find prey on the ground, can't
9 it?---They don't forage on the ground very much, they
10 don't come to the ground much. They get most of their
11 prey from the foliage canopy.

12 How would they be getting lizards and snakes and
13 frogs?---Well, they don't take many snakes, but tree
14 frogs, the few frogs they have been found to eat have
15 been tree frogs, like tree-dwelling frogs. And
16 lizards, there are some lizards that are arboreal as
17 well, so even if they do get the occasional prey item
18 on the ground, the bulk of it comes from the foliage
19 canopy.

20 Yes. And inspects such as moths, ants, grasshoppers,
21 crickets and beetles?---Beetles and moths and so on,
22 again tree canopy species, really.

23 Yes. They also eat on ground vegetation occasionally, don't
24 they?---There are very few records of them coming to
25 the ground. They have occasionally been known to
26 bathe, I think in water on the ground, even then they
27 bathe in foliage moisture. But they are hardly ever
28 seen on the ground, and they don't scavenge.

29 Would you agree, though, that when it's said that they prefer
30 a structurally diverse landscape that would include a
31 landscape that may have been harvested in part, because

1 that would provide access, visual access and also
2 physical access to the bird in order to catch
3 prey?---Well, yes, they will use edges and so on and
4 gaps in the canopy, yes, I would agree that they do use
5 a variety of situations.

6 So for instance the loss of habitat by harvesting might be
7 offset to some extent by the creation of suitable
8 openings in formerly extensive forest, which they could
9 take advantage of?---To some extent. I guess it
10 depends on the ratio of how much is taken and how much
11 is left.

12 Yes. Going back to the document I handed you, I see that
13 it's based, on the second page, on a bibliography that
14 includes four works that you authored or co-authored,
15 and it also relies on comments received from you and
16 others, do you see that?---Yes, I do, yes.

17 There's nothing in that that you disagree with, that
18 statement, that summary?---No, I guess the only thing I
19 would say is there's certainly been information
20 published since 2000 which has built up a bigger
21 picture of the kite's ecology, but at the moment I
22 would see no reason to disagree with that summary,
23 except we could add some detail nowadays.

24 Yes. Your Honour, I tender that.

25

26 #EXHIBIT I - Action Plan for Australian Birds 00/00/2000,
27 relating to the square tailed kite.

28 MR WALLER: I would like to show you another paper, if I
29 might. Dr Debus?---Yes.

30 Do you recognise that paper?---I do.

31 That's a paper that you co-authored with

1 Mr Czechura?---That's correct, yes.

2 In September 1989?---Yes.

3 And it was published in the Australian Bird Watcher in that
4 year?---That's correct, yes.

5 It's in fact one of the references you refer to in your CV in
6 your report to this court, isn't it?---That's correct,
7 yes.

8 And on page 81 of the article, in the introduction, you say
9 that - and this is towards the end of that paragraph -
10 "We review the literature on its biology and supplement
11 this with data from museum specimens, the RAOU Atlas of
12 Australian Birds, nest record scheme, and birds of prey
13 watch scheme, the bird observers' club unusual records
14 file, field notes from colleagues and our own field
15 experience"?---Yes.

16 That's an accurate summary of the sources you relied
17 on?---That is, yes.

18 Yes - I'm sorry?---At the time, yes. It's, what, 20 years
19 out of date almost now that paper, I think.

20 Yes?---Yes.

21 I want to take you to page 84, there's a heading "General
22 habits and behaviour"?---That's correct.

23 You do say in the third paragraph that "The square tailed
24 kite seldom comes to the ground where it appears
25 awkward"?---M'mm.

26 "Though it has been observed walking about, anting and
27 bathing"?---Yes.

28 Stopping there, what does anting mean?---It's a behaviour
29 where birds for some reason, and haven't quite worked
30 out why, but it might be an anti-parasite thing, they
31 will land on an ant nest and let ants crawl over them

1 and then they might get ants in their bill and rub the
2 formic acid over their feathers as a sort of
3 insecticide or something.

4 Yes?---It doesn't mean they are eating them, it means they
5 are using that as a plumage maintenance thing,
6 probably.

7 Yes, yes. And they can only do that by coming to the
8 ground, couldn't they?---That's true. I mean, I have
9 never said that they don't come to the ground. They
10 occasionally do, yes.

11 Yes. And it goes on to say "bathing", what do you
12 understand the bathing habits of the square tailed kite
13 to involve?---There was one incident, if I recall that
14 incident correctly, it was hot weather, a bird came
15 down to I think a sprinkler or something that was in a
16 garden of a bush block. It was bathing in water,
17 which meant that, yes, it was on the ground getting wet
18 somehow. I think it was a sprinkler or something.

19 And can it bathe in streams as well?---There's no records of
20 that. What there has been is records of bathing in
21 wet foliage, getting wet in foliage in the early
22 morning when it's covered in dew.

23 It goes on to say "It occasionally forages on the ground, but
24 it's not a scavenger"?---Yes.

25 "It may alight briefly but make little movement while on the
26 ground", you would agree with that?---That was my
27 co-author, yes, he's seen that happen. I have never
28 seen one on the ground, but - - -

29 Yes.

30 HIS HONOUR: How many times have you seen it?---On the
31 ground?

1 No, seen it? When you say you have never seen it on the
2 ground, how many times have you actually seen
3 it?---Seen the kites? Many times, I have lost count
4 now, I have observed nests and so on a number of times.
5 Does that mean hundreds or tens or - - - ?---Many tens,
6 anyway.

7 Yes?---You almost invariably see them in flight, except when
8 they occasionally perch or when they are attending
9 nests.

10 MR WALLER: You look for them in the air, don't you?---That's
11 true.

12 You don't look for them on the ground?---Well, you wouldn't
13 look for them on the ground because you would be very
14 unlikely to see them there. I mean, you see other
15 raptors on the ground occasionally, but no, knowing the
16 habits of the bird, the ground is not one place I would
17 look for them, that's for sure.

18 If you go to the section on page 85 headed "Distribution and
19 habitat"?---Yes.

20 In the second paragraph beginning "In southern Australia", it
21 says: "In southern Australia the square tailed kite
22 shows a clear preference for eucalypt open forest and
23 woodland." You agree with that statement?---Yes,
24 that's correct.

25 What does "open forest" mean?---The botanical classification
26 of forest type refers to eucalypt forest. "Closed
27 forest" would be rain forest with a continuous canopy,
28 like tree crowns touching. "Open forest" refers to
29 trees above a certain height whose canopies are not
30 touching or barely touching, if I recall.

31 So there are gaps between the trees?---Yes, that's - as you

1 would see in a mature eucalypt forest, as opposed to
2 rain forest. I mean, rain forest is a continuous
3 closed forest, a eucalypt forest is open forest because
4 it has some space between the tree crowns.

5 HIS HONOUR: Well, Mr Waller, doesn't that logically raise
6 the question: is the forest that he has been shown in
7 the photographs to be regarded as open forest or not?

8 MR WALLER: Yes, are you able to answer that?---According to
9 the ecological classifications, the forest I have been
10 shown, if the understorey is moist, like has rain
11 forest in amongst that, that would be called "tall open
12 forest"; it would be classified as "tall open forest",
13 I think, if there's a moist element in the understorey,
14 in the ground layer or shrub layer.

15 HIS HONOUR: All right.

16 MR WALLER: Could you go on to rate 86, and you will see
17 there's a heading "Diet", but immediately above that
18 there's a sentence or two beginning "However"?---Yes.

19 It says - I will go earlier than that, it says - talks
20 about "the square tailed kite may have suffered
21 considerable habitat degradation and loss"?---Yes.

22 It goes on to say "It's likely that the square tailed kite's
23 population has declined somewhat in response to loss of
24 habitat and decline of food supplies. However, some
25 kites displaced from extensively cleared woodlands of
26 the sheep wheat belts in South Australia may have been
27 able to move into coastal open forests and tall open
28 forests where openings in the canopy have been created
29 by logging and limited partial clearing. This is
30 suggested by the apparently increasing number of
31 sightings in such forests." And you refer to a

1 separate work that you did on that particular
2 matter?---Yes.

3 So you are drawing a distinction, aren't you, between
4 extensive clearing where you refer to the extensive
5 cleared woodlands of sheep wheat belts in South
6 Australia on the one hand, and logging and limited
7 partial clearing on the other hand, aren't you?---Yes,
8 that's true. And I guess in my own perspective,
9 that's in New South Wales, I would have been thinking
10 of situations in New South Wales where I have seen the
11 kites. It's a little bit speculative I guess to
12 suggest that they may have moved into the forest, but
13 yes, I think it's reasonable to speculate that they may
14 have been able to cope with limited - I think the key
15 is "limited clearing" or depending on the size of the
16 openings created in the canopy. Again it comes back
17 to the ratio of the size of the retained forest blocks
18 versus what's been - - -

19 Indeed - - - ?---And perhaps the age of the forest
20 regeneration as well.

21 Yes. I will just come back to that in a moment, but just to
22 deal with the issue of diet, you will see there that
23 you detail the diet, and you record in table 3 the
24 species that are recorded as prey for the square tailed
25 kite?---Yes.

26 You regard all of that as still an accurate statement?---We
27 have a bit more information, but that sort of profile
28 is generally pretty accurate. I mean the quantified
29 material we have got in recent times emphasises a bit
30 more the sort of small birds, eggs, nestlings and so
31 on, but in general that's a pretty good list. I mean,

1 you can see just from the frequency of birds versus
2 everything else, even there that birds rate pretty
3 highly.

4 And the text itself, four lines down from the heading "Diet",
5 does speak about most - "birds taken have an adult
6 weight of not more than 100 grams, but most are taken
7 as nestlings although the kite is capable of catching
8 birds surprised into flight from the forest canopy and
9 from ground vegetation." So that suggests that the
10 kite is able to swoop down for its prey as well?---Yes.
11 I have a bit of trouble with some of those earlier
12 references now. The more I look back at the old
13 literature the more I have to wonder how much they were
14 correctly identifying the birds they were looking at.
15 But yes, there's a few birds there that could have been
16 taken from the ground, the quail and the pipet I think
17 are about the only ones that actually dwell on the
18 ground, and it's quite possible that they could
19 sometimes swoop and take a bird off the ground. But,
20 yes - - -

21 And then if you could go to page 96 of the document, the last
22 page in the section - this is the end of your section
23 headed "Discussion", the last complete paragraph before
24 acknowledgments, it says: "The square tailed kite's
25 specialised feeding ecology apparently specific hunting
26 and breeding habitat requirements at a low density
27 suggests that it may be sensitive to climatic change
28 and variation in food supply, and possibly threatened
29 by the habitat destruction that has occurred and is
30 continuing to occur. However, loss of habitat may be
31 offset to some extent by the creation of suitable

1 openings in formerly extensive forest and the increase
2 in certain prey species such as miners in disturbed
3 areas"?---Yes.

4 So that's an example, isn't it, where harvesting of timber
5 might actually provide an opportunity for the kite to
6 find food?---Yes, and that seems to be happening in
7 some areas. Again, it's a matter of scale, but yes, I
8 would have to agree that bell miners and noisy miners
9 have been increasing under certain habitat management
10 regimes, and the kites certainly prey on them.

11 And you noticed that in particular in your study in New South
12 Wales - was it Eden?---Yes, most of the information I
13 have on feeding on miners and so on comes from the
14 north coast, but we have in the Eden study, in one of
15 the Eden studies or maybe both, we noticed that bell
16 miners were increasing and certainly around coastal
17 cities, around the sort of green fringe of coastal
18 cities you get a lot of noisy miners and the kites prey
19 on those as well.

20 Yes. Your Honour, I seek to tender that document.

21 HIS HONOUR: Yes.

22

23

24 #EXHIBIT J - Article from the Australian Bird Watcher
25 00/00/1989: The square tailed kite.

26 MR WALLER: Just before we leave the document, Dr Debus,
27 could I ask you to look at page 92, see that?---Yes.
28 "Square tailed kites" - in the first full paragraph on the
29 page - "square tailed kites apparently have traditional
30 nesting territories to which they return in successive
31 years"?---Yes.

1 "Renovating a previous season's nest or building a new one
2 nearby, sometimes in the same tree"?---Correct.
3 "One nesting territory was used for 10 years and another was
4 used for about 15 years"?---Yes.
5 They build the nests in the breeding season, don't
6 they?---That's correct, and they will sometimes rebuild
7 the previous year's nest if it still exists, or they
8 will build a new one if need be.
9 And the breeding season is spring/summer, is it?---That's
10 correct, yes.
11 Yes. So November would be sort of prime breeding
12 season?---That's correct, that's probably about the
13 time they would have chicks in the nest, I would
14 imagine.
15 Yes. So if you saw a square tailed kite near a nest, you
16 would expect to see it with sticks or foliage or
17 something returning to the nest to build it up?---Most
18 of the building is done before the eggs are laid, but
19 they will continue to renovate nests. But the other
20 thing is that they can also range a long way from the
21 nest when they are foraging, they could be seen 5 ks
22 from the nest perhaps - - -
23 Indeed. But if for argument's sake the nest was very close
24 by where Dr Bilney sighted the kite in November, you
25 would expect that it might be carrying sticks or other
26 foliage to the nest?---Yes, possibly. By November
27 there could still be some nest maintenance happening,
28 in fact they would be bringing foliage to line the nest
29 while the chicks are in the nest if one was nearby, but
30 when they have got chicks in the nests most of the
31 flights would probably be foraging flights and they

1 would be carrying something so small you probably
2 wouldn't see it in the kite's foot if it was a little
3 bird or something, a small bird.

4 But you would see it if it were a stick?---Yes, yes.

5 And no suggestion from Dr Bilney that he saw anything being
6 carried by the kite, was there?---Well, in one of the
7 reports - I mean, that's correct. But in one of the
8 reports it looked like it was foraging behaviour, and -
9 yes, that's right.

10 We will come to that. But you would agree that there's a
11 statement in the next paragraph that one nest took
12 about three weeks to build and sticks are added during
13 the incubation period?---Yes.

14 "Both sexes build, collecting material in flight by breaking
15 dry sticks from trees, the nest is lined with green
16 leaves which are renewed almost daily throughout the
17 cycle in the early morning"?---That's correct, yes, in
18 the early morning, yes.

19 The behaviour that Dr Bilney observed you say is consistent
20 with foraging?---There was one of Dr Bilney's reports
21 was of a bird doing some pretty typical foraging
22 behaviour, it might have been searching the canopy, I
23 think circling, or something like that, yes.

24 In the air for 8 minutes?---Yes, yes.

25 Transecting the area?---That sounds like a hunting flight,
26 yes. They either do a long searching transect or a
27 circum.

28 Yes. Now, what Dr Bilney says in his report says "The kite
29 appeared to be foraging, was covering an area of forest
30 several hundred metres in size, and was observed
31 gliding over the area for 8 minutes"?---Yes.

1 Now, he observed that bird from a coupe that had recently
2 been logged. It's possible, isn't it, that the bird
3 was interested also in the area at the edge of what had
4 been logged?---The edge, possibly, yes. And the other
5 thing is, of course, it would be more visible from a
6 logged coupe because the sky's much more open and so
7 on, you would be much more able to see a kite if you
8 are standing in a logged coupe. And I have had that
9 experience, yes.

10 So it provides visual access for the observer, but it also
11 provides good visual access for the bird, doesn't
12 it?---Yes, and it may well be using the edge, that's
13 true, yes.

14 Now, I think you have said in your report that you would
15 expect the square tailed kite's conservation status in
16 Victoria to decline in certain circumstances. You
17 have identified the kite's conservation status in
18 Victoria as "vulnerable", is that right?---That's the
19 DSE - the advisory list classification, yes, that's
20 correct.

21 And that's not the most threatened of the categories, is
22 it?---No, it's not.

23 The most threatened category I think is "extinct"?---Yes.

24 And then could you tell us what they are going down the
25 scale?---If Victoria uses the IUCN categories, the next
26 level would be "critically endangered", which means
27 it's about to move into the "extinct" category, and
28 above that would be "endangered", which is also at risk
29 of extinction, and then "vulnerable" is the next
30 category up after "endangered".

31 Yes. And in your report, I think at paragraph 7A, you say

1 that the conservation status in Victoria for the kite
2 is likely to, or you would expect it to decline in two
3 circumstances, "first if there is substantial habitat
4 loss to coastal development", do you see that?---Yes,
5 yes, I did write that.

6 Now, that means effectively clear felling and I think you are
7 talking about levelling large swathes of land to allow
8 for urban development, aren't you?---Yes, that's on my
9 experience on the north coast of New South Wales,
10 that's what I had in mind was, yes, replacing forest
11 with suburbia, basically.

12 Yes. We are not talking about harvesting the forest, are
13 we?---Not in that sentence I wasn't, no.

14 And the second instance was "substantial loss of woodland
15 cover from rural lands through increased aridity or
16 salinity under climate change"?---Yes.

17 So you don't refer to harvesting as a factor that would
18 influence the kite's conservation status in paragraph
19 7A at that point, do you?---Not at that point, I don't,
20 no.

21 Your comment on threats that might affect the kite in
22 Victoria - - -?---Yes, that's the next paragraph.

23 I think you go on to say in 7B that "areas subject to
24 extensive broad acre clear fell timber harvesting,
25 where harvested areas approximate the kite's home
26 range, or destroy kite nest sites"?---Yes.

27 That would present a threat, is that right?---Yes, I would
28 agree with that.

29 Now, let's be clear. The kite's home range is 5,000 to
30 10,000 hectares?---Yes, potentially. No one's
31 actually managed to meter it yet, but we have observed

1 them foraging over those sorts of distances that could
2 add up to that, yes.

3 Right. And what's that in square kilometres?---It's 50 to
4 100, which means an area up to - well, 100 square
5 kilometres is 10 by 10; 50 would be - - -
6 So 50 to 100 square kilometres equates to 5,000 to 10,000
7 hectares?---Yes, yes, just add two zeros to the - - -
8 Yes, I see. So the extensive broad acre clear felled timber
9 harvesting that you would consider to be a threat would
10 involve harvesting areas between 5 to 10,000 hectares
11 in size?---Well, there would be a threshold above which
12 the territory wouldn't be viable, you needn't
13 necessarily have to clear the whole lot to make the
14 territory non viable if it wouldn't support the kite's
15 food and so on, you wouldn't have to clear the whole
16 lot. There would be some threshold value of habitat
17 remaining that would possibly mean the kites can't live
18 there.

19 But the particular threat that you had in mind was one where
20 there was extensive broad acre clear felled timber
21 harvesting where the areas, if they don't equate to,
22 they approximate the home range?---Yes, I wrote that,
23 yes.

24 Now, you are aware, are you, that the harvesting in the
25 coupes in Brown Mountain which we are concerned with
26 consist in total of 81 hectares?---I remember reading
27 that, I think - I am not sure whether I mentioned it
28 specifically in my report, but I remember reading that,
29 yes.

30 And that would be less than 1 per cent of the total range,
31 home range of the kite, assuming a home range of 10,000

1 hectares?---Yes, well, depending on forest
2 productivity, it might be half that area that they
3 require, so it might be 1 or 2 per cent. I think I
4 remember saying that somewhere in the report. In
5 context, I think the area surrounding there, I did a
6 calculation elsewhere in my report.

7 Yes?---Where if you take those coupes and the other ones
8 around them that are scheduled to be logged, that could
9 add up to a higher proportion of the kite's territory.

10 Yes, we will come to that?---Okay.

11 Your experience in New South Wales, and I think you deal with
12 this in paragraph 7A(ii), is that "Where there has been
13 timber harvesting in state forests involving small
14 logging coupes of approximately 20 to 30 hectares each,
15 where they are logged on an alternate coupe
16 system"?---Yes.

17 "And dispersed in space and in time, that the kite has
18 survived across the logging mosaic where there is
19 extensive unlogged or mature forest remaining" ?---Yes,
20 I contrasted two situations in New South Wales.

21 Yes?---Where in one case where there's been alternate coupe
22 logging and a lot of habitat tree retention and so on,
23 and game reserves and so on, the kites have persisted,
24 and I contrasted that with another situation where the
25 coupes were completely levelled and there were no
26 reserves and habitat trees where the kites didn't
27 return again until the forest had regenerated.

28 Now, in the first case where there was logging in state
29 forest where there's an alternate coupe system and
30 logging coupes are small of about 20 to 30 hectares
31 each and dispersed in space and time, there there were

1 sightings of the kite every year, weren't
2 there?---That's correct, yes.

3 So you would agree that there was no threat posed to the kite
4 by that sort of logging?---Well, there didn't appear to
5 be. We kept seeing them, we never found a nest
6 because the kites just weren't nesting in the areas we
7 were surveying intensely, but we certainly saw them
8 every year up until the last year I was there, yes.

9 But you contrast that with the more dramatic and extensive
10 clear felling that occurs - and I am just looking for
11 where you deal with that - but you say in that case a
12 kite wasn't seen again until some 10 or 20 years - -
13 -?---It was some time between 25 and 30. The last
14 survey we did was at the 25 year point, and then the
15 next survey was the 30 year point, and in that interval
16 the kites appeared over that study area, by which time
17 the foraging, we only saw them foraging, but by that
18 time the forest was 30 year regrowth.

19 Yes. So in that case they do recover, but they take a lot
20 longer to do so?---Yes, and that was a matter of scale
21 and habitat retention on the logged coupe site. In the
22 former situation that we were talking about where the
23 kites persisted, there was I think about a 30 per cent
24 basal area retention, or something, in the logged plots
25 for seed trees and habitat trees, and there were gully
26 reserves and so on, and that was the opposite to what
27 happened in the situation where they didn't appear over
28 the logging mosaic until that 30 year period.

29 So in that second situation, what, there were no - - -
30 ?---No, it was just clear felled logging throughout the
31 coupe with maybe the odd seed tree, but that was about

1 it. No old trees retained.

2 No buffer zone?---No gully reserves and so on, yes, it was
3 just the whole coupe, pretty much, except for seed -
4 the odd seed tree, I think.

5 Now, if I could take you to paragraph 15 of your
6 report?---Yes.

7 You were asked there, taking into account answers you have
8 already given, you were asked "Would the logging of any
9 or all of the four Brown Mountain forestry coupes have
10 any impact on the square tailed kite as a
11 species"?---Yes.

12 "The local population or individual members of the species,
13 and if so can you estimate what the level of impact
14 will be." And you have relied in answering that
15 question on Exhibit VEB 8, which is a map that
16 Ms Bleyer provided you with, is that right?---That's
17 correct, yes.

18 You weren't provided with any other maps?---I was able to
19 read that map at different scales on the screen.

20 There were other - there was another map or two that I
21 was given electronically that I didn't print off partly
22 because I had printing problems at work at the time
23 that - I used that exhibit and a couple of the other
24 maps on screen to estimate the context, the present and
25 future logging context of those coupes, and that's how
26 I arrived at that figure of "there may be 10 to 20 per
27 cent of a kite's home range affected by the time the
28 harvesting schedule is completed in that area".

29 Perhaps just so we can understand exactly what you did, and
30 then I will ask you some further questions. So you
31 have taken the map provided by Ms Bleyer?---Yes.

1 You have been able to access it perhaps at a higher - a
2 larger scale?---Yes, that's correct.

3 You then - going to the text of your document - you have
4 worked out that the four relevant coupes fall within a
5 radius of less than 2 kilometres, or approximately 10
6 square kilometres, is that right?---Yes, I have said
7 that.

8 Yes. Now, how many hectares would that be?---A couple of
9 thousand, I think, if you add a couple of zeros - no,
10 100, I'm sorry. Sorry, which figure are we talking
11 about, the 10 square?

12 I am trying to work out the radius that you are dealing with
13 now where you take a radius of less than 2 kilometres
14 or approximately 10 square kilometres, and you then say
15 that's 10 to 20 per cent of the kite's home range. So
16 we are now talking in total of how many hectares in
17 that exercise?---The 10 square kilometres would add up
18 to 1,000 hectares.

19 It's about 500 to 1,000, is it?---I'm sorry, I have lost the
20 train of calculation for a second there. The 2
21 kilometres radius - - -

22 HIS HONOUR: Should it be 2 kilometres of approximately 10
23 square kilometres, or do you mean - - -?---Pi r
24 squared, if it's less - a bit under 2, squared - - -

25 MR WALLER: You would be taking - you have got a
26 radius?---Yes, that would come to 12, if you did pi r
27 squared - - -

28 Pi r squared?---If you did pi r squared that would come to
29 12, if it's a bit under 2 kilometres then it would be
30 less than 12, which is why I estimated 10.

31 About 10?---10 square kilometres, yes.

1 So you have plotted a point roughly in the middle of the
2 coupes, and then you have radiated out of that 2
3 kilometres?---Yes.

4 And you have made a circle, as it were?---Yes.

5 And you then say that if you are looking at that circle, you
6 say that would constitute about 10 to 20 per cent of
7 the home range?---Yes.

8 In that circle, and you have said there that of that area the
9 four coupes collectively total 81 hectares?---Yes.

10 That's 1 to 2 per cent of a kite's home range, which is
11 precisely what you said you'd said earlier in your
12 report?---Yes.

13 And the balance, that would be the 98 per cent, or
14 whatever?---Yes.

15 You say you split approximately evenly between reserves or
16 protected zones and areas scheduled to be clear felled
17 harvested over the next 5 years?---Yes.

18 Right. And you have taken all of that information from the
19 plan provided to you by Ms Bleyer?---It was taken from
20 a map that showed the proposed logging schedule. It
21 was either that Exhibit VEB 8 or another map on screen
22 that had colour coded - - -

23 Yes?---The logging plan?---Yes.

24 And that's this map that's under the timber release
25 plan?---That would be it, yes.

26 And it's dated 17 June 2009?---I believe that to be the one I
27 was going by, yes.

28 Yes. Now, you then take the exercise a step further, and
29 you say: "Expanding the radius out to 5
30 kilometres"?---Yes.

31 So you are still starting - you plot your point in the middle

1 of the coupes, but you radiate 5 kilometres?---Yes.

2 "To approximate the kite's home range"?---Yes.

3 "The area scheduled to be clear fell harvested over the next

4 five years amounts to about 50 per cent of the kite's

5 home range"?---Yes.

6 And you say "cumulatively the four Brown Mountain coupes and

7 surrounding coupes" - and by that you mean - -

8 -?---Yes, within the 5 - - -

9 Within that 5 kilometre radius, if they are all harvested

10 then that would remove 50 per cent of the foraging

11 habitat and prey for one pair of kites?---Yes.

12 Yes. And you go on to say "That loss could displace one

13 pair of kites"?---Yes.

14 "And temporarily reduce the East Gippsland population by one

15 pair"?---Yes.

16 Your conclusion then is that "The impact would be at the

17 level of individuals possibly the local population but

18 not on the species as a whole"?---Yes.

19 Now, I want to ask you to be shown the book of maps. Have

20 you seen this document before?---I may have seen some

21 of the maps on screen at different scales, and I have

22 actually found it difficult to read them on screen if

23 they are the ones I looked at.

24 But you haven't actually seen this bound volume?---I haven't

25 seen this bound volume, no.

26 I want to take you to map number 2, and you will see that's

27 described as East Gippsland FMA, Forest Management

28 Zones pre November 2009?---Yes.

29 Now, are you aware, Dr Debus, that in November 2009 a

30 significant quantity of new parks and reserves were

31 declared in this area?---I think I had heard something

1 to that effect.

2 But you were not given any maps illustrating those areas?---I

3 think I have seen a map that does show some park areas.

4 I am talking about new post November 2009 areas?---I don't

5 know what date they would have been, no, no, I haven't

6 knowingly been shown maps that identified new parks as

7 of November.

8 And you didn't rely in preparing paragraph 15 of your answer

9 on any new maps showing new parks and reserves, did

10 you, post November 2009?---As far as I can recall the

11 maps that I looked at were probably of the same date as

12 that Exhibit VEB 8, whatever date that was.

13 Yes, June 2009?---Yes.

14 So if you look at map number 2, you will see Brown Mountain

15 is located by a star?---Yes, I see that.

16 And if you flick over to map number 3, you will see that

17 there are now some pink areas which are surrounded by a

18 black border, do you see that?---Yes, I see that, yes.

19 Now, those pink areas surrounded by a new border you will see

20 from the legend are new parks and reserves 2009, and

21 you can see that - you would agree that they are quite

22 a substantial addition to the parks and reserve system

23 in East Gippsland?---Yes, I would agree there's some

24 new areas there.

25 Yes. And I want now to show you a larger scale at page 7.

26 You will see page 7 is focusing on the forest block

27 840, and compartment 502, and you will see that four

28 coupes in question, 15, 19, 26 and 27, are highlighted

29 on that map, aren't they?---Yes, I can see that, yes.

30 And you will see that they are to the west and to some extent

31 the south and also a little to the east, surrounded

1 largely by a green area?---Yes, a green - - -
2 Described as "general management zone"?---Yes.
3 And that's an area which - I withdraw that. If you could
4 now look at map numbered page 8, you will see that
5 after November 2009, significantly greater amounts of
6 reserve appear in the immediate vicinity of the coupes,
7 don't they?---Yes, I see that, yes.
8 Now, both to the east and the west, do you see that?---Yes,
9 in the square labelled 501 and 502.
10 Yes?---They are new areas.
11 Yes. So to replicate the exercise that you did, utilising
12 the scale that you see in the box at the right, there's
13 a scale up to 5 kilometres?---Yes, I see that, yes.
14 Plotting a point in the middle, say, of coupes 15 and
15 19?---M'mm.
16 And radiating 5 kilometres out to create a circle, you would
17 agree, wouldn't you, that post November 2009 there is a
18 great deal more reserve than was the case in June
19 2009?---Yes, I would agree with that. I guess to work
20 out the benefit for the kite you might need to consider
21 habitat quality as well, because the kites like
22 productive forests, in my experience in New South Wales
23 the places to see the kites are in the productive sort
24 of forests, so national parks need not necessarily
25 equal good kite habitat. But yes, I mean I agree that
26 there's more - - -
27 Can I ask you to look at - - - ?---Reserve.
28 Page 11?---Yes, page 11.
29 That's a larger scale, but it also indicates the logging
30 history?---Right, yes.
31 So you will see that the darker the blue, the more recent the

1 logging?---That's correct, yes.

2 Would you agree that that represents something that could be
3 described as a mosaic in the way you have used it in
4 your article?---Yes, there's a patchwork of logging of
5 different ages, some's since 2000 and some's in the
6 '90s, some's in the '80s and so on.

7 So if you were to plot - and there probably isn't enough room
8 on the page - but if you used the entire page as
9 providing probably less than a 5 kilometre radius but
10 probably something like a 4 kilometre radius from the
11 middle of coupe 15 and 19, and you were analysing the
12 threat to the kite, would you cause - would you be
13 maintaining the opinion in paragraph 15 of your report,
14 or would you be revising it based on this information I
15 have just shown you?---About the impact of probably one
16 pair?

17 Yes?---I guess it depends how much of that area, of that
18 radius is actually less than 30 years old regeneration
19 at any given point in time. But taking into account
20 the different ages and so on, it's - well, the logging
21 is dispersed in space and time, so there would be less
22 impact on the kites than if it was all clear felled at
23 once or if it was all at least younger than say 30
24 years anyway.

25 And then if you were to take into account also the darker
26 pink?---Yes.

27 Which have no logging history?---Yes.

28 That would provide a significant improvement for the kite's
29 foraging activities?---Well, it may do if the habitat
30 is of equivalent quality. I am not sure, I don't know
31 anything about site productivity and so on, but it's

1 quite possible that it might be on the steeper or
2 rugged country or less fertile country and so on. So
3 looking at a map doesn't really tell me whether it's
4 equivalent in value for the kites - - -

5 Could I ask you to look at map 12. This map provides more
6 information in relation to contour topography and
7 hydrology?---Yes.

8 Are you able to give a more considered answer now?---Well, if
9 the pink is the new parks and reserves, it appears to
10 be on the steep country, and the green is in the area
11 of the coupes we are considering, it's on the gentler
12 country, and so on. That's probably fairly indicative
13 of site productivity, I would think, that the reserves
14 have sort of got the rough country and the forests have
15 got the productive country.

16 You would agree, though, that to the west of coupe 19 -
17 sorry, the east, I should say, of coupe 19, that is not
18 as rugged country as to the west?---Yes, I would agree
19 it's not as rugged.

20 Yes. It approximates the sort of country that the coupes
21 lie in?---The coupes themselves are in fairly gentle
22 looking country, but there are patches within that
23 reserve that look similarly gentle, and there's some
24 steeper ridges and knolls as well, but there are some
25 areas that are fairly gentle, yes.

26 So what I am suggesting to you, Dr Debus, is that your
27 opinion expressed in paragraph 15 of your report,
28 namely, that the activity you there describe might
29 displace one pair of kites and temporarily reduce the
30 East Gippsland population by one pair, may well no
31 longer apply in light of the new information I have

1 just shown you?---Well, I would have to agree that that
2 may no longer apply given the reservation status of
3 some of the adjoining land, yes.

4 Yes.

5 HIS HONOUR: Well, if you look at the scale on map 12, and
6 you accept that one of the kites that Dr Bilney saw was
7 foraging along what's been called Brown Mountain Creek,
8 that's the creek between coupes 15 and 19, in the
9 middle of the valley there, it's still quite possible,
10 is it not, that the kite's nest is in reserved country,
11 we don't know where the kite's nesting?---There's no
12 indication as to where it might be. There's a
13 reasonable chance it might be in a fairly gentle
14 valley, but just looking at the map there's no way of
15 predicting where it would be. You would need more
16 observations of plotting flight paths and seeing where
17 they converge. If the bird is carrying material you
18 could eventually triangulate to a nest, but there's
19 nothing to indicate where it might be at the moment.

20 No.

21 MR WALLER: And looking in the detail we have been at these
22 four coupes, you will see that they are not entirely
23 contiguous, are they? It's similar to the alternate
24 coupe description that you provided for New South
25 Wales?---Yes, they are dispersed, mostly dispersed in
26 space.

27 Yes. And having regard to the logging history that I showed
28 you, logging in the area, harvesting in the area you
29 would agree is also dispersed in time?---That's
30 correct, yes.

31 Now, with the benefit of all of this information, some of

1 which I accept you may not have seen before today,
2 would you agree that - and I am now looking at your
3 answer to 15B, where you say "I would expect the kite
4 population to recover from that impact", that's the
5 impact you'd earlier described, "as the forest
6 structure and bird populations recover. Based on
7 experience near Eden in New South Wales in alternate
8 coupe logging with no retention of habitat trees or
9 gully reserves, recovery of bird population is likely
10 to take about 22 years, with kites likely to recover
11 over a similar timeframe as they feed on birds. In
12 that study kites were first seen over the logging
13 mosaic after 30 years, however in the adjoining study
14 area where alternate coupes were left unlogged, and
15 habitat trees and gully reserves were retained, kites
16 were observed over the logging mosaic throughout the
17 study from pre logging survey through every subsequent
18 year, annually or near annually at first, until 21
19 years after logging", based on your personal
20 observations?---That's correct, yes.

21 I want to suggest to you, with the information you now know,
22 the situation likely to occur in Brown Mountain would
23 replicate or closely replicate what occurred in the
24 adjoining study area reviewed by Kavanagh and others in
25 2003?---Yes, that's correct. It would probably move
26 in that direction. I would think the landscape and so
27 on would probably more resemble what we have been
28 seeing the kites over.

29 And in terms of habitat trees and gully reserves being
30 retained, you are aware, aren't you, from your
31 instructions that the prescriptions that would apply in

1 these coupes to be logged in Brown Mountain involve the
2 retention of habitat trees and the imposition of
3 buffers stream side to 100 metres each side?---Yes, I
4 was aware that that was the case, and I said in my
5 report that that would probably moderate the effect of
6 logging.

7 Yes. In your answer to 15C, over the page, you did say
8 "Based on" - again of course this is all predicated on
9 your earlier opinion which I accept without criticism -
10 was perhaps based on a map that wasn't complete, but
11 "Based on my participation", you say, "in the two bird
12 studies in logged and regenerating forest near Eden, I
13 would say that although hollows are irrelevant to the
14 kite, the retention of stream side reserves and large
15 trees and the protection of habitat trees from fire and
16 disturbance will moderate the impact of logging." You
17 go on to say: "However, under the Victorian system of
18 logging, coupes could still be aggregated in 120
19 hectare blocks of logged forest rather than a finer
20 mosaic of logged and unlogged coupes, hence the impact
21 on the kite could be expected to sit somewhere between
22 the two studies"?---Yes.

23 Now, you have already answered my question about perhaps
24 revising, as you have, that opinion, but just to look
25 at your statement about aggregation, first of all you
26 accept that the four coupes in question are not
27 aggregated to 120 hectares but 81 hectares?---Yes, yes.

28 And do you accept also that the reference to 12 square
29 kilometres should be 1.2 square kilometres?---I haven't
30 got a pen on me. Yes, that's a miscalculation - - -

31 By a factor of 10?---Yes. That's a silly mistake, yes, I

1 apologise for that. It's - - -

2 Now, you were then asked some questions about the forest

3 management plan, and you are aware that under the

4 forest management plan there's a statement concerning

5 diurnal raptors including the square tailed kite, which

6 is all predicated on there being a nest site

7 detected?---Yes.

8 It doesn't deal with foraging activity, does it?---It

9 doesn't, it's all about nest sites, it appears to be,

10 yes.

11 And if a nest site is located in a coupe, then the measures

12 that have to be implemented are the establishment of a

13 special management site with a 250 metre radius around

14 the site, but that won't - and that applies during the

15 breeding season, doesn't it?---The - - -

16 The 250 metre radius?---That's correct, it does.

17 But in the non breeding season, it is reduced to 100

18 metres?---Yes.

19 And harvesting and other road construction is permitted

20 provided a 100 metre radius is observed?---Yes.

21 Yes. Now, I want to ask you some questions now about the

22 precautionary principle. You have been asked what

23 your understanding is, and you drew your understanding,

24 did you, from the Victorian - the VicForests - I think

25 it's actually the Victorian code of practice?---Yes, I

26 did read that, yes, I read that.

27 I think it's formal title is the Code of Practice for Timber

28 Production 2007?---Yes, I read that document.

29 Was that a document that was provided to you by

30 Ms Bleyer?---It was, yes.

31 And you were able to locate within that document a glossary

1 with the definition of precautionary
2 principle?---That's correct. I found a definition of
3 what the code of practice means, yes.

4 And you have paraphrased it, but your paraphrasing includes
5 as an element the assessment of risks or consequences
6 of various options, doesn't it?---Yes.

7 That's right. In applying the precautionary principle in
8 answering questions 19 and 20, you relied, didn't you,
9 on the matters that you'd earlier answered, in
10 particular the matter you discussed in question 15?---I
11 would agree, yes.

12 Yes. So if you were to be asked this question again, in
13 light of your revision to that answer, you would likely
14 have to revise your answer to these questions as well,
15 wouldn't you?---I would have to moderate my conclusions
16 in the light of the new reserves and so on, given -
17 well, assuming that the habitat quality is sort of
18 equivalent or it's high quality type habitat in some of
19 the reserve there.

20 And in considering the application of the precautionary
21 principle, as you were asked, you did not take into
22 account any risks or consequences other than those
23 directly affecting the kite, is that right?---Yes. My
24 understanding of that sentence, when I said "Assessing
25 the risks or consequences", implicit in my
26 understanding was that the risks were to the
27 environment and the consequences of the various
28 options, I had in mind it was referring to forest
29 management options. So that was the context that I
30 was reading that statement in. I assumed that the
31 risks referred to risks to the environment, and that

1 the options referred to forest management options,
2 which might include the logging regime or the other
3 aspects of the management regime in forests.

4 Yes. Could I ask that you be shown volume 1 of the agreed
5 book. And if you could go to page 106, please?---106
6 is the title page - - -

7 That's the document you were given?---Yes.

8 And now if you would go to page 185?---Yes.

9 That's the definition of "precautionary principle" at the top
10 that you found?---That's probably the paragraph I would
11 have used.

12 I just want you to have a look at that, read it to yourself,
13 please, just for a moment?---Yes.

14 You will see there's a reference there to "serious or
15 irreversible damage to the environment"?---Yes.

16 And then there's separately reference to "properly assessing
17 the risk-weighted consequences of various
18 options"?---Yes.

19 Now, dealing first with the language of "serious or
20 irreversible damage", I suggest to you that in light of
21 the material that we have discussed and that you have
22 given some evidence about, including in particular the
23 new parks and reserves in the immediate vicinity of the
24 coupes, the fact that the coupes are not contiguous but
25 arranged in a patchwork, the fact that the coupes in
26 size are about 20 to 30 hectares each and in total 81
27 hectares?---Yes.

28 The fact that the logging history shows that harvesting has
29 been displaced both in space and in time, having regard
30 to those matters and the fact that any harvesting in
31 the coupes will involve habitat retention and stream

1 side buffers, that such harvesting would not present a
2 serious or irreversible damage to the kites in East
3 Gippsland?---Well, over the long-term the habitat is
4 going to regenerate, so I would assume if you take a
5 long-term perspective, it won't result in irreversible
6 damage. I guess we don't know where the nest site is,
7 though, so there's still a possible risk to a nest site
8 while it's unidentified.

9 Would you agree, turning now to the question of risk-weighted
10 consequences?---Yes.

11 You didn't understand that expression to involve any
12 examination or assessment of consequences other than
13 environmental consequences?---No, I assumed the focus
14 was environmental, actually, yes.

15 Yes. You accept, as you have seen, that timber harvesting
16 has been occurring in the area surrounding the coupes
17 at least for the last 15 years?---Yes.

18 And do you accept that the precautionary principle is not
19 intended to eliminate all risks? That is to say a zero
20 risk precautionary standard is inappropriate?---Well,
21 it's probably impractical to achieve, I would suspect.

22 Yes. And you will see that the definition set out in the
23 code in fact uses the expression "wherever practical
24 avoid"?---Yes.

25 So there's an element of practicality or practicability
26 that's built in, isn't there?---That's correct, yes.

27 Yes. And Dr Bilney I think said that finding a nest was
28 equivalent to finding a needle in a haystack. Would
29 you agree with that description?---With the kites in
30 that landscape, yes, because it's pretty much reliant
31 on luck, I think, or a lot of searching and a lot of

1 watching the kites. That's true, I mean, it's quite
2 difficult to find a nest.

3 Would you agree that in applying the precautionary principle,
4 measures should be adopted that are proportionate to
5 the potential threat?---That would be reasonable, I
6 would agree that would be a reasonable approach.

7 Yes. So you would agree you have got to strike a balance
8 between the strictness, if you like, of the measures,
9 the precautionary measures?---Yes.

10 And the seriousness of the potential threat?---Yes, I agree.

11 And just as an example in what we are talking about,
12 for instance there could be provision to do something
13 if a kite nest happened to be found during logging, you
14 would perhaps expect that it might have a buffer zone
15 put around it or something.

16 Indeed. And that would be - you would say that would be the
17 effect, would you say, of the forest management plan
18 which says that if a nest is found you have got to set
19 up a buffer around it?---Yes. The only qualifier is
20 of course the ability of the contractors or whatever to
21 identify the kite and perhaps their motivation to
22 record it, that's the thing.

23 Yes. Your Honour, I have no further questions.

24 <RE-EXAMINED BY MS MORTIMER>

25 Dr Debus, that last answer that you gave to my learned
26 friend, the ability for contractors to identify a
27 kite?---Yes.

28 And their motivation to report it?---Yes.

29 Have you had any experience in dealing with logging
30 contractors?---Limited experience dealing with them
31 directly, but I find that other than raptor specialists

1 or wood bird watchers, that most people are pretty poor
2 at identifying raptors, or at least identifying them to
3 species.

4 And what did you mean by their motivation?---In the contacts
5 that I have had with logging contractors, there is sort
6 of a bit of a standing joke that they would - they
7 would keep it quiet if they found something like that.

8 Now, can I ask you to go back to some matters you were asked
9 at the start of cross-examination. You were asked
10 about how much experience you had in Victoria and what
11 you have been doing in New South Wales?---Yes.

12 And in answer to one of the questions from my learned friend
13 I think you said that a lot of your work had been
14 immediately over the border in Eden?---That's correct,
15 yes.

16 Can you tell His Honour whether there's any significant
17 differences in the floristics or the habitat in the
18 areas that you have been working and the area of Brown
19 Mountain?---Overall the photographs of the areas around
20 Brown Mountain appear quite similar to some of the
21 areas I have been working in around the Eden area.
22 For instance, the grey gum appears to be the same
23 species in some of the gullies and so on, the mountain
24 grey gum, and it's fairly variable habitat where I have
25 been working in New South Wales, but certainly there
26 are elements that appear to be very similar.

27 Now, you were asked some questions about a document that was
28 then tendered as Exhibit I, the Commonwealth - I
29 withdraw that, the Action Plan For Australian
30 Birds?---Yes.

31 Can I ask that Dr Debus be shown Exhibit 28, please, which is

1 the Advisory List of the Threatened Vertebrate Fauna in
2 Victoria 2007. Now, Dr Debus, can you go to page 10
3 of that report, please. And you will see towards the
4 bottom there the listing for the square tailed
5 kite?---Yes.
6 And its classification as "vulnerable". See at the
7 top?---Yes, that's correct, yes.
8 Now, if you go to page 4, please, there's a definition of
9 "vulnerable"?---Yes.
10 Which essentially is that on the best available evidence it's
11 considered to be facing a high risk of extinction in
12 the wild, see that?---That's correct, yes.
13 So clearly the classification of the kite at a national
14 level, and the classification of the kite at a
15 Victorian level, are different, do you agree with
16 that?---Yes, that's correct.
17 Can you explain to His Honour why that is?---I imagine it's
18 mostly on the basis of the low population size in
19 Victoria, and the inference that it's probably declined
20 in large areas like the sheep wheat belt and so on, low
21 population and a significant population decline in the
22 last few decades, I would think.
23 And in terms of population sizes, that's a matter you deal
24 with in answer to 10B in your report, can I just ask
25 you to look at that. I think - - - ?---Yes, that's
26 correct. Probably fewer than 50 pairs in the state,
27 yes, in that paragraph, yes.
28 And how many in East Gippsland?---Just using the density of
29 dots on the map, in Victoria versus East Gippsland,
30 it's probably about 10 per cent or about five pairs in
31 East Gippsland, probably.

1 And, Dr Debus, if the dots on the map don't actually
2 represent active pairs of kites, how reliable does it
3 make it using those records?---The initial estimate was
4 only a guess anyway. I mean, it's a best estimate
5 really. And dots on a map don't tell you where nests
6 are, so you can't really infer the exact number of
7 pairs without being able to pinpoint nests, I guess.
8 But yes.

9 What's the best way of finding out where kites are and what
10 areas they are using?---Well, the methods I have used
11 to locate the kites themselves have been a series of
12 observations from lookout points, from vantage points
13 over the forest canopy so you can see the birds
14 foraging and so on, like maybe get up in a forestry
15 fire tower or on some sort of prominence or lookout,
16 and you can, depending on the habitat, like on inland
17 rivers you can find them by just walking along the
18 rivers and looking for nests because it's a pretty
19 simple sort of habitat there. But in forests like you
20 have got in East Gippsland, you really need to be on
21 areas with a bit of a view of the sky and the canopy
22 and wait for them, and then start plotting flight paths
23 if you are interested in finding where a nest might be,
24 and watching for them carrying anything.

25 And in terms of the comparison between estimating presence in
26 2010 from records that stop in 2005 and what Dr Bilney
27 said, what's the quality of those two kinds of records,
28 is there any difference in that quality?---I am not
29 sure I understand the question. What you have got -
30 you have got a series of maps with dots on them, and
31 then you have got knowledge of where a couple of birds

1 have either been seen foraging or an active nest. I
2 think that the higher quality information is where the
3 nest is or where the birds are foraging, I think that's
4 high quality information.

5 In a timber harvesting context in these coupes, what would
6 need to be done to try and identify where that nest
7 might be?---Well, it's sustained watching in areas
8 where the kites have already been seen, I would suggest
9 you would need to spend more time watching for them and
10 then getting bearings on their flight paths, watching
11 for whether they are carrying anything and in which
12 direction. Triangulating if you have got vantage
13 points around the area, you could triangulate on a map
14 where the flight paths converge, or something like
15 that.

16 If these coupes were being harvested in New South Wales, what
17 would need to occur?---As far as I am away now in New
18 South Wales they have to delineate buffers and so on
19 around nests. They have already identified a number
20 of nests in New South Wales, I think there are about -
21 the last I knew there were about a dozen nests
22 identified in the state forest of the north coast.

23 How is that done, Dr Debus, in a harvesting context?---It was
24 mainly, as far as I can tell it was based on the local
25 knowledge of the state forest personnel in the field.
26 They reported nests and started getting a database
27 going. I think they had interested personnel that
28 took note of where the birds were. And I suspect
29 initially they might have found a few nests by chance,
30 and then once they got a feel for where they were, they
31 were able to plot more nests, I think, find them and

1 plot them.

2 All right. Now, you were asked some questions about the
3 behaviour of the birds and where they might be found
4 and whether they would come on the ground and all those
5 sorts of things?---Yes.

6 And you were taken to a paper that you described as being 20
7 years old?---Yes.

8 That was Exhibit J?---Yes.

9 What if any developments have there been in the last 20 years
10 in relation to the knowledge of the square tailed
11 kite?---There's been several studies. They are all -
12 I think they are listed in my report there on page 2 of
13 my report, question 3. There's been a number of
14 papers from the '90s onwards, pretty much. But really
15 the bulk of the new information has been from the late
16 '90s and the 2000s, there have been several
17 observational studies of the birds at their nests,
18 quite sustained watchers collecting pellets and prey
19 remains from under nests that hadn't really been done
20 before much. We have got a much better idea of what
21 they eat and in what sort of proportions and - - -

22 Any of that work been done in Victoria, Dr Debus?---No, it
23 was pretty much all done on the north coast of New
24 South Wales with a couple of studies in Queensland.

25 Now, you were asked some questions again I think based on
26 that article about the kind of food that a square
27 tailed kite would eat, and the range of birds, and I
28 think you said that the new data emphasises that small
29 birds and nestlings - - -?---Yes.

30 That rate pretty highly, I think were your words?---That's
31 correct, yes.

1 Can you describe to His Honour how the kites hunt in terms of
2 getting the nests and nestlings and what they do with
3 it?---Well, they soar low down over the tree canopy
4 searching, they spend a lot of time on the wing and
5 just minutely searching the tree canopy from a low
6 altitude, and when they see a food item in the foliage
7 they seize it and fly off with it, and that can include
8 the whole nest. They can remove nests and so on and
9 extract - - -

10 And where do they take them?---Well, during the breeding
11 season they would - if they didn't satisfy their own
12 hunger and eat them on the spot, they would take them
13 back to their own nests to feed the nestlings and to
14 feed the female that's attending the nest. I mean,
15 mostly the male hunts and the females are tied to the
16 nest when there's eggs and young ones. So yes, they
17 take it back to the nest.

18 And how much food do they need when they have got chicks on
19 the nest?---Well, the sort of rough figure would be
20 about 10 to 15 per cent of body weight, so you are
21 talking about - of a bird that's 6 or 700 grams, you
22 might be talking about 60 to 70 or so, maybe 100 grams
23 of food per kite per day. So - - -

24 And the chicks?---Well, over their nest life they would
25 average about the same as an adult.

26 And what's the fledging success for a kite?---The few data
27 that we have got indicate less than one young per pair
28 per year on average because there's a few nest
29 failures. Some pairs fail, and the successful ones
30 usually get one young one off, or maybe sometimes two,
31 so that on average it comes back to about 0.7 young per

1 pair per year.

2 And what's the juvenile mortality?---Well, again in birds of
3 prey, like eagles and so on, it's estimated at maybe 50
4 per cent in their first year after they become
5 independent. But it's high anyway, there's a high
6 attrition of young birds of prey in their first year
7 while they are gaining hunting skills and so on.

8 And bearing in mind those answers, Dr Debus, and turning to
9 some other questions you were asked about the extensive
10 home range these birds have of 5 to 10,000 hectares,
11 why do they have such a large home range?---Probably
12 because they need such a large area to support that
13 density of prey, because that sort of prey takes a lot
14 of searching to find, they have to spend a lot of time
15 searching and cover a lot of ground to find it, and
16 they are taking many small items rather than, say, one
17 big item a day, they are taking many small items, and
18 they are taking things that are well hidden in the
19 trees and it just takes a lot of time and area to
20 sustain them.

21 And in answer to some questions by my learned friend in
22 relation to the reserve systems, and how useful they
23 might be to the kite, and when you were taken to the
24 agreed book of maps, you gave an answer that you agree
25 they may be of use, but you would need to work - you
26 said "To work out the benefit for the kite you would
27 need to know whether they were productive forests".
28 What do you mean by "productive
29 forests"?---Ecologically productive in terms of high
30 densities of prey and so on. That was what I had in
31 mind. And it also, as it happens in my experience in

1 New South Wales, is that that's also - that coincides
2 with the productive forest for logging. If you want
3 to see a square tailed kite in the area that I am
4 familiar with them in, you go to the state forests
5 rather than national parks because the state forests
6 are more highly ecologically productive. And again I
7 have to qualify that by saying that they are also in
8 the taller forests on the north coast. It's sort of
9 70 year old-plus regrowth.

10 Dr Debus, can I ask you to go to - if Dr Debus could be shown
11 page 11 of the agreed maps. Have you still got that
12 bundle of agreed maps there? That's it, the large book
13 of maps. Can you go to page 11, please, Dr Debus.
14 Now, you were asked some questions about what you could
15 draw from the logging history that you see represented
16 on those maps?---Yes.

17 In terms of these coupes that have been logged being
18 productive in the way you have just described?---Yes.

19 How long ago does the logging have to have occurred?---I
20 think they will - if I recall correctly the Eden study
21 area they were starting to forage over about 30 year
22 old regrowth, or getting close to that, between 25 and
23 30 years. By that stage it's getting tall enough and
24 so on to be attractive to them for foraging.

25 And if on looking at this map and based on what you know
26 about the nature of these coupes that are not logged,
27 are you able to compare the quality of the habitat in
28 terms of food supply and nesting of the unlogged coupes
29 with the logged coupes?---Not just by looking at the
30 colours on the map there. I am not quite sure I
31 understood the question, but the forest type or the

1 site productivity may well be similar across the logged
2 and unlogged coupes, but if I understand the question
3 the habitat quality for foraging would be fairly
4 restricted to the sort of 30 year old and older
5 regrowth. I think that's what you meant, was that
6 correct? That the younger age, like say the 2000 to
7 2009, or the 1990 to 1999 would not be high quality
8 foraging habitat at that young age. I think that's
9 what you were trying to ask.

10 And still on the maps - still on that map in fact, Dr Debus,
11 you were asked some questions about the area to the
12 west of the logging area, and you gave some - and about
13 the contours, and it was suggested to you that the area
14 to the west that is reserved may be a gentler slope.
15 What would you need to know about both the logging
16 history and the floristics of that area to know whether
17 it was suitable for kites?---It's probably more about
18 bird densities and so on in them, but the logging
19 history, I guess as far as logging history goes, I
20 would need to have an idea of the age, whether it was
21 25 to 30 year old regrowth or younger, and, yes -
22 sorry, the other part of the question?

23 What would you need to know about the floristics?---Whether
24 it was similar forest type and so on, whether it
25 indicated similar site productivity, meaning ecological
26 site productivity.

27 If Your Honour pleases, I have no further questions.

28 HIS HONOUR: Yes, thank you. Thank you, Dr Debus, you are
29 excused?---Thank you very much.

30 <(THE WITNESS WITHDREW)

31 (Witness excused.)

1 MS MORTIMER: Your Honour, would this be a convenient time to
2 have a short break?

3 HIS HONOUR: Yes, it would be.

4 (Short adjournment).

5 HIS HONOUR: Yes, Ms Mortimer.

6 MS MORTIMER: If Your Honour pleases. Your Honour, I am not
7 in a position to close the plaintiff's case as I stand
8 here now, and I need to explain to Your Honour why that
9 is so. And I have had some discussions with my
10 learned friend, and what I am about to outline to Your
11 Honour is the subject of agreement from the defendant
12 in that sense.

13 HIS HONOUR: Yes.

14 MS MORTIMER: Your Honour, there is one additional piece of
15 witness evidence, and we will be providing an affidavit
16 to our learned friends over the weekend about that.
17 It's about GPS and the plotting of GPS coordinates on a
18 map that is already in evidence.

19 HIS HONOUR: Yes.

20 MS MORTIMER: And that evidence will be provided by affidavit
21 to our learned friends and to Your Honour on Monday.

22 There is required to be sworn a supplementary
23 affidavit of documents on behalf of the plaintiff, and
24 that will be done over the weekend, and those documents
25 will be produced to the defendant over the weekend.
26 There may be some matters arising from that on the
27 defendant's part, and my learned friends will talk to
28 us about that first thing on Monday.

29 The third thing is there's one other issue
30 outstanding between the parties that I don't need to
31 trouble Your Honour with in terms of subject matter,

1 but we expect that will be resolved one way or the
2 other on Monday.

3 HIS HONOUR: Yes.

4 MS MORTIMER: And then, Your Honour, the fourth thing is that
5 I need to regularise the agreed book of documents and I
6 would appreciate, if Your Honour pleases, the
7 indulgence of having the weekend to ensure there are no
8 documents - not controversial documents, but things
9 that have not been picked up by me that need to be
10 tendered as part of the plaintiff's case. For
11 example, my instructor has sworn several affidavits
12 that have not been read as part of this proceeding, I
13 just want to make sure that all the documents that have
14 been exhibited to that have either been picked up in
15 the agreed book or I need to tender them separately.
16 And I really just need the weekend to do that.

17 HIS HONOUR: Yes. I don't require you to formally tender
18 the documents in the agreed book, I take them to be
19 before the court.

20 MS MORTIMER: If Your Honour pleases.

21 HIS HONOUR: If you don't refer to them at any stage during
22 the case, it's unlikely that I will look at them.

23 MS MORTIMER: I understand that, Your Honour.

24 HIS HONOUR: But I hear what you say and of course that's a
25 sensible course, to check where you are with your
26 documentation.

27 MS MORTIMER: And, Your Honour, we just simply seek leave to
28 uplift Your Honour's copy of the agreed book to reduce
29 it by removing the two duplicates of the management
30 plan and making sure there are no other duplications,
31 so that we promise to reduce the size of it, Your

1 Honour, not increase it.

2 HIS HONOUR: Yes, I have actually marked my book, so that
3 may - - -

4 MS MORTIMER: We could tell Your Honour's associate the
5 pages, and Your Honour's associate could remove it, if
6 that was convenient.

7 HIS HONOUR: Yes, I think that would be a better course.

8 MS MORTIMER: If Your Honour pleases.

9 HIS HONOUR: Yes. The reason I was a little slow coming
10 on the bench after you had come back in a little while
11 ago was that I have received an update in relation to
12 the position with the County Court, and the County
13 Court has a criminal trial fixed for circuit hearing in
14 this court, and it's a matter that can't go to
15 Bairnsdale because of difficulties about empanelling a
16 jury at that place. If we were not sitting, they
17 would have recommenced, or they would have commenced
18 here next week, but currently a jury has been requested
19 for the following Monday, that's the 22nd. The matter
20 was the subject of at least one if not two
21 interlocutory appeals to the Court of Appeal, and it
22 has had a series of delays, and I accept that it's not
23 a matter that can go elsewhere easily, and our estimate
24 was originally 10 days - - -

25 MS MORTIMER: It was, Your Honour.

26 HIS HONOUR: And I think that we are therefore in a
27 situation where the final addresses will probably have
28 to be heard elsewhere. And there are really on the
29 face of it two, perhaps three, choices: they are
30 Melbourne, Bairnsdale, which in fact is closer to Brown
31 Mountain than Sale, or Morwell, which is a new court

1 and is in effect the new regional court. Now, you
2 might like to talk between yourselves as to which of
3 those is your preference. I must say that for the
4 reasons I expressed the other day I would in the
5 ordinary course have just continued sitting here, but
6 if we can't continue sitting here and we have to
7 relocate, then I will hear what each side says about
8 that process of relocation.

9 There's a sense in which, although the addresses
10 are very significant in this case for the reasons that
11 I have indicated, the whole of the evidence will have
12 been heard in Sale, and the public will have had the
13 opportunity to go through that process with us. There
14 may be real reasons of convenience from counsel's point
15 of view in having the addresses heard in Melbourne.
16 On the other hand, it may be that those notions of the
17 public interest and, in effect, the local interest of
18 both sets of clients, if I can put it that way, favour
19 one or other of the Gippsland locations.

20 MS MORTIMER: I understand, Your Honour, yes.

21 HIS HONOUR: I haven't myself formed a concluded view about
22 these matters, and I think before I do I should hear
23 from you. If you both arrived at an agreed position,
24 that is something that I am likely to give some real
25 weight to.

26 MS MORTIMER: Would it be convenient for us to deal with that
27 first thing on Monday, Your Honour?

28 HIS HONOUR: It would, yes.

29 MS MORTIMER: If Your Honour pleases.

30 HIS HONOUR: I have some other commitments as a principal
31 judge in Melbourne, that is principal judge of the

1 common law division, which mean that from the court's
2 point of view there are some advantages to me
3 returning, but I would not regard that as
4 determinative. As I have said, if we could have kept
5 sitting here I would have kept sitting here, but if we
6 have got to move, then I think it's a matter that
7 requires fresh consideration.

8 MS MORTIMER: If Your Honour pleases.

9 HIS HONOUR: Yes. Well, Ms Mortimer, how long do you
10 think you are going to need on Monday morning? Not
11 very long?

12 MS MORTIMER: No, Your Honour, not very long at all. Less
13 than an hour. And we are commencing - may I enquire
14 what time Your Honour proposes to commence on Monday?

15 HIS HONOUR: Well, at the moment we are listed for 12, but
16 we could commence earlier if you asked me to. I must
17 say that it's imperative that we finish the evidence
18 next week.

19 MS MORTIMER: Your Honour, the parties would suggest 11 am,
20 if that was convenient to Your Honour.

21 HIS HONOUR: Yes, we will adjourn until 11 o'clock on
22 Monday.

23 ADJOURNED UNTIL 11.00 AM MONDAY 15 MARCH 2010

24
25
26
27
28
29
30
31