



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION

No. 8547 of 2009

BETWEEN:

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

- and -

VICFORESTS

Defendant



JUDGMENT

JUDGE: The Honourable Justice Osborn

DATE MADE: 14 September 2010

ORIGINATING PROCESS: Writ

HOW OBTAINED: After Trial commencing 1 March 2010.

ATTENDANCE: Ms D. S. Mortimer, Senior Counsel, with Mr R. M. Niall and Ms P. C. Knowles of Counsel for the Plaintiff
Mr I. Waller, Senior Counsel, with Mr H. Redd of Counsel for the Defendant

OTHER MATTERS: 1. This order is signed by the Judge pursuant to Rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure Rules) 2005*.

2. In this Order:

Associated Activities means the preparation of sites for Timber Harvesting Operations; forest regeneration and site rehabilitation; and all road construction and road improvement operations for Timber Harvesting Operations.

Coupes means forestry coupes numbered 840-502-0015, 840-502-0019, 840-502-0026 and 840-502-0027 located at Brown Mountain in Victoria.

Detections means the detections of the Long-footed Potoroo referred to in [361], [396] and [414] of the reasons for judgment published by the Court on 11 August 2010.

Director means the Director, Biodiversity Policy and Programs, DSE.

DSE means Department of Sustainability and Environment.

Timber Harvesting Operations means felling or cutting trees or parts of trees and taking or removing timber.

3. Upon the plaintiff by its Counsel undertaking that it will:

- (a) forthwith provide to DSE copies of all photographic evidence it possesses relating to the presence of the Long-footed Potoroo in the Coupes; and
- (b) take all reasonable steps to assist DSE to confirm the precise location of the taking of the images produced in evidence by Shelley Renee McLaren

THE JUDGMENT OF THE COURT IS THAT:

1. The defendant, by its employees, servants, agents or howsoever otherwise be and hereby is restrained from undertaking or conducting Timber Harvesting Operations and/or Associated Activities in the Coupes unless and until:

- (a) a special management zone and Long-footed Potoroo retained habitat area have been created in respect of the Detections of the Long-footed Potoroo within the Coupes and in accordance with Appendix I to the *Flora and Fauna Guarantee Act 1988* Action Statement for the Long-footed Potoroo (2009) to the satisfaction of the Director;
- (b) a survey is carried out for the presence of the Giant Burrowing Frog and the Large Brown Tree Frog within the Coupes during appropriate climatic conditions by appropriately qualified persons to the satisfaction of the Director;
- (c) a review of the provision of Powerful Owl management areas and Sooty Owl management areas (as those terms are referred to in the *Flora and Fauna Guarantee Act 1988* Action Statement for the Powerful Owl (2004) and the Sooty Owl (2001) respectively) within the East Gippsland Forest Management Area taking into account the report of Dr Rohan Bilney dated December 2009 is completed to the satisfaction of the Director;
- (d) a survey is carried out for the presence of the Spot-tailed Quoll within the Coupes during the breeding season of the Spot-tailed Quoll in and between May and August by appropriately qualified persons to the satisfaction of the Director, and in the event of detection of the Spot-tailed Quoll, a review of the provision of reserves for the Spot-tailed Quoll within the East Gippsland Forest Management Area is completed to the satisfaction of the Director; and
- (e) a special protection zone of approximately 100 hectares is created to the satisfaction of the Director in response to the detection of densities of Greater Gliders and Yellow-bellied Gliders in coupe 840-502-0015 exceeding those specified in the guideline relating to arboreal mammals contained in the East Gippsland Forest Management Plan.

2. The defendant shall:

- (a) provide to the plaintiff within 14 days of their final approval by the

Director maps delineating any special management zone, special protection zone, Long-footed Potoroo retained habitat area, Powerful Owl management area or Sooty Owl management area created within the Coupes;

- (b) provide to the plaintiff within 14 days of their approval by the Director copies of any surveys in respect of the Giant Burrowing Frog, Large Brown Tree Frog and Spot-tailed Quoll completed within the Coupes; and
 - (c) provide to the plaintiff 28 days notice in writing of any intended resumption of logging within the Coupes.
3. The injunction granted by the Court on 29 September 2009 be and hereby is discharged.
 4. The defendant pay 90 per cent of the plaintiff's costs of the proceeding, including reserved costs.

DATE AUTHENTICATED: **14 September 2010**



John J. Osborn

The Hon. Justice Osborn