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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
PRACTICE COURT

No. 8547 of 2009

ENVIRONMENT EAST GIPPSLAND INC — Plaintiff

v

VICFORESTS — Defendant

JUDGE:	FORREST J
WHERE HELD:	Melbourne
DATE OF HEARING:	1 & 2 September 2009
DATE OF JUDGMENT:	14 September 2009
CASE MAY BE CITED AS:	Environment East Gippsland Inc v VicForests
MEDIUM NEUTRAL CITATION:	[2009] VSC 386

PRACTICE and PROCEDURE – Interlocutory injunction – Whether serious question to be tried – Whether balance of convenience favours granting injunction – Injunction to preserve status quo – Logging of State forest – Obligation to conserve and manage flora and fauna habitat – Endangered species of potoroo - Standing of environment group – Obligations imposed by statute upon statutory corporation – *Conservation, Forests and Lands Act 1987* (Vic) – *Flora and Fauna Guarantee Act 1988* (Vic) – *Sustainable Forests (Timber) Act 2004* (Vic).

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Ms D.S. Mortimer SC with Mr R.M. Niall	Bleyer Lawyers Pty Ltd
For the Defendant	Mr I. Waller SC with Mr H.L. Redd	HWL Ebsworth Lawyers as Agent for Komessaroff Legal Pty Ltd

HIS HONOUR:

Introduction

1 In the week commencing 7 September 2009, VicForests proposed to carry out logging of two coupes in State forest on Brown Mountain in East Gippsland.

2 Environment East Gippsland ("EEG") seeks an interlocutory injunction restraining VicForests from carrying out operations in the two coupes as well as two others close by, which are designated for logging in the future. EEG asserts that such logging is unlawful, given the environmental obligations cast upon VicForests to protect native fauna.

3 The general area in which the coupes are located is a major habitat for native fauna, in particular: Long-footed Potoroo, Spot-tailed Quoll, Orbost Spiny Crayfish, Sooty Owl and the large Brown Tree Frog. Arguably, some of these threatened or endangered species may live in the coupes in which the logging operations are to commence. In particular, it is said that both the Long footed Potoroo ("the potoroo") and the Sooty owl have been detected in those areas.

4 The potoroo is an endangered and threatened species.[1] Their numbers are very small and they live only in the forests of the Great Dividing Range. The species is described as one of the rarest mammals in the world. The Sooty Owl is a medium to large barn owl that inhabits eucalypt forests on the eastern seaboard. It is also a threatened species.[2]

5 EEG asserts that given the likely presence of the potoroo and the sooty owl in the coupes, the logging operations are unlawful as they will breach a number of statutory provisions affecting the operations of VicForests, particularly those contained in the *Sustainable Forests (Timber) Act 2004* (Vic) ("SFTA") and the *Flora and Fauna Guarantee Act 1988* (Vic) ("FFGA").

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1 Endangered under the *Environment Protection and Biodiversity Act* 1999 (C'wealth) and threatened under FFGA.

2 Under the FFGA.

6 In particular, EEG says that VicForests has failed to comply with the Code of Practice for Timber Production 2007 ("the code"), the East Gippsland Forest Management Plan ("the Plan") and action statements concerning individual species ("action statements") promulgated by the Department of Sustainability and Environment ("DSE") and the FFGA itself. It is said by EEG that particular parts of the respective codes or plans have the force of law and that the commencement of logging operations will necessarily result in breach of those provisions.

7 At the heart of EEG's application is detection of the potoroo and the sooty owl. Once there is evidence of the presence of either of the species within the particular coupes, the statutory obligations imposed upon VicForests are triggered, so the argument runs, and VicForests is obliged to comply with stringent obligations relevant to the preservation of their habitat.

8 VicForests contends that EEG has no standing. If it does, it says there is no serious question to be tried as no breach (actual or prospective) of particular obligations have been established which it disputes applies to it in any event. Finally, it says that the balance of convenience points to permitting the commencement of logging operations.

9 In the result, I have concluded that an interlocutory injunction should be granted in respect of the two coupes, but subject to a strict timeline in relation to the hearing of EEG's claim for a permanent injunction.

The parties

10 EEG is an incorporated association. Its members are active throughout East Gippsland operating in the field of environmental issues. It has 420 members and over 500 people on its email list. On 24 August 2009, it resolved to bring this proceeding against VicForests.[3] I shall say a little more about its operations when I examine the issue of standing.

11 VicForests is a statutory body established by an order of the Governor-in-Council on

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3 Affidavit of Jill Redwood, 28 August 2009 ("Redwood affidavit") [2], [5] and [6].

28 October 2003 pursuant to s 14 of the *State Owned Enterprises Act 1992* (Vic) (the SOE Act). It has the responsibility for carrying out logging operations in State forests. By cl 3(3) of the establishing order, VicForests is required to –

(a) undertake the sale and supply of timber resources in Victorian State forests and related management activities, as agreed by the Treasurer and the Minister, on a commercial basis;

(b) develop and manage an open competitive sales system for timber and resources; and

(c) pursue other commercial activities as agreed by the Treasurer and the Minister.

12 Pursuant to clauses 5 to 7 of the establishing order, VicForests must –

(a) operate in business or pursue its undertakings as efficiently as possible consistent with prudent commercial practice;

(b) be commercially focused and deliver efficient, sustainable and value for money services; and

(c) operate in the framework consistent with Victorian Government policy and priorities.[4]

13 VicForests carries out logging in the Brown Mountain area pursuant to the Plan.[5]

The proceedings

14 EEG's generally endorsed writ was issued on 25 August 2009 and its summons seeking the interlocutory restraint of VicForests was issued on 28 August 2009.

15 The writ asserts that the Brown Mountain forestry operations are unlawful and in breach of statutory provisions.[6] The breach is said to be constituted by the actual and likely presence of the five identified species in the Brown Mountain area. In the course of argument and on the material adduced on the hearing, the central issue

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4 Affidavit of Cameron McDonald, 31 August 2009 ("first McDonald affidavit"), [3]-[8].

5 First McDonald affidavit [15].

6 [5] and [6] of these reasons.

relates to the presence of the potoroo and the sooty owl in the area of the coupes. It is also said that VicForests failed to take into account the "precautionary principle", relevant available, scientific evidence and the fact that an Interim Conservation Order ("ICO") application had been made but not determined by the Minister. This latter matter was not relied upon in the course of the application.

16 EEG's summons seeks that VicForests be prohibited from undertaking any forestry operations in four coupes, two of which are about to be logged and another two, recently placed within a timber release plan.[7]

17 Any interlocutory order would be in effect until the trial of the action at which EEG will seek final orders to restrain VicForests from undertaking forestry operations in the Brown Mountain coupes and/or declaratory orders as to the unlawfulness of forestry operations in the coupes.

18 EEG relied upon five affidavits, namely, (a) two affidavits of Vanessa Bleyer, the solicitor for EEG, dated 24 August 2009 and 31 August 2009, (b) the affidavit of Jill Redwood, a member of the committee of EEG dated 28 August 2009, (c) an affidavit of Andrew Lincoln, a volunteer who undertakes native fauna species surveys dated 24 August 2009, and (d) an affidavit of Eliza Marie Poole, a zoologist dated 24 August 2009.

19 VicForests filed an affidavit of Cameron McDonald, its Director of Strategy and Corporate Affairs dated 31 August 2009 and during the course of the application a further affidavit of 2 September 2009.[8]

Brown Mountain

20 State forests are divided into three zones –[9]

(a) special protection zone (SPZ) to be managed for conservation, with timber harvesting excluded;

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7 See paras [32] and [33] of these reasons.
8 "Second McDonald affidavit".
9 First McDonald affidavit [14].

(b) special management zone (SMZ) to be managed to conserve specific features, while catering for timber production under certain conditions;

(c) general management zone (GMZ) to be managed for a range of uses, with timber production as high priority.

21 Brown Mountain is about 55 kilometres north-north-east of Orbost and is an area of natural beauty with considerable native flora and fauna.[10] It also holds substantial resources of native timber suitable for intense harvesting.

22 The Brown Mountain creek area is a catchment of approximately 450 hectares on the edge of the Errinundra Plateau in East Gippsland. It is State forest (with the exception of about 50 hectares which forms part of The Gap Scenic Reserve) and has been designated GMZ pursuant to the Plan.[11]

23 Attached to these reasons is a VicForests document showing the relevant coupes on Brown Mountain. The two coupes, 840-502-0015 ("15") and 840-502-0019 ("19") which VicForests proposes to log, are adjacent and are located to the east and west of the creek. Coupe 15 is 43.4 hectares in size and coupe 19, 21.5 hectares.[12] The shaded area on the western and eastern edges of each of the two coupes, running north, is a proposed SPZ announced by the Minister last week.[13] The proposal, as I understand it, is to log the balance of the areas of the two coupes not within the SPZ. The other two coupes, the subject of the proposed injunction are 840-502-0026 ("26") and 840-502-0027 ("27"). Coupe 26 is 21.4 hectares in size and coupe 27 is 5 hectares. Coupe 26 is located to the north of coupes 15 and 19, and coupe 27 is located to the south of coupe 15 (not shown on attached document).

24 Directly to the south of coupe 19 is coupe 840-502-0020 ("20"), which was logged at the end of October 2008. Photographs taken before and after the logging operations show the destruction of the natural habitat which appears to be a necessary

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10 Report of Dr Charles Meredith, Biosis research, Exhibit JR39.
11 First McDonald affidavit, [13].
12 Exhibit VEB8, [18] to the affidavit of Vanessa Elizabeth Bleyer, 24 August 2009.
13 First McDonald affidavit [16]-[20].

consequence of such activity.[14]

25 Both coupes 15 and 19 are within a timber release plan approved by the Secretary of the DSE on 30 July 2004, as periodically amended. On 5 June 2009, a new timber release plan was approved by the Secretary to the DSE which included coupes 15 and 19 and added coupes 26 and 27.[15]

26 Between January and March 2009, officers or agents of the DSE conducted a survey of coupes 15 and 19 for arboreal mammals ("the DSE survey"). That survey was released in August 2009.[16]

27 On 21 August 2009, the Minister for Environment and Climate Change issued a media release concerning the Brown Mountain area. In particular:

> "Mr Jennings said the significant additional habitat protection measures, including extra wide 100 metre streamside buffers and the protection of the hollow bearing habitat trees identified by diversity officers, will be put in place at Brown Mountain creek area even though no threatened species were found during fauna surveys of the area".[17]

The Minister's statement accurately reflects the findings of the DSE survey, although, as will be seen, the authors' conclusion as to the absence of potoroos within the two coupes is less than unequivocal.

28 VicForests intended to start harvesting in coupes 15 and 19 in the week commencing 7 September 2009.[18] It has undertaken not to initiate harvesting pending the resolution of this application.

The statutory framework in which VicForests operates

29 It is necessary to refer, as concisely as possible, to the statutory framework under which VicForests operates when conducting logging operations, such as those proposed in the two coupes.

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14 Exhibit VEB20 and VEB21.
15 McDonald first affidavit [16]-[20].
16 Exhibit EMP3 to the affidavit of Eliza Marie Poole, 24 August 2009.
17 McDonald first affidavit [30].
18 McDonald first affidavit [23].

30 Under Part 3 of the SFTA, the Minister, by s 13, may allocate timber and State forests to VicForests "for the purpose of harvesting and selling or harvesting or selling, timber resources". That order, known as an allocation order, permits VicForests to undertake timber harvest in particular areas of Victoria. Section 16 requires VicForests to carry out its functions in accordance with an allocation order. Section 15 sets out the requirements of an allocation order. In particular by s 15(1)(c) it is necessary for the allocation order to specify conditions applicable to VicForests in carrying out its functions. In this case the "*allocation to VicForests 2004*" order ("the allocation order") was made in July 2004 by the Minister with the following specified conditions.[19]

> "In accordance with s 15(1)(c) of the *Sustainable Forests (Timber) Act* 2004, in undertaking authorised activities, VicForests is required to comply with the conditions and standards in the following documents as amended from time to time:
>
> - *The Code of Forest Practices for Timber Production, Revision No. 2 1996.* Department of Natural Resources and Environment.[20]
> - Management Guidelines as specified in the Forest Management Plans published by the Department of Sustainability and Environment or its predecessors, relevant to the forest management areas to which this change applies."[21]

31 Part 5 of the SFTA then sets out the scheme by which timber resources are to be managed by VicForests. Under s 42 the property in timber resources vests in VicForests.

32 Central to the management of timber resources by VicForests is the preparation of a timber release plan (s 37 and s 38) and its approval by the Secretary. VicForests is obliged to carry out its functions and powers in accordance with the timber release plan: s 44.

33 There are two relevant timber release plans, one of 30 July 2004 (subsequently amended on several occasions) and a new timber release plan approved on 5 June

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19 Exhibit VEB3; clause 6.

20 The Code was amended in 2007 and is now entitled "Code of Practice for Timber Production".

21 I have only reproduced the references to documents relevant to this application.

2009 for 2009-2014,[22]. Each plan includes coupes 15 and 19. The new plan includes coupes 26 and 27. It also identifies many other coupes which will be harvested, the location and timing of proposed operations, the particular activities authorised by VicForests and attaches conditions to those operations. Included in those conditions are the following:

> "In accordance with s 15(1)(c) of the *Sustainable Forests (Timber) Act 2004*, in undertaking authorised activities VicForests is required to comply with the conditions and standards in the following documents as amended from time to time. VicForests requests that any such amendments be made in consultation with VicForests.
>
> - *The Sustainability Charter for Victoria State's Forests 2006*. Department of Sustainability and Environment.
> - *The Code of Practice for Timber Production 2007*. Department of Sustainability and Environment.
> - Management Guidelines as specified in Forest Management Plans published by the Department of Sustainability and Environment or its predecessors, relevant to the forest management areas to which this change applies." [23]

34 The SFTA, by s 45(1), introduces a concept of "authorized operations". This requires VicForests to carry out its activities in accordance with the relevant timber release plan, part of which I have just referred to: s 45(2). Section 45(1) makes it an offence to carry out harvesting operations which are not "authorized operations".

35 The application of the Code is also taken up by s 46 of the SFTA, found in Part 6 "Management of Timber Harvesting", which requires that VicForests "must comply with any relevant code of practice relating to timber harvesting".

36 The Minister, under s 31 of the *Conservation, Forests and Lands Act 1987* (Vic) ("the CFLA"), is empowered to publish codes of practice relating to timber harvesting. It was common ground that the Code was published by the DSE under the hand of the Minister. It was the successor to the 1996 "Code of Forest Practices for Timber Production Revision No. 2".

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22 Exhibit CM16.

23 I have only reproduced the references to documents relevant to this application.

37 It is convenient now to turn to parts of the FFGA. By s 19 it provides that the secretary must prepare an action statement, "for any listed taxon or community of flora or fauna". That action statement "must set out what has been done to conserve and manage that taxon, community or process and what is intended to be done and may include information on what needs to be done". In this case, there are action statements relating to four of the five relevant species, namely, the potoroo, the Orbost Spiny Crayfish, the Spot-tailed Quoll and the Sooty Owl.[24]

38 Section 26 of the FFGA enables the Minister to make an ICO to conserve the habitat of a listed taxon. Such an order had unsuccessfully been sought by EEG in respect of Brown Mountain.

39 Finally, in relation to the FFGA there is s 4 which sets out the objectives of flora and fauna conservation management in the State, including:

> "(a) to guarantee that all taxa of Victoria's flora and fauna other than a taxa listed in the Excluded List can survive, flourish and retain their potential for evolutionary development in the wild".

40 One other statutory provision needs to be mentioned. Section 22 of the *Forests Act 1958* (Vic) requires a Forest Management Plans to be developed for particular areas. The relevant plan for East Gippsland was developed in December 1995. Compliance with it is, as has been seen, mandated by both the timber release plan and the allocation order.

41 In summary, in carrying out its logging activities in the coupes on Brown Mountain, VicForests is required, by a number of statutory routes, to comply with the conditions of the Code and the Plan. The Code then requires compliance with a relevant action statement.

The Code of Practice for Timber Production 2007 ("the Code")

42 The Code is set out over some 85 pages. It is carefully drafted and has Code principles with statements as to its purpose and its scope. It has many definition

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24 Exhibits VEB 13, 14, 15, and 16.

provisions and differentiates between mandatory and permissive requirements.

43 Under the heading "Why a Code of Practice for Timber Production?", the following is said:

> "Maintaining the benefits to society provided by forestry depends on balancing community needs and concerns with careful stewardship and responsible management. The effective implementation of a Code of Practice helps to ensure that the activities of timber growing and harvesting are compatible with the conservation of the wide range of values associated with forests, and of any such values associated with land on which commercial plantation development is proposed."

44 The purpose of the Code is described as follows:

> "The purpose of this Code of Practice is to provide direction and guidance to forest managers and operators to deliver sound environmental performance when undertaking commercial timber growing and harvesting operations in such a way that:
>
> - permits an economically viable, internationally competitive, sustainable timber industry;
> - is compatible with the conservation of the wide range of environmental, social and cultural values associated with timber production forests;
> - provides for the ecologically sustainable management of native forests proposed for continuous timber production;
> - enhances public confidence in the management of Victoria's forests and plantations for timber production."

45 The scope of the Code is defined as follows:

> "The Code covers all timber production operations on both public and private land in Victoria. The Code aims to ensure that:
>
> - native forest is adequately regenerated and managed following timber harvesting;
> - impacts on environmental values (including soil, water, biodiversity) are avoided or minimised; and
> - social and cultural values (Aboriginal cultural heritage places, historic places and landscapes) are maintained, protected and respected."

46 Within the Code Principles the following is found:

> "1. Biological diversity and the ecological characteristics of native flora and fauna within forests are maintained.

2. The ecologically sustainable long-term timber production capacity of forests managed for timber production is maintained or enhanced."

47 The Code provides a series of explanatory notes, including the following under the heading "Terminology".

> "**Mandatory Actions** are actions to be conducted in order to achieve each operational goal. *Forest managers and operators must undertake all relevant mandatory actions to meet the objectives of the Code. Mandatory actions are focused on practices or activities. Failure to undertake a relevant Mandatory Action would result in non-compliance with this Code.*" (Emphasis added).

I pause here to observe again that the Code is a carefully drafted document which patently seeks to impose obligations upon those who come within its purview. This is also reflected by Chapter 2. Under the heading "Environmental Values in Public Forests", the following is said:

> "This section includes requirements that must be observed during planning, tending, roading and harvesting of public forests."[25]

48 Under the heading "Conservations of Biodiversity", the Code reads as follows:[26]

> "**Operational Goal**
>
> Planning, harvesting and silvicultural operations in native forests specifically address the conservation of biodiversity, in accordance with relevant legislation and regulations, and considering relevant scientific knowledge.
>
> **Mandatory Actions**
>
> Where fire is used in timber production operations, all practicable measures must be taken to protect all areas excluded from harvesting from the impacts of unplanned fire.
>
> *Forest management planning and all forestry operations must comply with measures specified in relevant Flora and Fauna Guarantee Action Statements and Flora and Fauna Guarantee Orders.*
>
> Rainforest communities in Victoria must not be harvested. Rainforest communities must be protected from the impacts of harvesting through the use of appropriate buffers to maintain microclimatic conditions and protect from disease and other disturbance.
>
> To facilitate the protection of biodiversity values, *the following matters must be addressed when developing and reviewing plans and must be adhered to during operations*:

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25 Clause 2.2.

26 Clause 2.2.2.

- *application of the precautionary principle* to the conservation of biodiversity values, consistent with monitoring and research to improve understanding of the effects of forest management on forest ecology and conservation values;

- *consideration of the advice of relevant experts* and relevant research in conservation biology and flora and fauna management at all stages of planning and operations;

- use of wildlife corridors, comprising appropriate widths of retained forest, to facilitate animal movement between patches of forest of varying ages and stages of development, and contributing to a linked system of reserves;

- providing appropriate undisturbed buffer areas around significant habitats;

- maintaining forest health and ecosystem resilience by managing pest plants, pest animals and pathogens; and

- modifying coupe size and dispersal in the landscape, and rotation periods, as appropriate." (Emphasis added.)

49 The precautionary principle, which must be adhered to both before and during operations, is defined in the glossary as follows:[27]

> "Precautionary principle – when contemplating decisions that will affect the environment, the precautionary principle requires careful evaluation of management options to wherever practical avoid serious or irreversible damage to the environment; and to properly assess the risk-weighted consequences of various options. When dealing with threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."

50 This brief analysis demonstrates, I suggest, that the clear purpose of the Code was to impose significant "mandatory" environmental obligations on VicForests at both the planning and operational level.

The Flora and Fauna Guarantee Action Statements ("the action statements")

51 As mandated by the Code, forestry operations must comply with the measures set out in the Flora and Fauna Guarantee Action Statements.[28]

52 Pursuant to s 19 of the FFG, Action Statements were published in relation to the

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27 Page 78.

28 See [48] of these reasons.

following species:

(a) the Sooty Owl, June 2001;[29]

(b) the Orbost Spiny Crayfish, December 2001;[30]

(c) the Spot-tailed Quoll, September 2003;[31]

(d) the Long footed Potoroo, August 2009.[32]

No action statement has been prepared for the large Brown Tree Frog.

53 It is not practicable to refer now to the terms of each of the action statements. It suffices to say that the document provides a relatively comprehensive analysis of the particular species and details matters such as description, distribution, habitat, life history and ecology, conservation status, threat, predation and past management actions. Of particular relevance are the intended management actions set out under "Conservation Objective". The most recent of the action statements relates to the potoroo; setting out some 14 specific actions under particular objectives. Such actions also appear to allocate responsibility to particular State Government organisations; for instance, DSE, Parks Victoria, VicForests and local government. Of particular relevance to this application is action 4:

> "**Protect Long-footed Potoroo habitat at detection sites on public land outside the Core Protected Area**
>
> Establish additional protected areas where Long-footed Potoroos have been detected in State forest or other public land outside the Core Protected Area. In State forest, apply the protection measures specified in Appendix 1. The protection measures will be formally reviewed in 2014.
>
> *Responsibility:* *DSE, VicForests"*

54 Appendix I then provides:

> "**Prescriptions to be applied in State forest:**
>
> 1. Each Long-footed Potoroo (LFP) detection site outside the Core Protected Area will generate a Special Management Zone (SMZ) of approximately 150 ha.

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29 Exhibit VEB16.
30 Exhibit VEB15.
31 Exhibit VEB14.
32 Exhibit VEB12.

2. As far as possible, SMZ boundaries will follow recognisable landscape features such as ridges, spurs and watercourses.

3. Within each SMZ, at least one third (~50 ha) will be protected from timber harvesting and new roading.

4. This will be known as Long-footed Potoroo Retained Habitat.

5. The LFP Retained Habitat will include the best LFP habitat in the SMZ, which will generally be in gullies and on lower, sheltered slopes.

6. The LFP Retained Habitat may include areas otherwise unavailable for timber harvesting due to restrictions under the Code of Practice for Timber Harvesting.

7. The SMZ will also have a general restriction of one third of the total area that can be harvested in any three year period. If more than one coupe is to be harvested in an SMZ in the same year, the coupes must be separated by at least the equivalent of another coupe width.

8. The SMZ, with the LFP Retained Habitat clearly delineated, will be shown as part of the Forest Management Area zoning scheme.

9. The SMZ will be designed by DSE, in consultation with VicForests, and approved by DSE."

The East Gippsland Forest Management Plan ("the Plan")

55 The Plan has direct application to VicForests by virtue of the allocation order and the timber release plan. Parts of the Plan focus on the preservation of the biodiversity of East Gippsland.

56 The Plan is a carefully considered document which identifies major issues such as sustainable timber supply, low volume forest, old growth forest, national estate, sites of biological significance, rainforest conservation and threatened and sensitive fauna.

57 Chapter III of the Plan deals with biodiversity conservation. One paragraph from that chapter demonstrates the contest in this case:

> "Resolution of debate over how timber production and nature conservation can be integrated to achieve ecologically sustainable forest management is the most pressing forest management issue in the FMA and Australia".[33]

58 Chapter III is also well thought out and specific. It is noted that -

> "Conservation guidelines have been developed for threatened or sensitive

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33 Exhibit VEB 11, 3.1.

species with major habitat requirements in State forest and whose needs may not be fully met by other conservation strategies (featured species)".

59 The purpose of the guidelines is said to be -

> "Provide planned protection for sensitive and threatened species in State forest to meet the requirements of the *Flora and Fauna Guarantee Act 1988* and the precautionary principle outlined in the National Forests Policy Statement".

and to

> "initiate an orderly process for ongoing reconciliation of timber production with conservation of threatened species".[34]

60 There is specific reference in the conservation guidelines to the potoroo. The management strategy and the action statement are applicable and in particular -

> "Accordingly 400 to 500 hectares around confirmed sites will be protected. These will be sub-catchment units containing suitable habitat (includes rainforest, Wet Forest or Damp Forest) timber harvesting, new roading and most fuel reduction burning will be excluded. Areas identified in State forest will be included in the Special Management Zone (SMZ) or in the Special Protection Zone (SPZ) where they coincide with other values".

61 Under the heading "Birds", the Sooty Owl receives special attention; "they are potentially sensitive to the effects of clear felling and may be among the most difficult fauna to conserve in production forest". The guideline in relation to a Sooty Owl habitat is as follows:

> "Approximately 500 ha of forest dominated by old trees and generally comprising Lowland, Damp and Riparian forests, and Warm Temperate Rainforest. Where the SPZ or SMZ is based on a known owl locality 500 ha is to be located within a 1000 ha area that includes the detection site."

Principles relevant to the grant of an interlocutory injunction

62 There was no dispute between the parties as to the applicable principles. They were identified by the High Court in *Australian Broadcasting Corporation v O'Neill*[35] and can be summarised as follows:

(a) The plaintiff must demonstrate that there is a serious question to be tried. It

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34 Exhibit VEB11, 3.4.

35 (2006) 227 CLR 57 Gleeson CJ and Crennan J [19], [65]-[83] per Gummow and Hayne JJ. See also *Beecham Group Ltd v Bristol Laboratories Pty Ltd* (1968) 118 CLR 618.

must prove, *prima facie*, a sufficient likelihood of success to justify, in the circumstances, the preservation of the status quo pending trial. In the context of this case it must show that it has a putative legal or equitable right in respect of which final relief is sought.[36]

(b) The injury which the plaintiff is likely to suffer must be one that damages will not provide an adequate remedy.

(c) The balance of convenience must favour the granting of an injunction. The balance of convenience requires a consideration of the relevant matters favouring or militating against the granting of an injunction and will necessarily involve a consideration of the strength of the plaintiff's claim assuming that a serious issue has been identified. In Victoria, this consideration is explained further by the decision of the Court of Appeal in *Bradto Pty Ltd v State of Victoria*.[37] The Court must, in determining whether to grant an interlocutory injunction, "take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong, in the sense of granting an injunction to a party who fails to establish his right at the trial, or in failing to grant an injunction to a party who succeeds at trial".[38]

(d) There may be other discretionary considerations which militate against the grant of the injunction.

Is there a serious question to be tried?

63 Three issues arise in determining whether EEG has demonstrated that there is a serious question to be tried in the sense of establishing a *prima facie* case against VicForests, as explained in *ABC v O'Neill*.[39]

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36 *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199, [8]-[13].

37 (2006) 15 VR 65.

38 *Bradto Pty Ltd v State of Victoria* (2006) 15 VR 65; *Tymbook Pty Ltd v State of Victoria* (2006) 15 VR 65 [35]. See also *Magna Alloys and Research Pty Ltd v Coffey* [1981] VR 23.

39 (2006) 227 CLR 57, see [65]-[69].

The standing of EEG to bring the claim

64 It was not in issue that the principles set out by Sackville J as to standing in *North Coast Environment Council Inc v Minister for Resources,*[40] should be applied in this case.

65 In that case, after reviewing the decisions of the High Court of Australia in *Conservation Foundation Inc v The Commonwealth*[41] and *Onus v Alcoa Australia Limited,*[42] his Honour set out the following matters relevant to determination of the standing of an environmental organisation which sought to impugn, under the *Administrative Decisions (Judicial Review) Act*, the grant of a licence for the export of woodchips:

> "First, North Coast must demonstrate a 'special interest' in the subject matter of the action. A 'mere intellectual or emotional concern' for the preservation of the environment is not enough to constitute such an interest. The asserted interest must go beyond that of members of the public in upholding the law and must involve more than genuinely held convictions.
>
> Secondly, a person may be able to demonstrate a 'special interest' in the preservation of a particular environment. For this purpose, as *Onus v Alcoa* allows, an intellectual or emotional concern is not disqualification from standing to sue.
>
> Thirdly, to the extent (if any) that north coast relies on possible non-compliance with the *Administrative Procedures*, neither the Environment Protection Act (with the possible exception of s 10) nor the *Administrative Procedures* themselves confer any private rights enforceable by individuals. An allegation of non-compliance with the Environment Protection Act or *Administrative Procedures* is not enough of itself to confer standing on North Coast.
>
> Fourthly, the fact that a person makes comments on an EIS produced pursuant to directions given under the *Administrative Procedures* does not of itself confer standing on that person to challenge or complain of a decision resulting from the environmental assessment process. Thus, North Coast's role as a commentator on Sawmillers' draft EIS does not, without more, confer standing to challenge the decision to grant Sawmillers an export licence or, presumably, to require reasons for such a decision.
>
> Fifthly, an organisation does not demonstrate a special interest in the environment sufficient to establish standing simply by formulating objects that demonstrate an interest in and commitment to the preservation of the physical environment. Otherwise, it is likely that the ACF would have had standing to complain of the decision to approve the exchange control transaction relating to the development at Farnborough." (Citations

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40 (1994) 55 FCR 492.
41 (1980) 146 CLR 493.
42 (1981) 149 CLR 27.

omitted).[43]

66 Sackville J then identified a number of the factors which led to his conclusion that the plaintiff had standing.[44]

- It was a peak environmental organisation.
- It was recognised by the Commonwealth as a significant and responsible environmental organisation.
- It had received Commonwealth grants and had been recognised by the Government of New South Wales as a body that should represent environmental concerns on advisory committees.
- It coordinated or conducted projects and conferences on matters of environmental concern.
- It had made submissions on forestry management issues.

67 Central to the determination of this issue is that mere "intellectual or emotional" concern is insufficient to found standing. Nor is it enough to rely solely on the objects of the particular association or complaints that may have been made in the past about the subject matter. What is vital is "the importance of its (the plaintiff's) concern with the subject matter, the decision and the closeness of its relationship to that subject matter".[45]

68 EEG relies upon its specific involvement in the Brown Mountain area.[46] Its objects and purposes are to "promote conservation values and environmental awareness about East Gippsland"; it has consulted with government and campaigned for many years in relation to the preservation of the wildlife in the area; it has conducted many walks and treks through Brown Mountain and the coupes and provides ecology camps; it has a large number of members devoted to the preservation of the

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43 (1994) 55 FCR 492, 512-513.
44 (1994) 55 FCR 492, 512-513.
45 (1994) FCR 492, 512.
46 Redwood affidavit [2]-[5].

endangered and threatened species located through the area; it is invited by Government to comment on ecological issues; and its activities in the area (both in terms of representations to government and its use of the mountain) make it uniquely placed to represent the areas ecological value. Indeed, the EEG rhetorically asks, if it does not represent the interests of the native habitat and fauna on Brown Mountain, who will?'

69 VicForests points to a number of distinctions between EEG and the *North Coast Environment Council*, which was found to have standing. EEG is not a peak body; it has had no recognition by government as to its authority in representing environmental issues. It has not received governmental funding. VicForests submits that EEG's only real concern is intellectual or emotional, and as such it cannot have standing in a proceeding such as this.

70 Accordingly, VicForests says that EEG lacks standing and this is fatal to the application. I do not agree. Whilst I accept that EEG is not a peak body and does not have a close relationship to the Victorian State Government (in terms of advice or funding), these matters are not determinative of this issue. Whether a particular organisation has standing or not will depend on the facts of the case and most importantly the nature of its relationship with the subject matter of the dispute.

71 I am mindful that I only need to be satisfied on this point on a *prima facie* basis and I am not determining the issue at a final hearing. It seems to me that EEG's level of membership, constant activities on Brown Mountain (including its conducting of fauna surveys), regular communications with government concerning the area and the fact that it appears to be the only body directly interested in the preservation of the area's natural habitat demonstrates in a practical sense, that it has an arguable case to bring this proceeding.

The extent of the obligation imposed on VicForests by the statutory regime

72 VicForests contend that many of the obligations apparently imposed upon it amount to statements of principle, rather than specific responsibility. It was said that such

obligations are "imperfect" and that there can be no question of it acting contrary to any legal obligation in commencing the logging operations.

73 Insofar as EEG relies upon s 4(2) of the FFGA, I agree with VicForests' submission. An objective within the statute, notwithstanding the use of the word "guarantee", could not, I think, create a statutory obligation.

74 However, the position is considerably different, certainly on a *prima facie* basis, in relation to the responsibilities imposed upon VicForests (via the SFTA) by the Plan, the Code and the action statements.

75 I have set out their provisions in some detail, as I think it necessary to understand that these are far from lofty statements of principle, but rather, given the inherent tension between principles of conservation and logging, are designed to set out precisely the manner in which VicForests will carry out its logging,. This is particularly so, it seems to me, where there is a question of whether a threatened or endangered species habitat will be affected.

76 I think it is distinctly arguable that parts of the Code and the action statements I have referred to have application to VicForests logging activities where there is the detectable presence of a species to which the particular obligation applies.

77 I will deal with each relatively briefly. The action statements[47] are patently specific. Once the particular species is detected, then specific obligations are cast upon particular agencies of government including statutory authorities. Whilst I accept that there may be a real distinction as to which obligations contained within the action statements are cast upon particular statutory bodies (e.g. DSE, Parks Victoria, VicForests), the reference within the action statement to a specific entity does not, I think, necessarily remove the obligation of VicForests to comply with provisions of the action statement, particularly as three of the action statements were published prior to VicForests' establishment. For present purposes, I do not have to resolve this issue, as it seems there is a *prima facie case* that, at the very least, once a species is

47 [51]-[54] of these reasons.

detected, then each of the matters contained in the relevant action statements needs to at least be considered by VicForests. Moreover, it is clearly arguable that where VicForests is specifically identified, as is the case with the potoroo action statement 4, it must take the mandated action once it is aware of detection.

78 I also think that there is a *prima facie* case that the Code (apart from requiring compliance with the action statements) imposes obligations upon VicForests.

79 Arguably, the mandatory actions provisions of the Code requiring the application of the precautionary principle and the consideration of relevant scientific evidence create statutory obligations. I have set out in some detail those provisions as it seems to me that there is a case, particularly given the vulnerability of the species, that these requirements must be applied by VicForests in the event of detection of a threatened or endangered species in the preparation or running of operations. That is not to say that upon more careful analysis and with more evidence, a contrary conclusion may be reached, but at the very least there is a *prima facie* case that it is necessary for VicForests to apply the precautionary principle and to consider relevant scientific evidence in the event of detection within a coupe.

80 I am not persuaded that the reference to the precautionary principle is, at least on the analysis required for this application, simply a statement of objective or lofty principle. The decision of the Western Australian Supreme Court in *Bridgetown/Greenbushes Friends of the Forest v Conservation and Land Management*[48] is distinguishable in that it involved a considerably different statutory regime. It is the terms of the Code and the emphasis on the mandatory nature of the obligation on VicForests both before and during operations that satisfies me that there is a *prima facie* case that it was obliged to comply with the Code in relation to both the application of the precautionary principle and the consideration of expert evidence relevant to the area the subject of logging.

81 Finally, there is the Plan, parts of which clearly descend into sufficient detail in

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48 (1997) 18 WAR 102, per Wheeler J.

relation to particular species. Arguably, it may also create a statutory obligation if that species is identified within the areas to be logged. The creation of an SMZ or SPZ in areas where particular species are identified is spelt out – and this applies directly to potoroos and Sooty Owls.

82 In summary, I am satisfied that there is a *prima facie* case that the provisions of the action statements, the Code and the Plan create lawful obligations upon VicForests with which it must comply when carrying out logging operations in the two coupes. For reasons that will become clear, it is not necessary at this time for me to resolve questions as to the applicability of other statutory provisions to VicForests operations.

Breach of the obligations – arguable unlawful conduct

83 Central to whether EEG can demonstrate an arguable case is evidence of the presence of the potoroo and the Sooty Owl within the two coupes. Absent evidence of their presence in the coupes, it is difficult to see how there could be a relevant breach. Indeed, putting aside the requirement of consideration of scientific evidence as mandated in the Code, the obligations (arguably) cast upon VicForests must, depend upon an identification of the habitat and the presence of the particular species within the relevant coupes. Otherwise, the obligations would be meaningless and impossible to apply.

84 EEG relies upon the evidence of Mr Lincoln and Ms Poole as to the identification of the potoroo in the coupe. During 2009, Mr Lincoln conducted surveys which he provided to the DSE. Subsequently, on 14 August, he set up a camera which filmed activity near the Brown Mountain creek separating the two coupes. He used infrared and motion sensor cameras.[49] A still photograph was also taken from the footage. Ms Poole, a qualified zoologist, has examined the film and the photograph and concluded:

> "Based on my knowledge of Victorian marsupials and previous experience with potoroos, the most likely explanation is that the animal in question is a

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49 Affidavit of Andrew Lincoln, 24 August 2009 [4].

potoroo. … I am confident in my opinion that the animal on film is a Long-footed potoroo".[50]

85 Mr McDonald of VicForests accepted that the camera was located within the 100 metre buffer area (SPZ) which will apply to coupe 15.[51]

86 The evidence of Ms Poole and Mr Lincoln is corroborated, to some extent, by the DSE survey conducted between January and March of this year.[52]

87 Although the DSE, in the course of its survey, did not detect a potoroo within the coupe, the authors, Mr Henry and Mr Mitchell of the Biodiversity Group of the DSE, made the following observation:

> "The non-detection of Long-footed Potoroos must be interpreted with caution. The survey was implemented using standard methodology and level of effort and it had a high probability of detecting the species if it was present. However the species can be very difficult to detect – often detections are not confirmed until a third or even fourth return visits to a site, despite the presence of diggings which are strongly suggestive of the species presence. Some diggings of this type were seen in the study area, and the forest type was assessed as good quality habitat for Long-footed Potoroos. A confirmed Long-footed Potoroo site also occurs immediately to the west of the study area, on the other side of Leggs Road, and thus it is plausible that the species may be present at the site."[53]

88 I am satisfied, on the basis of the evidence I have identified above that there is an arguable case that a potoroo or potoroos are present in or about the areas of the two coupes (remembering that the two coupes are adjacent and beside the creek). The detection of a potoroo in one of the coupes makes it likely, I think, that it or they may be inhabiting the other coupe. The detection of a potoroo enlivens, at the very least, the application of the potoroo action statement.

89 VicForests contended that the declaration by the Minister of an SPZ 100 metres to the east and west of the Brown Mountain creek dividing the two coupes was sufficient to comply with its obligations[54] under the action statement.[55] The requirement, once

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50 Affidavit of Eliza Poole, 24 August 2009 [18].
51 McDonald first affidavit, [39].
52 EMP3 to the affidavit of Eliza Poole.
53 Page 9 Exhibit EMP3 to affidavit of Eliza Poole 24 August 2009.
54 McDonald first affidavit [40] in a hearsay form relying upon advice from a DSE officer.
55 See [27].

there is detection, is to comply with the provisions of the appendix.[56] For my part, at least on this application, I am not satisfied that the mere declaration of this area constitutes appropriate compliance with the wide range of requirements identified in the appendix, particularly those relating to the creation of a potoroo habitat. These requirements mandate careful consideration of the establishment of a habitat in the coupes. I think EEG has an arguable case on this issue.

90 Nor am I satisfied that the declaration of the SPZ satisfied the obligations cast upon VicForests by other parts of the Code. The detection of the potoroo raises the question of VicForests' application of the precautionary principle in relation to its logging activities as set out in the Code.[57] It seems to me that there is at least an arguable case that once the presence of the particular species is noted, then there is an obligation upon VicForests to comply with that principle in determining whether to commence or continue with operations.[58]

91 Finally, the detection of the potoroo may engage the management strategy contained in the plan[59] requiring the protection of confirmed sites of the potoroo in areas of up to 400 to 500 hectares. How this provision is to be interpreted is not altogether clear to me, but it also reflects the overarching conservation obligation on the part of VicForests once a potoroo is detected.

92 I have therefore concluded that, given the detection of the potoroo, EEG has established a *prima facie* case in the sense explained in *O'Neill v ABC*, that VicForests would be in breach of its obligations imposed by the Code and the action statement if it commenced logging in coupes 15 and 19 this week.

93 EEG also argued that the report of Dr Meredith[60] was relevant to the question of breach as it constituted an expert report which VicForests was obliged to consider. The report is entitled "Assessment of Critical Habitat for Six Species Under the Flora

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56 See [41].
57 Clause 2.2.2 of the Code.
58 See the observations as to the application of the precautionary principle of Osborn J in *Western Water v Rosen* [2008] VSC 382, [107-]109].
59 See [60] of these reasons.
60 Exhibit JR39.

and Fauna Guarantee Act in the Bonang-Goongerah area, East Gippsland, Victoria". This report essentially deals with the declaration of Brown Mountain as critical habitat under the FFGA. Whilst it was prepared in April 2009, it seems clear that it first came to the notice of VicForests in the course of this proceeding.

94 I am not prepared at the present time to conclude one way or another as to whether the obligation to consider expert advice and research as required by the Code extends as far as to require VicForests to deal with every report drawn to its attention, whilst preparing or continuing logging operations, particularly where such a report emerged only in the course of legal proceedings and was apparently prepared for use in litigation.

95 In the light of my conclusion as to the arguable breach of statutory obligations in respect of the potoroo, I need only deal briefly with the question of the presence of the Sooty Owl in the coupes, It has not been sighted by DSE officers or by any of the volunteers who conducted surveys of coupes on Brown Mountain.[61] However, one volunteer has apparently heard the owl within coupe 15.[62] It is not at all clear at the present time, as to whether it inhabits the area, in the sense of roosting or nesting. This would be necessary, I think, to trigger the application of the various statutory obligations.

96 EEG placed no real reliance upon the detection of the other species. In any event, given my conclusion in relation to the presence of potoroo, it is not necessary to deal with the presence or otherwise of those species and any potential breaches of statutory obligations.

97 Finally, I should also add that I am not persuaded that there is any potential breach of the obligations imposed on VicForests in respect of coupes 26 and 27. The evidence does not disclose detection of the potoroo or the Sooty Owl in those coupes. Moreover, there is no probative material that VicForests plans to carry out

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61 Exhibits JR17, JR24, JR26, JR27.
62 Exhibit JR17.

operations in these coupes in the near future.[63]

Balance of convenience/Minimum risk of injustice

98 VicForests pointed to a number of matters which militate against the granting of an injunction. They were as follows.

99 First, the primary case of EEG is weak and further there is a risk that EEG will fail at trial in establishing that it has the requisite standing. I accept that the question of standing may be a real consideration at trial. However, I am not otherwise persuaded that there is such weakness in EEG's case for this to be a decisive consideration.

100 Second, VicForests has a statutory obligation to log State forests. This area has been designated for logging for some time and contracts entered into. It will suffer a sizeable financial loss as set out by Mr McDonald, if prevented from doing so.[64] Weather patterns mean that the beginning of September is the preferable time for carrying out the logging of the coupes. There is a risk, depending on the season, that if prevented from logging, that it will not be able to meet its contractual commitments. I accept that VicForests will suffer financially if an interlocutory injunction is granted. I also accept that contractors and customers will be disadvantaged. However, I am not persuaded that the extent of the disadvantage is as significant as set out by Mr McDonald. There seems little hard evidence that there will be any true contractual issues (either with contractors or customers) as a result of the loss of these two coupes to logging this year. Even if I am wrong about that, and in the event that EEG's claim fails, the fact remains that VicForests retains the asset which, presumably, can be harvested at a later time (say next year). Notwithstanding my observations during the course of the hearing, no material was provided by VicForests to indicate what loss it would suffer on a deferral basis. Rather, it elected to provide figures on the basis of a total loss of production and the impact on contractors. Whilst I take into account that there will be a real financial

63 McDonald first affidavit [23].
64 Mc Donald first affidavit, [41]-[46], McDonald second affidavit, [6]-[12], CM17.

impact upon VicForests and contractors, I am not satisfied that it is as severe as Mr McDonald maintains.

101 Third, VicForests correctly says that any undertaking as to damages which may be given by EEG is in effect close to meaningless. The estimate of EEG's assets vary between $10,000[65] and $45,000. If it is unsuccessful in the claim, presumably it will, at least, have out of pocket legal expenses, and I assume, there will be no money available to satisfy the undertaking as to damages. However, this is a public interest piece of litigation against a State corporation and I bear in mind that the preservation of endangered native fauna is a paramount consideration in the statutory provisions and documents I have referred to.[66]

102 There is an extraordinarily powerful consideration in favour of granting an interlocutory injunction. I have referred previously to the photographs tendered in relation to the logging of coupe 20.[67] I readily acknowledge that logging operations are lawful activities and in carrying out those activities there will be consequential destruction of native flora and the habitat of native fauna. The photographs, however, demonstrate the apparent total obliteration of the area of native forest as a result of logging and the subsequent burning off. To put it bluntly, once the logging is carried out and the native habitat destroyed, then it cannot be reinstated or repaired in anything but the very, very long term. An award of damages is, of course, irrelevant.

103 In *Slater Walker Superannuation Pty Ltd v Great Boulder Mines Limited*,[68] Lush J said:

> "There will be other situations in which, though the plaintiff's proof of his rights or the infringement of them is not strong, an injunction may be granted because to withhold it would do the plaintiff irreparable harm, while to grant it would not greatly injure the defendant. The possible variety of situations is unlimited."

104 Irreparable harm will be done to the habitat of the native fauna, and particularly that

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65 McDonald first affidavit [48].
66 See *Oshlack v Richmond River Shire Council* (1994) 82 LGERA 236, 243.
67 Exhibits VEB20 and VEB21.
68 [1997] VR 107, 110.

of the detected potoroo. I accept that there will be significant financial ramifications for VicForests by the granting of an interlocutory injunction, but, as I have said, that needs to be balanced against the irreversible damage that will be caused to the habitat, bearing in mind that the potoroo is an endangered and threatened species.

105 I am persuaded that the balance of convenience strongly favours the granting of an interlocutory injunction to preserve the status quo until final hearing. Further, the lesser risk of injustice test points directly to the preservation of the status quo.

106 In reaching this conclusion, I have thought long and hard about the adverse economic consequences to VicForests, its customers and its contractors. Notwithstanding these matters I have formed the firm opinion that the legislature intended that its logging operations be carried out with clear and specific consideration of the environmental impact of such an enterprise upon threatened species; a potential breach of these guidelines runs contrary, I think, to the underlying policy of the Code, the Plan and the action statements. Whether, of course, there has in fact been a breach of the applicable provisions (as may be found by the trial judge) will be determined at a full hearing of EEG's claim.

Other discretionary considerations

107 VicForests urged several other considerations which tell against the granting of the injunction.

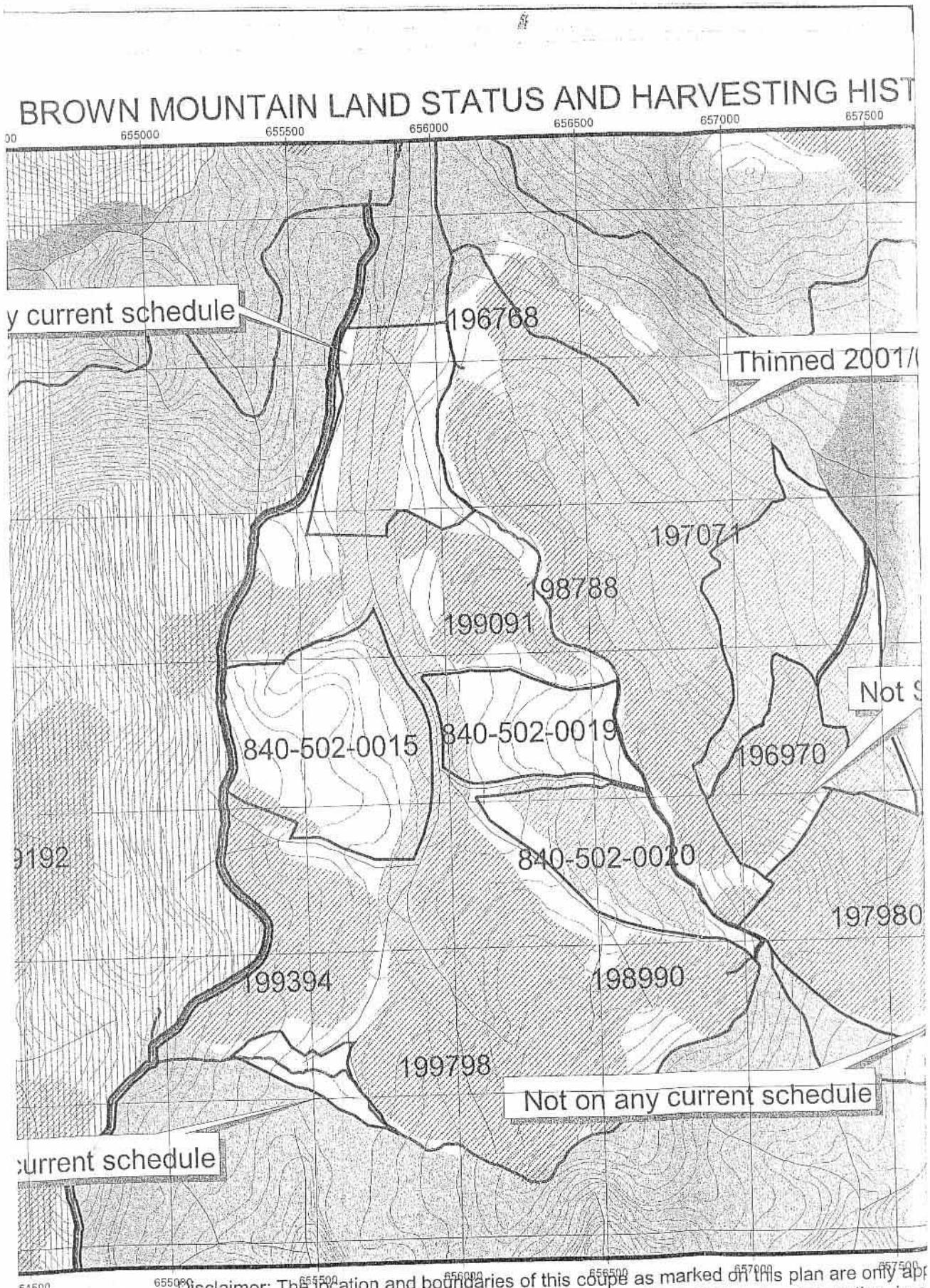
108 First, it referred to the principle that equity will not intervene where there is a breach of the criminal law. Section 45(1) of the SFTA creates an offence where a person carries out harvesting operations unless they are authorised operations. Section 44 requires that VicForests' operations comply with the timber release plan. However, the alleged unlawful activities of VicForests are not solely confined to its asserted failure to comply with that plan. As I have sought to explain, the source of VicForests' obligations comes from a variety of statutes and documents, rather than one specific statute which gives rise, in the case of breach, to a criminal penalty. I do not think that there is much in this point.

109 Secondly, it relied upon the proposition that there are alternative remedies that could have been pursued by EEG. In particular, it says that EEG had, up until shortly prior to the issue of this proceeding, focused on trying to persuade the Minister to make an ICO under the FFGA. It pointed to a number of letters written on behalf of EEG to the Minister threatening judicial review, particularly in relation to the Minister's failure to make an ICO in relation to Brown Mountain. It said that judicial review was the appropriate form of relief and that it should be directed at the Minister. I do not find this submission persuasive. The nub of EEG's argument is that there are stringent conditions attached to the logging of pristine native forest such as Brown Mountain, and that once the existence of endangered or threatened species is made out, then those obligations cannot be avoided. It is not a case for judicial review, but rather for curial intervention if the proposed logging of the coupes is ultimately demonstrated to be unlawful. Merely because there was a change of tack by EEG at a late point of time does not seem to me to militate strongly against interlocutory relief, provided the *prima facie* case is made out.

Conclusion

110 It is appropriate to grant an interlocutory injunction restraining VicForests from carrying out timber harvesting operations in coupes 15 and 19. I am not persuaded that the injunction should be any wider, as on the material I cannot apprehend the danger of any immediate logging operations in the other two coupes - nor are they within immediate proximity of 15 and 19.

111 I am also firmly of the view that a strict timetable should be set in relation to the trial of this proceeding. Given VicForests' legitimate concerns as to the worth of any undertaking as to damages and its potential economic detriment as a result of the granting of the injunction, the trial should be held as soon as is practicable. I propose to discuss with counsel the best way in which to advance the case, with a view to having a trial conducted early in 2010.



Disclaimer: The location and boundaries of this coupe as marked on this plan are only app
boundary of the coupe will be marked on the ground by VicForests before harvesting, in a