

**FORM 5A**

Rule 5.02(1)

**WRIT**

**IN THE SUPREME COURT  
OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION**

No. *SC12014 03096*

BETWEEN

**ENVIRONMENT EAST GIPPSLAND INC**

Plaintiff

and

**SECRETARY, DEPARTMENT OF ENVIRONMENT AND PRIMARY INDUSTRIES**

First Defendant

and

**VICFORESTS**

Second Defendant

Date of document:	22 September 2014
Filed on behalf of:	Plaintiff
Bleyer Lawyers Pty Ltd	Ph: 9600 4224
Level 1, 550 Lonsdale Street	Fx: 9600 4225
Melbourne 3000	Code: 101385
Em: danya@bleyerlawyers.com.au	Ref: VEB:DJ:15714

**TO THE DEFENDANTS**

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and

- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

FILED 22 September 2014



THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

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SECRETARY, DEPARTMENT OF ENVIRONMENT AND PRIMARY INDUSTRIES

First Defendant

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VICFORESTS

Second Defendant

STATEMENT OF CLAIM

Date of document:	22 September 2014
Filed on behalf of:	Plaintiff
Bleyer Lawyers Pty Ltd	Ph: 9600 4224
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PART A: INTRODUCTION

A1: Parties

1. The Plaintiff (**EEG**) is:
  - (a) an Association incorporated under the *Associations Incorporation Reform Act* 2012 (Vic); and
  - (b) capable of suing in its own name.
2. The First Defendant (the **Secretary**) is:
  - (a) the Secretary to the Department of Environment and Primary Industries (**DEPI**);
  - (b) established under s 6 of the *Conservation, Forests and Lands Act* 1987 (Vic) (the

- CFL Act**) as a body corporate capable of being sued in its corporate name;
- (c) the person who, under s 18 of the *Forests Act* 1958 (Vic) (the **Forests Act**), is charged with the protection and control and management of State forests;
  - (d) required by s 7 of the *Flora and Fauna Guarantee Act* 1988 (Vic) (**Flora and Fauna Guarantee Act**) to administer that Act in such a way as to promote flora and fauna conservation and management objectives; and
  - (e) is, or alternatively, appoints and is responsible for, the office of Senior Forester for the East Gippsland Forest Management Area (the **East Gippsland FMA**).
3. The Second Defendant (**VicForests**):
- (a) is established as a State body under s 14 of the *State Owned Enterprises Act* 1992 (Vic);
  - (b) was, on 28 October 2003, declared to be a State business corporation under s 17 of the *State Owned Enterprises Act* 1992 (Vic);
  - (c) is a body corporate capable of being sued in its own name;
  - (d) has as its principal function undertaking, on a commercial basis, the sale and supply of timber resources in Victorian State forests; and
  - (e) is a public authority for the purposes of s 4(2) of the *Flora and Fauna Guarantee Act*.
4. VicForests is the person who will undertake, whether by itself, its servants, agents or contractors, any authorised activities as defined in paragraph 14 below in the East Gippsland FMA.

## **A2: Standing**

5. At all material times, EEG has had amongst its objects and purposes:
- (a) the promotion of conservation values and environmental awareness about East Gippsland;

- (b) the promotion of sustainability in environmental, economic and social matters;
- (c) the making of representations to Government regarding land use and management; and
- (d) the undertaking of research, including in relation to forests and wildlife in East Gippsland.

6. At all material times, in furtherance of its objects and purposes, EEG has:

- (a) carried out regular visits to State Forests in East Gippsland including to identify rare or threatened flora and fauna, including the Powerful Owl, the Sooty Owl and the Masked Owl (the **Large Forest Owls**);
- (b) produced newsletters, articles, and other written information about the environment of East Gippsland and the protection of the environment in East Gippsland, particularly forests and threatened fauna species, including the Large Forest Owls;
- (c) made submissions to Government in relation to the protection of the environment in East Gippsland;
- (d) responded to Government invitations, at both State and Commonwealth level, to comment on environment-related matters;
- (e) been represented on Committees established by Government concerned with the environment including the Regional Forest Agreement Consultative Committee, and the Far East Gippsland Round Table Forum on fire established by the Secretary's Department;
- (f) conducted guided walking tours and camps in East Gippsland including in areas the subject of this proceeding and to observe the Large Forest Owls; and
- (g) brought proceedings in this Court to protect threatened communities and habitat in East Gippsland for threatened species and to challenge the lawfulness of timber

harvesting operations conducted by VicForests, including:

- (i) *Environment East Gippsland v VicForests* (2010) 30 VR 1 in relation to the Powerful Owl and the Sooty Owl;
- (ii) proceedings brought in 2012 in the Supreme Court of Victoria against the First and the Second Defendant in relation to the protection of threatened communities of rainforest in East Gippsland, which were settled; and
- (iii) proceedings brought in 2013 in the Supreme Court of Victoria against the First Defendant in relation to obligations to prepare action statements for listed threatened species and communities pursuant to s 19 of the Flora and Fauna Guarantee Act, which were settled.

7. At all material times, EEG has had standing to bring this application.

## **PART B: THE REGULATION OF FOREST OPERATIONS**

- 8. State forest in the State of Victoria is divided into forest management areas (**FMAs**).
- 9. For each FMA, a forest management plan is prepared pursuant to s 22 of the Forests Act.
- 10. By s 12A of the *Sustainable Forests (Timber) Act 2004 (Vic)* (the **Sustainable Forests Act**), all timber resources in State forest in the State of Victoria, namely timber from the trees or parts of trees which are specified as available for timber harvesting in an allocation order, are the property of the Crown.
- 11. Property in timber resources only passes from the Crown to VicForests in accordance with s 14(1) of the Sustainable Forests Act or otherwise in accordance with that Act.

### **B1: The Allocation Order**

- 12. On 1 October 2013, the Minister for Agriculture and Food Security, acting pursuant to s 13 of the Sustainable Forests Act, made an allocation order (the **Allocation Order**).
- 13. The Allocation Order:

- (a) allocates timber resources in a specified number of hectares of State forest in FMAs throughout Victoria to VicForests;
- (b) divides the State forest allocated to VicForests into forest stands differentiated by reference to species of trees; and
- (c) includes an allocation of timber resources to VicForests in the East Gippsland FMA.

### Particulars

The Allocation Order was published in the Victorian Government Gazette No. S 343 on 1 October 2013.

Reference to the full terms of the Allocation Order will be made at trial.

14. The Allocation Order permits VicForests to undertake the harvesting and selling, or the harvesting or selling, of trees in the forest stands allocated in accordance with the terms of the Allocation Order, together with associated management activities including, for example, the preparation of sites for timber harvesting, site rehabilitation, forest regeneration and monitoring (together, **the authorised activities**).
15. It is a condition of the Allocation Order that in undertaking the authorised activities, VicForests is required to comply with the conditions, requirements, obligations, measures and standards prescribed in:
  - (a) laws including the Sustainable Forests Act, the Forests Act, the CFL Act and the Flora and Fauna Guarantee Act;
  - (b) the Code of Practice described in paragraphs 33 to 38 below; and
  - (c) the East Gippsland Forest Management Plan (the **East Gippsland FMP**) as prepared and amended from time to time and described in paragraphs 24 to 27 below.
16. The condition referred to in paragraph 15 above applies to VicForests when it carries out the authorised activities in the East Gippsland FMA.

## **B2: The Timber Release Plan and the Amended Timber Release Plan**

17. On 1 October 2013, VicForests caused notice pursuant to s 41(1) of the Sustainable Forests Act to be published in the Government Gazette of a timber release plan it had prepared for the years 2013 – 2016 (the **Timber Release Plan**).
18. The Timber Release Plan identifies by map and coupe number the areas of State forest in Victorian FMAs, including the East Gippsland FMA, that are, or in the alternative, were until 17 July 2014, the subject of the release of timber resources to VicForests by the Allocation Order.

### **Particulars**

The notice was published in Victorian Government Gazette No. S 343 on 1 October 2013

The VicForests Board approval of the Timber Release Plan was published on the VicForests website together with the Timber Release Plan, including schedules and maps, at: <http://www.vicforests.com.au/approved-timber-release-plan/current-timber-release-plan>.

A copy of the Timber Release Plan is in the possession of the Second Defendant.

Reference to the relevant terms of the Timber Release Plan will be made at trial.

19. On 17 July 2014, VicForests caused notice to be published in the Government Gazette of a Timber Release Plan change pursuant to s 43(6) of the Sustainable Forests Act (the **Amended Timber Release Plan**).
20. The Amended Timber Release Plan replaces, or in the alternative, supplements the Timber Release Plan.
21. The Amended Timber Release Plan identifies:
  - (a) by map and coupe number the areas of State forest in Victorian FMAs, including the East Gippsland FMA, that from 14 July 2014 are the subject of the release of timber resources to VicForests by the Allocation Order; and

- (b) identifies at least 1179 coupes in the East Gippsland FMA predominantly for logging.

### **Particulars**

The notice was published in the Victorian Government Gazette No. S 29 on 17 July 2014.

The VicForests Board approval of the Amended Timber Release Plan is published on the VicForests website together with part of the Amended Timber Release Plan, including some schedules and maps at: <http://www.vicforests.com.au/approved-timber-release-plan/current-timber-release-plan>.

A copy of the Amended Timber Release Plan is in the possession of the Second Defendant.

Reference to the relevant terms of the Amended Timber Release Plan will be made at trial.

22. The Timber Release Plan, and the Amended Timber Release Plan, require that VicForests, in undertaking the authorised activities, comply with all relevant laws including, but not limited to:
- (a) the Sustainable Forests Act;
  - (b) the Forests Act;
  - (c) the CFL Act;
  - (d) the Flora and Fauna Guarantee Act; and
  - (e) all conditions, requirements and limitations in the Allocation Order.

### **Particulars**

Clause 6 of the Timber Release Plan and Clause 6 of the Amended Timber Release Plan.

23. At all material times, in undertaking the authorised activities, VicForests is also required to comply with, and apply, the precautionary principle, namely:

“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.”

#### **Particulars**

Pages 21 (cl 2.2.2) and 77 of the Code.

Page 28 of the East Gippsland FMP.

### **B3: The East Gippsland Forest Management Plan**

24. In or about December 1995, the Secretary made the East Gippsland FMP pursuant to s 22 of the Forests Act.

#### **Particulars**

The East Gippsland FMP is contained in a document entitled East Gippsland Forest Management Plan dated 1995.

A copy of the East Gippsland FMP is in the possession of the First and Second Defendants.

Reference to the relevant terms of the East Gippsland FMP will be made at trial.

25. The East Gippsland FMP:

- (a) promulgates conservation guidelines that specify minimum levels of planned protection for sensitive and threatened species, including for Large Forest Owls, in the East Gippsland FMA;
- (b) adopts the zoning scheme described in paragraph 26 below that sets priorities and specifies permitted activities for different parts of State forests; and
- (c) requires review, evaluation and amendment of the zoning scheme to ensure that the requisite minimum levels of planned protection are met as described in paragraphs 50 to 52 below.

#### **Particulars**

Pages 7, 12, 28, 30-31, 78-79 of the East Gippsland FMP.

26. The East Gippsland FMP:

- (a) zoning scheme divides State forest in the East Gippsland FMA into three zones

**(Forest Management Zones):**

- (i) Special Protection Zone, which is to be managed for conservation and in which timber harvesting will be excluded (the **SPZ**);
  - (ii) Special Management Zone, which is to be managed to conserve specific features while catering for timber production under certain conditions (the **SMZ**); and
  - (iii) General Management Zone, which is to be managed for a range of uses but timber production will have a high priority (the **GMZ**); and
- (b) establishes a zoning scheme register that lists the conservation values forming the basis of each of the SPZs and the SMZs at the date of publication (the **1995 Zoning Scheme Register**).

**Particulars**

Pages 8, 10 and 11 of the East Gippsland FMP.

The 1995 Zoning Scheme Register is contained at Appendix B at pages 90 to 105 of the East Gippsland FMP and includes Map 26.

A copy of Map 26 is in the possession of the First and Second Defendants.

27. The East Gippsland FMP requires that the Senior Forester for the East Gippsland FMA, or alternatively, the Secretary, be responsible for implementing the FMP including:
- (a) adopting the relevant zoning scheme for forest management activities as set out in paragraph 26 above as amended from time to time;
  - (b) on-going multi-disciplinary planning and reviewing to ensure that the zoning scheme is up to date and based on the best available information; and
  - (c) monitoring and reporting to assess its effectiveness.

**B4: Action statements**

28. Pursuant to s 19 of the Flora and Fauna Guarantee Act, the Secretary made the following Action Statements in relation to the Large Forest Owls:

- (a) in or about 1999, an Action Statement in relation to the Powerful Owl (*Ninox strenua*); (the **Powerful Owl Action Statement**);
- (b) in or about 2001, an Action Statement in relation to the Sooty Owl (*Tyto tenebricosa*); (the **Sooty Owl Action Statement**);
- (c) in or about September 2003, an Action Statement in relation to the Masked Owl (*Tyto novaehollandiae*) (the **Masked Owl Action Statement**).

### **Particulars**

Section 19 of the Flora and Fauna Guarantee Act requires the Secretary to prepare an action statement for any listed threatened species.

- 29. Each of the Powerful Owl, the Sooty Owl and the Masked Owl are listed as threatened species under s 16 of the Flora and Fauna Guarantee Act.
- 30. The Advisory List of Threatened Vertebrate Fauna in Victoria (2013) lists the conservation status of the:
  - (a) Powerful and Sooty Owl as vulnerable and therefore facing a high risk of extinction in the wild; and
  - (b) Masked Owl as endangered and therefore facing a very high risk of extinction in the wild.
- 31. The Action Statements referred to in paragraph 28 above have been in effect at all material times.
- 32. The Action Statements for the Large Forest Owls:
  - (a) aim in the short term to prevent further decline, and in the long term to increase the population of each of these species;
  - (b) promulgate conservation prescriptions for the Large Forest Owls; and
  - (c) require:
    - (i) that the conservation guideline for the Large Forest Owls in the East Gippsland FMP be maintained until that FMP is reviewed;

- (ii) on-going monitoring and completion of specific research as described in paragraphs 47 to 49 below.

### **Particulars**

Pages 6-7 and 9 of the Action Statement for the Powerful Owl

Pages 3-4 and 6 of the Action Statement for the Sooty Owl.

Pages 4, 7 and 8 of the Action Statement for the Masked Owl.

### **B5: The Code of Practice**

33. Section 46 of the Sustainable Forests Act requires that VicForests comply with any relevant Codes of Practice.
34. On a date presently unknown to EEG, the then Minister for Water, Environment and Climate Change made, approved and published a Code of Practice entitled "Code of Forest Practices for Timber Production 2007" under Part 5 of the CFL Act (**the Code**).
35. The Code regulates timber harvesting and associated activities in the East Gippsland FMA including the authorised activities described in paragraph 14 above.
36. The Secretary is responsible for ensuring compliance with the Code.

### **Particulars**

Page 6 of the Code.

37. At all material times, the Code required VicForests to ensure that when approving the Timber Release Plan and the Amended Timber Release Plan they:
  - (a) are consistent with the Code and the East Gippsland FMP; and
  - (b) minimise impact on biodiversity.
38. At all material times, the Code required the Secretary and VicForests when conducting forest management planning and operations, including the authorised activities, in the East Gippsland FMA to:
  - (a) comply with measures specified in relevant Flora and Fauna Guarantee Action

Statements;

- (b) apply the precautionary principle, as defined in paragraph 23 above, 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; and
- (c) consider the advice of relevant experts and relevant research in conservation biology and flora and fauna management.

#### **Particulars**

Pages 13, 14 and 21 (cls 2.1.1, 2.1.2 and 2.2.2) of the Code of Practice.

Reference to the relevant terms of the Code of Practice will be made at trial.

### **PART C: CONSERVATION PRESCRIPTIONS**

39. The East Gippsland FMP requires that there be:

- (a) conservation of flora and fauna species and communities across their natural geographic range; and
- (b) protection of multiple populations of flora and fauna species across a species' range.

#### **Particulars**

Page 13 of the East Gippsland FMP.

40. The East Gippsland FMP conservation guideline for the Large Forest Owls requires the Senior Forester, and in the alternative, the Secretary, to ensure that:

- (a) good quality habitat (as defined in the East Gippsland FMP) is maintained in the East Gippsland FMA to support at least 100 pairs of each of the Large Forest Owls and:
  - (i) for Powerful Owls, good quality habitat is defined as approximately 800 hectares of forest dominated by old trees. Where the habitat is based on a

known owl locality, it must be within a 1500 hectare area of forest that includes the detection site;

- (ii) for Sooty Owls, good quality habitat is defined as approximately 500 hectares of forest dominated by old trees and generally comprising Lowland, Damp and Riparian Forest and Warm Temperate Rainforest. Where the habitat is based on a known owl locality, it must be within a 1,000 hectare area of forest that includes the detection site;
- (iii) for Masked Owls, good quality habitat is defined as approximately 500 hectares of forest including old, relatively undisturbed forest, woodlands and heathlands;
- (b) once sufficient habitat for 100 pairs is being managed to conserve the Large Forest Owls, new owl records may be used to adjust the zoning scheme in accordance with the Review Obligations described in paragraphs 50 to 52 below; and
- (c) within SMZ areas:
  - (i) areas of best habitat for the Large Forest Owls are identified and protected; and
  - (ii) harvesting is modified in areas of moderate habitat value by retaining additional habitat trees and advanced regrowth on coupes and concentrating harvesting in areas of lower value to the featured species.

### **Particulars**

Pages 30, 31 and 34 of the East Gippsland FMP.

41. The Powerful Owl Action Statement requires the Secretary to:

- (a) establish 100 Powerful Owl Management Areas (**POMAs**) in the East Gippsland FMA according to the following criteria for inclusion (in descending order of

priority):

- (i) confirmed identification of owl sites eg nesting tree utilised during the past 5 years;
  - (ii) confirmed roost tree utilised during the past five years;
  - (iii) repeated sighting or vocalisation during the past five years;
  - (iv) incidental sighting or vocalisation during the past five years;
  - (v) historic record not reconfirmed in past five years;
  - (vi) potential habitat area (preferably based on formal analysis and modelling);
- and
- (b) once regional targets are met, establish new POMAs on the basis of records of a higher priority.

42. The Powerful Owl Action Statement requires the Secretary and VicForests to:

- (a) where clear-fell or seed-tree systems are used for logging:
  - (i) ensure that each POMA will comprise at least 500 hectares of forest and is managed as a SPZ;
  - (ii) delineate and protect a core area of suitable habitat of at least 500 hectares (dependent on habitat type) as SPZ within a 3.5km radius (approx area of 3,800 hectares) for each POMA. Suitable habitat is areas dominated by old trees and areas likely to support high densities of prey species;
  - (iii) maintain additional habitat of up to 500 hectares as SPZ and/or SMZ within the same 3.5 km radius where forest stand characteristics limit the adequacy of the core SPZ;
  - (iv) determine the size of core SPZ and any additional habitat requirements by assessing the suitability of both existing forest habitat and regrowth forest in relation to prey densities; and

- (b) protect all confirmed nesting and roosting sites by a 3 hectare SPZ around the site and a 250-300 metre radius (or equivalent linear area) SMZ buffer around identified localities and by providing habitat for foraging by excluding areas from timber harvesting.
- 43. The Sooty Owl Action Statement requires the Secretary to establish 131 Sooty Owl Management Areas (**SOMAs**) in the East Gippsland FMA located on the basis of:
  - (a) the occurrence of owlets or roosting pairs of adults; and
  - (b) habitat identified as suitable by habitat modelling.
- 44. The Sooty Owl Action Statement requires the Secretary and VicForests to:
  - (a) ensure where clear-fell or seed-tree systems are used for logging:
    - (i) that each SOMA will comprise 500 hectares of forest and is managed as a SPZ;
    - (ii) that where the SOMA is based on a specific record, the SPZ will fall within a 3.5 km radius (approximately 3,800 hectares) of the record;
    - (iii) the 500 hectares will be bounded by recognisable features, preferably natural, such as ridgelines, sub-catchments or groups of sub-catchments; and
    - (iv) the 500 hectares will maximise habitats known to be used by the Sooty Owl including old-growth forest in gullies and forest with large and/or dead hollow-bearing trees and avoid extensive areas of forest known to be less suitable;
  - (b) protect all confirmed nesting and roosting sites utilised recently and frequently located outside a SOMA by a 3 hectare SPZ around the site and a 250-300 metre SMZ buffer around identified localities and by providing habitat for foraging by excluding areas from timber harvesting.

45. The Masked Owl Action Statement requires the Secretary to:

- (a) establish 100 Masked Owl Management Areas (**MOMAs**) in the East Gippsland FMA that are selected on the basis of:
  - (i) the strength of the evidence for the existence of a resident pair of Masked Owls; and
  - (ii) the need for MOMAs to be distributed throughout the main range of the species with a reasonable spread across habitats and land tenures.

46. The Masked Owl Action Statement requires the Secretary and VicForests to:

- (a) ensure that, where clear-fell harvest or seed-tree systems are used for logging:
  - (i) each MOMA will comprise a core area of at least 500 hectares of suitable habitat to be managed as a SPZ; and
  - (ii) where the MOMA is based on specific records, rather than habitat modelling, the SPZ will fall within a 3.5 km radius (approximately 3, 800 hectares) of the record;
- (b) protect all confirmed nests and roosting sites utilised recently and frequently located outside a MOMA by a 3 hectare SPZ around the site and a 250-300 metre SMZ buffer around identified localities and by providing habitat for foraging by excluding areas from timber harvesting.

(The obligations contained in paragraphs 39 to 46 are, together, the **Owl Conservation Prescriptions**.)

47. The Powerful Owl Action Statement requires the Secretary to:

- (a) regularly monitor at least 10% of POMAs in Victoria to determine the persistence of owls and breeding success, where the method of such monitoring will be determined so as to then provide statistically valid analysis of management actions and program evaluation; and
- (b) assess the results of attaining and protecting specified targets in line with the

major conservation objectives.

### **Particulars**

Pages 5 to 9 of the Powerful Owl Action Statement.

48. The Sooty Owl Action Statement requires the Secretary to:
- (a) conduct research into the Sooty Owl to determine:
    - (i) amongst other parameters, the annual mortality rates of adult males, adult females, sub-adults and fledglings, and the annual variation in those rates;
    - (ii) nesting, roosting, foraging and dispersal habitat requirements and ecological requirements so that conservation strategies are continuously improved; and
    - (iii) the home-range and territory sizes of the Sooty Owl in different habitat types and in habitats of varying qualities.

### **Particulars**

Pages 3 to 6 of the Sooty Owl Action Statement.

49. The Masked Owl Action Statement requires the Secretary to:
- (a) conduct surveys across all land tenures in Victoria to locate as many resident pairs of Masked Owls as possible across land tenures throughout the main range of the species, focussing mainly on lowland forests south of the Great Divide;
  - (b) undertake research about the Masked Owl including:
    - (i) investigating home ranges and use of habitat in a variety of habitat types, from dry open forest to tall wetter forests and mixed forest and farmland;
    - (ii) conducting dietary studies to refine the understanding of prey selection in all major Masked Owl habitat types;
    - (iii) undertaking telemetry studies to determine the dispersal and recruitment of young birds into established populations;

- (iv) recording habitat attributes of known Masked Owl sites to contribute to developing a model habitat (as has been done for the Sooty Owl and the Powerful Owl), investigating the actual use of such habitat elements to determine their importance and assessing the need to focus conservation efforts on those elements, and restoring habitat for the Masked Owl as new research becomes available.

### **Particulars**

Pages 6 to 8 of the Masked Owl Action Statement.

(The obligations contained in paragraphs 47 to 49 are, together, the **Owl Conservation Research Obligations**.)

### **PART D: REVIEW OBLIGATIONS**

50. The East Gippsland FMP requires that each year, the Senior Forester for the East Gippsland FMA, or alternatively, the Secretary, will:
  - (a) consider new information; and
  - (b) if necessary, recommend (or alternatively make) amendments to the zoning scheme.
51. The East Gippsland FMP requires that each year, the Senior Forester for the East Gippsland FMA, or alternatively, the Secretary, will:
  - (a) make available an up-to-date zoning map and a list of any proposed amendments to the zoning scheme for public viewing and comment;
  - (b) consider comments received and relevant specialist advice; and
  - (c) seek approval from the Secretary about, (or alternatively approve) the adoption of revised zones.

(The obligations in paragraphs 50 and 51 are, together, the **Annual Review**.)

52. The East Gippsland FMP requires the Senior Forester, or in the alternative, the Secretary to review and amend Forest Management Zone boundaries when:

- (a) a zone no longer contains the values for which it was established, to ensure that conservation targets are met;
- (b) new records are listed for species whose conservation targets have not been met; or
- (c) new records of some species warrant changes to zones to consolidate an area of good quality habitat in exchange for an area of poorer-quality habitat.

### **Particulars**

Pages 12, 31, 78 to 80 of the East Gippsland FMP.

(The obligations paragraphs 50 to 52 are, together, the **Review Obligations**.)

53. The East Gippsland FMP and the Action Statements for each of the Large Forest Owls are binding on:

- (a) the Senior Forester;
- (b) the Secretary; and
- (c) VicForests.

### **Particulars**

VicForests is required to comply with the Allocation Order, the Timber Release Plan and the Amended Timber Release Plan.

Each of the Allocation Order, the Timber Release Plan and the Amended Timber Release Plan require, as conditions, that VicForests comply with the Code, the Flora and Fauna Guarantee Act and the East Gippsland FMP.

The Code requires compliance with the Flora and Fauna Guarantee Act and the Action Statements made thereunder.

Sections 4 and 7 of the Flora and Fauna Guarantee Act.

Section 10 of the CFL Act.

Sections 18 and 22 of the Forests Act.

Paragraph 2 above.

## **PART E: RELEVANT EVENTS SINCE 1995**

### **E1: Amendments to the Forest Management Zones and OMAs**

54. In or about 1997, following the making of the East Gippsland Regional Forest Agreement between the Commonwealth and Victorian Governments on 3 February 1997 (the **RFA**), the Secretary purported to review and/or amend the East Gippsland FMP by amending the:

- (a) 1995 Zoning Scheme Register; and
- (b) review guideline on page 79 of the East Gippsland FMP.

#### **Particulars**

The 1995 Zoning Scheme Register amendments are contained at attachment 1 to the RFA.

The review guideline amendments are contained at attachment 5 to the RFA.

The RFA is in the possession of the First Defendant.

Reference to the relevant terms of the RFA will be made at trial.

55. In or about 2011, the Secretary purported to review and/or amend the Forest Management Zones in the East Gippsland FMA and the 1995 Zoning Scheme Register (as amended in 1997) (the **2011 Zoning Scheme Register**).

#### **Particulars**

The 2011 Zoning Scheme Register, including maps, was published online as spatial data containing attributes on the website "Forest Explorer Online" operated by the First Defendant and located at <http://nremap-sc.nre.vic.gov.au/MapShare.v2/imf.jsp?site=forestexplorer>.

The 2011 Zoning Scheme Register is in the possession of the First and the Second Defendants.

Reference to relevant terms of the 2011 Zoning Scheme Register, including maps, will be made at trial.

56. In or about 2012, the Secretary purported to review and/or amend the boundaries of the

Owl Management Areas (the **OMAs**) in the East Gippsland FMA (the **2012 OMA Review**).

57. The new OMAs were published in the form of a register and maps showing each of the POMAs, the SOMAs and the MOMAs in the East Gippsland FMA (together, the **2012 OMA Registers**).

#### **Particulars**

Copies of the 2012 OMA Registers, including maps, are in the possession of the First and Second Defendants.

Reference to relevant terms of the 2012 OMA Registers, including maps, will be made at trial.

58. According to the 2012 OMA Registers described in paragraph 57 above:
- (a) 93 POMAs comprise less than 800 hectares;
  - (b) the total number of hectares set aside as POMAs is 64,107;
  - (c) there are 98 MOMAs; and
  - (d) MOMA 0016 comprises 110 hectares.
59. By reason of the matters described in paragraph 58 above, the OMAs in the East Gippsland FMA do not comply with the Owl Conservation Prescriptions.

#### **Particulars**

The conservation guideline contained in the East Gippsland FMP for the Powerful Owl requires there be established in the East Gippsland FMA 100 POMAs each comprising 800 hectares of good quality and a total of 80,000 hectares.

The conservation guideline contained in the East Gippsland FMP for the Masked Owl requires there be established in the East Gippsland FMA 100 MOMAs, each comprising 500 hectares.

Paragraph 40(a) above.

#### **E2: The Orbost Fire Complex**

60. In January and February 2014, bushfires burnt over 170,000 hectares or approximately 17% of the East Gippsland FMA (the **Orbost Fire Complex**).

61. The Orbost Fire Complex affected approximately:

- (a) fifteen per cent of POMAs, namely the following fifteen (15) POMAs:
  - (i) 0012, 0022, 0032 (partial), 0033, 0034, 0035, 0036, 0037, 0038, 0047, 0048, 0049, 0053, 0054, 0128;
- (b) seventeen per cent of SOMAs, namely the following twenty-two (22) SOMAs:
  - (i) 0004, 0005, 0023, 0117, 0118, 0119, 0120, 0126, 0128, 0129, 0136, 0138, 0140, 0141, 0142, 0143, 0144, 0145, 0149, 0150, 0151, 0152; and
- (c) nine per cent of MOMAs, namely the following nine (9) MOMAs:
  - (i) 0002, 0003 (partial), 0004, 0005, 0005 (2012), 0014, 0048, 0049, 0092.

(Together, the **Fire Affected OMAs**.)

62. By reason of the matters described in paragraphs 60 and 61 above:

- (a) the Forest Management Zones in the East Gippsland FMA no longer contain the conservation values for which they were established (described in paragraph 52(a) above) and which are:
  - (i) prescribed in the 2011 Zoning Scheme Registers; and/or
  - (ii) required to meet the Owl Conservation Prescriptions, and
- (b) the OMAs in the East Gippsland FMA do not comply with the Owl Conservation Prescriptions.

63. The matters described in paragraphs 60 and 61 above constitute “new information” within the meaning of the Review Obligations described in paragraph 50(a) above.

64. The Secretary and/or VicForests are aware, or ought reasonably to be aware of the matters described in paragraphs 60 to 62 above.

### **Particulars**

By letter dated 2 April 2014, the Plaintiff wrote to the Minister responsible for the First Defendant and the First Defendant’s Department indicating that large areas of the reserve system including SPZs designated as habitat for the Large Forest Owls had been burned by the Orbost Fire Complex and requesting that

a review of the zoning scheme be conducted to ensure that conservation targets and prescriptions are met.

A copy of the letter from the Plaintiff to the Minister dated 2 April 2014 is in the possession of the Plaintiff's solicitors and available for inspection.

### **E3: Owl Detections**

65. The following coupes in the East Gippsland FMA contain detections of Large Forest Owls within the coupe or within close proximity of the coupe boundary:

- (a) 890-503-0014:
  - i. a Sooty Owl detection, and possible roost site, within the coupe in 2012; and
  - ii. a Sooty Owl detection within close proximity of the coupe boundary in 2011;
- (b) 830-509-0004: a Powerful Owl detection, and possible roost site, within 50 metres of the coupe in 2014;
- (c) 830-510-0006: two Sooty Owl detections, and a Powerful Owl detection and possible roost site, within the coupe in 2014;
- (d) 830-506-0013: two Sooty Owl detections, and possible roost site, within the coupe, or alternatively within close proximity of the coupe boundary, in 2011;
- (e) 830-510-0004: a Sooty Owl and a Powerful Owl detection within 50 meters of the coupe in 2014;
- (f) 885-503-0003: a Powerful Owl detection within the coupe in 2011;
- (g) 830-509-0011: a Sooty Owl detection within the coupe in 2014;
- (h) 840-502-0026: two Powerful Owl detections within the coupe in 2012;
- (i) 893-504-0002: a Sooty Owl detection within the coupe in 1989;
- (j) 836-516-0005: a Powerful Owl detection and a Sooty Owl detection within the coupe in 2014;

- (k) 842-516-0010: a Sooty Owl detection within the coupe in 2014;
- (l) 849-502-0015: a Powerful Owl detection within the coupe and a Sooty Owl detection within 50 meters of the coupe in 2012;
- (m) 814-510-0008: a Sooty Owl detection within 50 metres of the coupe boundary in 2011;
- (n) 814-510-0009: a Sooty Owl detection within 50 meters of the coupe boundary in 2011;
- (o) 815-515-0005: a Sooty Owl detection within 50 meters of the coupe boundary in 2011;
- (p) 830-506-0004: two Sooty Owl detections within the coupe in 2011;
- (q) 830-503-0014: two Sooty Owls detections within the coupe in 2010;
- (r) 849-502-0016: a Sooty Owl detection within 50 meters of the coupe boundary in 2012;
- (s) 849-502-0019: a Sooty Owl detection within 50 meters of the coupe boundary in 2012;
- (t) 829-515-0011: four Sooty Owl detections within the coupe in 1991-1992;
- (u) 829-515-0002: eight Powerful Owl detections within the coupe in 2011;
- (v) 830-501-0024: a Sooty Owl detection within the coupe in 2011;
- (w) 832-502-0017: a Sooty Owl detection within the coupe in 1992;
- (x) 885-514-0012: a Powerful Owl detection within 50 meters of the coupe boundary in 2011;
- (y) 877-507-0018: a Masked Owl detection within 50 meters of the coupe boundary in 2011;
- (z) 817-502-0015: a Sooty Owl detection within the coupe in 2011;
- (aa) 892-510-0001: a Sooty Owl detection within the coupe in 2014;

- (bb) 892-509-0002: a Sooty Owl detection within the coupe in 2014;
- (cc) 864-505-0011: a Powerful Owl detection within close proximity of the coupe boundary in 2011; and
- (dd) 871-504-0002: a Sooty Owl detection within close proximity of the coupe boundary in 2011.

### Particulars

The detections relating to coupes **817-502-0015, 830-503-0014, 829-515-0011, 893-504-0002, 814-510-0008, 814-510-0009, 815-515-0005, and 832-502-0017** are recorded in the Victorian Biodiversity Atlas published and maintained by the Secretary's Department and available publicly at the Secretary's Department's website.

The detections relating to coupes **830-501-0024, 830-506-0004, 829-515-0002, 849-502-0015, 840-502-0026, 885-514-0012, 849-502-0019, 849-502-0016, and 877-507-0018** were obtained by VicForests' contractors in the course of pre-logging surveys conducted by VicForests, and were subsequently recorded in the Victorian Biodiversity Atlas published and maintained by the Secretary's Department and available publicly at the Secretary's Department's website.

The detections relating to coupes **890-503-0014** (in 2011), **830-506-0013, 864-505-0011 and 871-504-0002** were recorded by VicForests' contractors in the course of pre-logging surveys conducted by VicForests. Copies of the relevant pre-logging surveys are in the possession of VicForests.

The detection in coupe **890-503-0014** in 2012 was recorded by David Caldwell and Tim Gentles on behalf of Goongerah Environment Centre and submitted to the Secretary's Department in or about October 2012. A copy of the document recording the detection and submitted to the Secretary's Department is in the possession of the Plaintiff's lawyers and available for inspection.

The detection relating to coupe **885-503-0003** was recorded by Andrew Lincoln and David Caldwell in or about March 2011 and submitted to VicForests. A copy of the document recording the detection and submitted to VicForests is in the possession of the Plaintiff's lawyers and available for inspection.

The detections relating to coupe **836-516-0005** were recorded by Andrew Lincoln and others in about May and June 2014 and submitted to the Secretary's Department and VicForests on or about 25 August 2014. A copy

of the document recording the detections and submitted to the Secretary's Department and VicForests is in the possession of the Plaintiff's lawyers and available for inspection.

The detections relating to coupes **830-509-0004, 830-510-0006 and 830-510-0004** were recorded by Andrew Lincoln and Owen Hanson in about August 2014 and submitted to the Secretary's Department and VicForests on or about 5 September 2014. A copy of the document recording the detections and submitted to the Secretary's Department and VicForests is in the possession the Plaintiff's lawyers and available for inspection.

The detection relating to coupe **830-509-0011** was recorded by Rena Gabarov, Andrew Lincoln and Owen Hanson in about September 2014 and submitted to the Secretary's Department and VicForests on or about 15 September 2014. A copy of the document recording the detection and submitted to the Secretary's Department and VicForests is in the possession the Plaintiff's lawyers and available for inspection.

The detections relating to coupes **892-510-0001 and 892-509-0002** were recorded by Andrew Lincoln and Owen Hanson in about September 2014 and submitted to the Secretary's Department and VicForests on or about 16 September 2014. A copy of the documents recording the detections and submitted to the Secretary's Department and VicForests is in the possession the Plaintiff's lawyers and available for inspection.

The detection relating to coupe **842-516-0010** was recorded by Andrew Lincoln and others in about September 2014 and submitted to the Secretary's Department and VicForests on or about 19 September 2014. A copy of the document recording the detection and submitted to the Secretary's Department and VicForests is in the possession the Plaintiff's lawyers and available for inspection.

(The coupes in paragraph 65 are, together, the **Coupes**).

66. In or around 2013 or 2014, VicForests partially logged Coupes 830-510-0006, 836-516-0005, and 830-510-0004 by seed tree method.

67. The Coupes:

- (a) are listed on the Amended Timber Release Plan and are scheduled to be logged predominantly by seed tree method; and
- (b) are in areas that are likely to contain good quality or suitable habitat for Large Forest Owls as defined by the East Gippsland FMP or required by the Action Statements.

68. The detections described in paragraph 65 constitute “new records” within the meaning of the Review Obligations described in paragraph 52(b) and (c) above.
69. The Secretary and/or VicForests are aware, or ought reasonably to be aware, of the matters described in paragraph 65.

### **Particulars**

The Plaintiff refers to and repeats the Particulars at paragraph 65.

70. The majority of the Coupes are adjacent, or in close proximity, to each other or, alternatively, to:
  - (a) Adjacent Coupes as described in paragraph 71 below; and/or
  - (b) forest areas which are zoned as SPZ, reserve or which are otherwise not available for logging.
71. The following coupes are adjacent, or in close proximity, to one or more of the Coupes:
  - (a) 817-502-0011, 817-503-0008, and 817-502-0013;
  - (b) 830-503-0016, 830-503-0005, and 830-505-0013;
  - (c) 842-520-0028, 829-516-0015, 829-515-0001, 829-515-0012, and 842-520-0017;
  - (d) 830-501-0025, 830-503-0021, and 830-503-0018;
  - (e) 830-506-0014, 830-508-0008, and 833-512-0019;
  - (f) 832-501-0032, 832-501-0033, 832-501-0018, 832-502-0019, 832-502-0010, and 832-502-0011;
  - (g) 849-502-0021 and 849-502-0022;
  - (h) 840-502-0015 and 840-502-0019;
  - (i) 814-510-0006;
  - (j) 836-516-0006, 836-516-0007, 836-510-0019, 836-510-0018 and 836-515-0009;
  - (k) 885-503-0015, 885-505-0008, and 886-509-0012;
  - (l) 866-501-0004 and 866-501-0017;

- (m) 871-505-0011;
  - (n) 830-509-0006;
  - (o) 842-516-0016, 842-516-0024, 842-516-0023, 842-519-0012, 842-519-0013; 842-519-0022, 842-519-0021, and 842-519-0020; and
  - (p) 892-508-0005, 892-511-0001, and 892-511-0002.
- (together, the **Adjacent Coupes**).

### **Particulars**

- (a) The Adjacent Coupes set out at paragraph 71(a) are adjacent, or in close proximity, to Coupe 817-502-0015.
- (b) The Adjacent Coupes set out at paragraph 71(b) are adjacent, or in close proximity, to Coupe 830-503-0014.
- (c) The Adjacent Coupes set out at paragraph 71(c) are adjacent, or in close proximity, to Coupes 829-515-0011 and/or 829-515-0002.
- (d) The Adjacent Coupes set out at paragraph 71(d) are adjacent, or in close proximity, to Coupe 830-501-0024.
- (e) The Adjacent Coupes set out at paragraph 71(e) are adjacent, or in close proximity, to Coupes 830-506-0004 and/or 830-506-0013.
- (f) The Adjacent Coupes set out at paragraph 71(f) are adjacent, or in close proximity, to Coupe 832-502-0017.
- (g) The Adjacent Coupe set out at paragraph 71(g) is adjacent, or in close proximity, to Coupes 849-502-0019, 849-502-0016 and/or 849-502-0015.
- (h) The Adjacent Coupes set out at paragraph 71(h) are adjacent, or in close proximity, to Coupe 840-502-0026.
- (i) The Adjacent Coupe set out at paragraph 71(i) is adjacent, or in close proximity, to Coupes 814-510-0008, 814-510-0009 and/or 815-515-0005.
- (j) The Adjacent Coupes set out at paragraph 71(j) are adjacent, or in close proximity, to Coupe 836-516-0005.
- (k) The Adjacent Coupe set out at paragraph 71(k) is adjacent, or in close proximity, to Coupe 885-503-0003.
- (l) The Adjacent Coupe set out at paragraph 71(l) is adjacent, or in close proximity, to Coupe 864-505-0011.
- (m) The Adjacent Coupe set out at paragraph 71(m) is adjacent, or in close proximity, to Coupe 871-504-0002.
- (n) Adjacent Coupe set out at paragraph 71(n) is adjacent, or in close proximity, to Coupe 830-509-0011.
- (o) Adjacent Coupes set out at paragraph 71(o) are adjacent, or in close proximity, to Coupe 842-516-0010.
- (p) Adjacent Coupes set out at paragraph 71(p) are adjacent, or in close proximity, to Coupe 892-509-0002.
- (q) Coupes 890-503-0014, 830-503-0014, 829-515-0011, 830-506-0013, 830-506-0004, 893-504-0002, 832-502-0017, 849-502-0015, 829-

515-0002, 864-505-0011, 849-502-0019, 885-514-0012, 877-507-0018, 836-516-0005, 885-503-0003, 830-509-0004, 830-510-0004, 830-510-0006, 842-516-0010, 892-509-0002 and 830-509-0011 are adjacent, or in close proximity to, forest areas zoned as SPZ.

- (r) Coupes 890-503-0014, 830-501-0024, 832-502-0017, 840-502-0026, 849-502-0016, 814-510-0008, 815-515-0005, 814-510-0009, 885-514-0012, 892-510-0001, 892-509-0002 and 885-503-0003 are adjacent, or in close proximity, to forest areas which are otherwise not available for logging including reserve.

72. The Adjacent Coupes are:

- (a) listed on the Amended Timber Release Plan and are scheduled to be logged predominantly by seed tree method; and
- (b) in areas that are likely to contain good quality or suitable habitat for Large Forest Owls as defined by the East Gippsland FMP or required by the Action Statements.

73. By reason of the matters set out in paragraphs 65 to 67, 71 and 72 above, logging in the Coupes and/or the Adjacent Coupes (together, the **Threatened Coupes**) is likely to:

- (a) reduce good or suitable quality habitat for the Large Forest Owls in the East Gippsland FMA;
- (b) damage good or suitable quality habitat in the East Gippsland FMA in which Large Forest Owls are actually, or are likely to be present, or nearby; and
- (c) damage and adversely affect the recovery of populations of Large Forest Owls in the East Gippsland FMA to sustainable levels.

74. By reason of the matters set out in paragraphs 50, 52, 53, 58 to 65, 67 to 73 above, the Senior Forester, and in the alternative, the Secretary, is required to:

- (a) consider the new information described in paragraphs 60 and 61;
- (b) consider the new records of owls described in paragraphs 65 and 71 above;
- (c) review the Forest Management Zones and the OMAs in the East Gippsland FMA;
- (d) assess the quality of the habitat in the Fire Affected OMAs;

- (e) assess the quality of the habitat in the Threatened Coupes;
- (f) if necessary, substitute the poorer quality habitat in the Fire Affected OMAs with good quality habitat from the Threatened Coupes, including to consolidate an area of good quality habitat;
- (g) if necessary establish additional OMAs in accordance with the Owl Conservation Prescriptions described at paragraphs 39 to 46 above; and
- (h) if necessary, amend the Forest Management Zones,

to ensure the Forest Management Zones contain the conservation values for which they were established as prescribed in the 2011 Zoning Scheme Registers and/or to meet the requirements of the Owl Conservation Prescriptions for the Large Forest Owls.

75. By reason of the matters described in paragraphs 42(b), 44(b) and 65(a) to (d) above, VicForests and the Senior Forester, or in the alternative, VicForests and the Secretary, are required to:

- (a) protect the roosting sites contained in, or alternatively in close proximity to, Threatened Coupe numbers 890-503-0014, 830-509-0004, 830-510-0006 and 830-506-0013 with a 3 hectare SPZ and a 250 – 300 metre radius Special Management Site or SMZ around the roost site as described in paragraphs 42(b) and 44(b) above; or in the alternative,
- (b) conduct a survey of Threatened Coupe numbers 890-503-0014, 830-509-0004, 830-510-0006 and 830-506-0013 to confirm the possible roost sites and if confirmed, protect the sites in accordance with the Owl Conservation Prescriptions described in paragraphs 42(b) and 44(b) above.

(The matters described in paragraphs 74 and 75 are, together, the **Secretary's OMA and Zone Review**.)

76. Further, and in the alternative, the precautionary principle described in paragraph 23 and referred to at paragraph 38(b) above requires:

- (a) the Senior Forester, and in the alternative, the Secretary, and VicForests, to comply with the Owl Conservation Prescriptions described in paragraphs 39 to 46 above;
- (b) the Senior Forester, and in the alternative, the Secretary to conduct the Owl Conservation Research Obligations described in paragraphs 47 to 49 above;
- (c) the Senior Forester, and in the alternative, the Secretary, to conduct the Secretary's OMA and Zone Review described in paragraphs 74 and 75 above; and
- (d) VicForests to refrain, and the Secretary to restrain VicForests, from logging the East Gippsland FMA or in the alternative, the Threatened Coupes including until the Senior Forester, and in the alternative, the Secretary, has conducted the Secretary's OMA and Zone Review.

## **PART F: BREACH**

### **F1: Breach of Owl Conservation Prescriptions**

- 77. By reason of the matters set out in paragraphs 58 and 59 above, the Senior Forester, and in the alternative, the Secretary, and VicForests, have failed to comply with the Owl Conservation Prescriptions for the Powerful Owl and the Masked Owl described in paragraphs 39 to 46 above.
- 78. By reason of the matters set out in paragraphs 60 to 62 above, the Senior Forester, and in the alternative, the Secretary, and VicForests, have failed to comply with the Owl Conservation Prescriptions for each of the Large Forest Owls described in paragraphs 39 to 46 above.
- 79. Further or alternatively, the Senior Forester, and in the alternative, the Secretary, has breached the obligation set out at paragraph 38(b) to apply the precautionary principle, as it is described in paragraph 23 above, and the obligations set out at paragraph 76(a)

by failing to comply with the Owl Conservation Prescriptions for each of the Large Forest Owls described in paragraphs 39 to 46 above.

### **F2: Breach of Owl Conservation Research Obligations**

80. Further or alternatively, in breach of the Owl Conservation Research Obligations described in paragraphs 47 to 49 above, the Senior Forester, and in the alternative, the Secretary, has failed to carry out the Owl Conservation Research Obligations regularly or at all.
81. Further or alternatively, the Senior Forester, and in the alternative, the Secretary, has breached the obligation set out at paragraph 38(b) to apply the precautionary principle, as it is described in paragraph 23 above, and the obligations set out at paragraph 76(b) by failing to carry out the Owl Conservation Research Obligations described in paragraphs 47 to 49 above.

### **F3: Breach of Review Obligations**

82. Further or alternatively, in breach of the Annual Review obligation set out in paragraphs 50 and 51 above, the Senior Forester, and in the alternative, the Secretary has:
  - (a) failed to conduct the Annual Review; and
  - (b) further or alternatively, refused to conduct the Annual Review since 2011.

#### **Particulars**

On 19 May 2014, the Minister for Environment and Climate Change responded to the Plaintiff's letter of 2 April 2014 advising that the East Gippsland forest management zoning scheme review was completed in 2011 and there would be no further review until reviews of other Forest Management Areas have been completed.

A copy of the letter from the Minister for Environment and Climate Change dated 19 May 2014 is in the possession of the Plaintiff's solicitors and available for inspection.

83. Further or alternatively, in breach of the obligations set out in paragraphs 50, 52 and 74

above, the Senior Forester, and in the alternative, the Secretary, has failed, and in the alternative, refused to:

- (a) consider the new information described in paragraphs 60 and 61 properly or at all;
- (b) consider the new records of owls described in paragraphs 65 and 71 above;
- (c) review the Forest Management Zones and the OMAs in the East Gippsland FMA;
- (d) assess the quality of the habitat in the Fire Affected OMAs;
- (e) assess the quality of the habitat in the Threatened Coupes;
- (f) if necessary, substitute the poorer quality habitat in the Fire Affected OMAs with good quality habitat from the Threatened Coupes, including to consolidate an area of good quality habitat;
- (g) if necessary, establish additional OMAs in accordance with the Owl Conservation Prescriptions described at paragraphs 39 to 46 above; and
- (h) if necessary, amend the Forest Management Zones.

#### **Particulars**

The Plaintiff refers to and repeats the particulars set out in paragraphs 64 and 82 above.

84. Further or alternatively, in breach of the obligations set out in paragraph 75 above, the Senior Forester, and in the alternative, the Secretary, has failed to:

- (a) protect the roosting sites contained in, or alternatively in close proximity to, Threatened Coupe numbers 890-503-0014, 830-509-0004, 830-510-0006 and 830-506-0013 with a 3 hectare SPZ and a 250 – 300 metre radius Special Management Site or SMZ around the roost site as described in paragraphs 42(b) and 44(b) above; or in the alternative,
- (b) conduct a survey of Threatened Coupe numbers 890-503-0014, 830-509-0004, 830-510-0006 and 830-506-0013 to confirm the possible roost sites and if

confirmed, protect the sites in accordance with the Owl Conservation Prescriptions described in paragraphs 42(b) and 44(b) above.

85. Further or alternatively, the Senior Forester, and in the alternative, the Secretary, has breached the obligation set out at paragraph 38(b) to apply the precautionary principle, as it is described in paragraph 23 above, and the obligations set out at paragraph 76(c) and (d) above, by failing to carry out the Secretary's OMA and Zone Review described in paragraphs 74 and 75 above.

**F4: Unlawful forestry planning and operations**

86. Notwithstanding the above, VicForests has continued to carry out timber harvesting operations in the East Gippsland FMA, including logging the Threatened Coupes and intends, unless restrained, to continue to carry out timber harvesting operations in the East Gippsland FMA, including logging the Threatened Coupes.
87. Further and alternatively, the Secretary has failed, or in the alternative, refused to restrain VicForests from carrying out its timber harvesting operations in the East Gippsland FMA, including the logging of the Threatened Coupes.
88. By reason of the matters set out in paragraphs 77 to 87 above:
- (a) the Senior Forester, or in the alternative, the Secretary, has failed to comply with the:
    - (i) East Gippsland FMP;
    - (ii) Action Statements for the Large Forest Owls; and
    - (iii) Code;
    - (iv) precautionary principle;
    - (v) the Flora and Fauna Guarantee Act;
    - (vi) the Sustainable Forests Act; and
    - (vii) the Forests Act;

- (b) VicForests has failed to comply with the:
  - (i) East Gippsland FMP;
  - (ii) Action Statements for the Large Forest Owls;
  - (iii) Code;
  - (iv) precautionary principle;
  - (v) conditions in the Allocation Order;
  - (vi) conditions in the Timber Release Plan;
  - (vii) the Flora and Fauna Guarantee Act; and
  - (viii) the Sustainable Forests Act.

89. Further and alternatively, unless restrained by this Honourable Court, VicForests will, in any future logging or forestry harvesting operations within East Gippsland FMA, or in the alternative, in the Threatened Coupes, pending the completion of the reviews described in paragraphs 74 to 75 above, breach the:

- (a) East Gippsland FMP;
- (b) Action Statements for the Large Forest Owls;
- (c) Code;
- (d) precautionary principle;
- (e) conditions in the Allocation Order;
- (f) conditions in the Amended Timber Release Plan
- (g) the Flora and Fauna Guarantee Act; and
- (h) the Sustainable Forests Act.

#### **PART G: RELIEF**

90. EEG seeks:

- (a) A mandatory injunction requiring the First Defendant to undertake the reviews set out in paragraphs 74 and 75 above.


- (b) An injunction restraining VicForests, or any contractor retained by VicForests under s 70 of the Sustainable Forests Act, from undertaking any timber harvesting operations, and activities preparatory to timber harvesting operations, in the East Gippsland FMA, or in the alternative, in the Threatened Coupes, until the completion of the reviews set out in paragraphs 74 and 75 above.
- (c) A declaration that any timber harvesting operations in the East Gippsland FMA, or in the alternative, in the Threatened Coupes are, presently and until the completion of the reviews set out in paragraphs 74 and 75 above, unlawful.
- (d) Such further or other orders as the Court considers just.

R M Niall

P C Knowles

N J Blok

DATED 22 September 2014

  
**Bleyer Lawyers Pty Ltd**  
Solicitors for the Plaintiff

1. Place of trial—  
Melbourne
2. Mode of trial—  
before a Judge of the Court sitting alone.
3. This writ was filed—  
for the plaintiff by Bleyer Lawyers Pty Ltd of 1/550 Lonsdale Street, Melbourne 3000
4. The address of the plaintiff is—  
Locked Bag 3, Orbost, 3888
5. The address for service of the plaintiff is—  
c/ Bleyer Lawyers Pty Ltd, Level 1, 550 Lonsdale Street, Melbourne 3000
6. The address of the First Defendant is -  
8 Nicholson Street, East Melbourne, 3002
7. The address of the Second Defendant is—  
Level 7, 473 Bourke Street, Melbourne 3000