

FORM 5A

Rule 5.02(1)

WRIT

IN THE SUPREME COURT
OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

No.

SC 182 2016 00503

BETWEEN

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

and

VICFORESTS

Defendant

Date of document:	12 February 2016	
Filed on behalf of:	Plaintiff	
Environmental Justice Australia		Ph: (03) 8341 3100
Level 3, 60 Leicester Street		Fx: (03) 8341 3111
CARLTON VIC 3053		Code: CR009995
Em: danya.jacobs@envirojustice.org.au		Ref: Danya Jacobs

TO THE DEFENDANT

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.

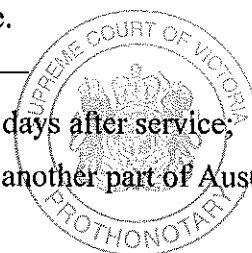
YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by—

- (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;

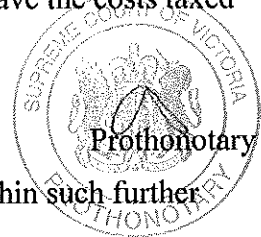


- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a 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.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED

12 FEB 2018



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

GENERAL ENDORSEMENT

Introduction

1. By its proceeding the Plaintiff alleges that:

- (a) The Defendant is presently undertaking and proposes to undertake certain forestry operations at Kuark Forest in East Gippsland Victoria (**the Kuark Forestry Operations**);
- (b) the Kuark Forestry Operations are unlawful in that they do or will not comply with s 15 and 46 of the *Sustainable Forests (Timber) Act* 2004 (**the Sustainable Forests Act**), the Allocation Order under the Sustainable Forests Act, and the Timber Release Plan for the East Gippsland forest management area, because they do or will not comply with:
 - A. the *Code of Practice for Timber Production* 2014 (**the Code**);
 - B. the *Management Standards and Procedures for timber harvesting operations in Victoria's State forests* 2014 (**the Management Procedures**);
 - C. the *Planning Standards for timber harvesting operations in Victoria's State forests* 2014, being Appendix 5 to the Management Procedures (**the Planning Standards**); and
 - D. the East Gippsland Forest Management Plan.

2. The Plaintiff seeks:

- (a) injunctions (both interim, interlocutory and final) to restrain the Defendant from undertaking the Kuark Forestry Operations; and

- (b) declaratory orders that the present and proposed Kuark Forestry Operations are unlawful.

Parties

- 3. The Plaintiff (**EEG**) is an Association incorporated under the *Associations Incorporation Reform Act 2012* (Vic).
- 4. The Defendant (**VicForests**):
 - (a) is a State body under s 14 of the *State Owned Enterprises Act 1992* (Vic);
 - (b) , was declared to be a State business corporation on 28 October 2003;
 - (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;
 - (e) is undertaking and will undertake forestry operations in the Kuark forestry coupes as described in paragraph 14 below (**the Kuark forestry coupes**), whether by itself, its servants, agents or contractors.

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.

6. At all material times, in furtherance of its objects and purposes, EEG has:
 - (a) carried out research including by means of surveys in State forests;
 - (b) produced newsletters, articles, and other written information about the environment of East Gippsland particularly forests;
 - (c) made submissions to Government;
 - (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, particularly forests, including the Regional Forest Agreement Consultative Committee and the East Gippsland Fire Roundtable; and
 - (f) conducted guided walking tours and camps in East Gippsland.
7. Accordingly, EEG has standing to bring this application.

The Allocation Order as amended

8. On or about 1 October 2013, the Minister for Agriculture made an allocation order under s 13 of the Sustainable Forests Act (the **Allocation Order**).
9. On or about 30 October 2014, the Minister amended the Allocation Order.
10. The Allocation order, as amended:
 - (a) allocates timber resources to VicForests by reference to numbers of different forest stands in forest management areas throughout Victoria; and
 - (b) includes an allocation of timber resources to VicForests in the East Gippsland FMA; and

- (c) by reason of the matters in sub-paragraph (b) above, includes an allocation of timber resources in the Kuark area.
11. It is a condition of the Allocation Order that VicForests is required to comply with:
- (a) all relevant laws, including the Sustainable Forests Act, the *Forests Act 1958* (Vic), the *Conservation Forests and Lands Act 1987* (Vic) (**CFL Act**), and the *Flora and Fauna Guarantee Act 1988* (Vic).;
 - (b) all relevant Codes of Practice, including the Code of Practice described in paragraphs 36 to 38 below; and
 - (c) the forest management zoning scheme established pursuant to the East Gippsland FMP described in paragraphs 26 to 34 below.

The Timber Release Plan

12. On or about 31 August 2015, VicForests prepared a Timber Release Plan (the **Timber Release Plan**) under Section 37 and 38(1)(a) of the Sustainable Forests Act identifying by map, schedule and coupe number the areas of forest in the East Gippsland FMA that were the subject of release.
13. Contrary to Section 38(1)(b) of the Sustainable Forests Act, VicForests failed to detail the approximate timing of timber harvesting in the identified coupes on the Timber Release Plan.
14. The Timber Release Plan has designated coupe numbers 830-507-0020 and 830-507-0021 at Kuark Forest for timber harvesting (the **Kuark forestry coupes**).
15. In or about January or February 2016, VicForests commenced timber harvesting operations in some or all of the Kuark forestry coupes.

16. On or about 19 January 2016, VicForests published a Notice of Timber Harvesting Safety Zones under Section 77B of the Sustainable Forests Act on VicForests' website, which:
 - (a) includes coupes 830-507-0020 and 830-507-0021;
 - (b) designates coupes 830-507-0020 and 830-507-0021 with a "Harvest Status" of "In progress".

The East Gippsland Forest Management Plan

26. In or about December 1995, the Secretary of the Department of Environment, Land, Water and Planning (the **Secretary**) made a working plan (the **East Gippsland FMP**) under s 22 of the *Forests Act* 1958 (Vic) for the East Gippsland Forest Management Area (**East Gippsland FMA**).
27. The Kuark forestry coupes are:
 - (a) located in the East Gippsland FMA; and
 - (b) covered by the East Gippsland FMP.
28. Chapter 2 of the East Gippsland FMP ("Forest Management Strategy") creates a forest management zoning scheme (**FMZ scheme**) in the East Gippsland FMA.
29. The FMZ scheme divides State forest of East Gippsland into three zones:
 - (a) the Special Protection Zone (**SPZ**), which "will be managed for conservation" and from which "timber harvesting will be excluded"; and
 - (b) the Special Management Zone (**SMZ**), which "will be managed to conserve specific features, while catering for timber production under certain conditions"; and
 - (c) the General Management Zone, which "will be managed for a range of uses but timber production will have a high priority.

30. The East Gippsland FMP requires that there be:
- (a) conservation of flora and fauna species and communities across their natural geographic range;
 - (b) protection of multiple populations of flora and fauna species across a species' range.
31. The East Gippsland FMP aims to ensure that:
- (a) all indigenous fauna and flora species survive and flourish throughout the East Gippsland FMA;
 - (b) special protection is provided for threatened and sensitive fauna and flora species;
 - (c) linear reserves are maintained across the East Gippsland FMA to maintain resident populations of arboreal mammals across the forest landscape.
32. The East Gippsland FMP requires that in the event that densities of Yellow-bellied Gliders reach the levels prescribed, the Secretary must declare the area in which they are found to be a SPZ. Section 3.4 of the FMP states:
- "For each of the following occurrences, approximately 100 ha of suitable habitat will be included in the SPZ:*
- ...
- Yellow-bellied Glider - >0.2 per ha, >5 per km, or >7 per hour of spotlighting.*
- ...
- substantial populations of the above species that are isolated or in unusual habitat.*
33. The East Gippsland FMP requires that sites supporting rare or threatened crayfish species extending approximately 100 metres from each bank of a watercourse, for 1 km upstream and 1 km downstream of those sites will be included in a SPZ.

34. The conservation guidelines in the East Gippsland FMP for the Yellow-bellied Glider referred to at paragraph 32 above informed the mandatory timber harvesting instruction responsive to Yellow-bellied Glider detections set out in the Planning Standards referred to at paragraph 44(e) below (page 24 of the Code).

The Code of Practice

36. In or about October 2014, the then Minister for Environment and Climate Change made, approved and published under the CFL Act:
- (a) a Code of Practice entitled “Code of Forest Practice for Timber Production 2014” (the Code);
 - (b) the Management Procedures; and
 - (c) the Planning Standards.
37. The Code:
- (a) regulates timber harvesting and associated activities;
 - (b) requires each specific timber harvesting operation to be conducted in accordance with an approved Forest Coupe Plan; and
 - (c) includes “mandatory actions”, which “are actions to be conducted in order to achieve each operational goal” and that must be undertaken “to meet the objectives of the Code” (page 25 of the Code).
38. At all material times, the Code required VicForests:
- (a) to plan and manage forestry operations compliant “with relevant biodiversity conservation measures specified within the [Management Procedures]” (s 2.2.2.1, page 34);

- (b) to apply the precautionary principle to the conservation of biodiversity values (s 2.2.2.2, page 34);
- (c) to consider “the advice of relevant experts and relevant research in conservation biology and flora and fauna management” when planning and conducting forestry operations (s 2.2.2.3, page 34);
- (d) during planning for forestry operations, to “identify biodiversity values listed in the [Management Procedures] prior to roading [and] harvesting” and “[a]ddress risks to these values through management actions consistent with the [Management Procedures] such as appropriate location of coupe infrastructure, buffers, exclusion areas, modified harvest timing, modified silvicultural techniques or retention of specific structural attributes” (s 2.2.2.4, page 34);
- (e) to protect areas excluded from harvesting from the impacts of timber harvesting operations (s 2.2.2.5, page 34);
- (f) to ensure that rainforest communities are not harvested (s 2.2.2.7, page 34);
- (g) to plan forestry operations to meet the requirements of the Code and the Management Procedures (pages 34 and 36);
- (h) to prepare forest coupe plans prior to the commencement of a timber harvesting operation (s 2.3.1.2, page 36); and
- (i) to ensure that forest coupe plans “communicate the intended boundaries, activities and requirements in adequate detail to enable operators to complete work to the required standard, comply with the Code and comply with the Management Procedures” (s 2.3.1.2, page 36).

39. The Code defines rainforest (page 16) as follows:

'rainforest' means closed (>70 per cent projected foliage cover) broadleaved forest vegetation with a more or less continuous rainforest tree canopy of variable height, and with a characteristic composition of species and life forms, of at least 0.1 ha in area and 20 metres width. Rainforest includes closed transitional and seral communities, with emergent eucalypts, that are of similar botanical composition to mature rainforests in which eucalypts are absent.

The Management Procedures and Planning Standards

40. The Management Procedures:

- (a) are incorporated into the Code (page 23 of the Code);
- (b) provide detailed mandatory operational instructions, including region specific instructions for timber harvesting (page 23 of the Code);
- (c) apply to all commercial timber harvesting operations conducted in Victoria's State forests where the Code applies (page 21 of the Code);
- (d) include the Planning Standards.

41. Each of the following are biodiversity values listed in the Management Procedures:

- (a) Rainforest (page 40);
- (b) Long-footed Potoroo (*Potorous longipes*) (page 80);
- (c) Mountain Galaxias (*Galaxias olidus*) (page 80);
- (d) Yellow-bellied Glider (*Petaurus australis*) (page 80);
- (e) Blackfellow's Hemp (*Commersonia rossii*) (page 94); and
- (f) Slender Tree Fern (*Cyathea Cunninghamii*) (page 97).

42. At all material times the Management Procedures required VicForests:

- (a) to apply to the Secretary or delegate prior to commencement of a timber harvesting operation to create or amend an SPZ or SMZ in accordance with the Planning Standards where evidence of a value that requires protection via the establishment or amendment of an SPZ or SMZ is found in the field (s 2.1.1.3);
- (b) to include an SMZ plan in an application referred to at paragraph 42(a) (s 2.1.1.3);
- (c) to comply with the application and plan referred to in paragraphs 42(a) and (b) during timber harvesting operations (s 2.1.1.3);
- (d) to apply management actions for rare and threatened fauna and flora identified within areas affected by timber harvesting operations as outlined in Appendix 3 Tables 13 and 14 (Rare or threatened fauna and flora prescriptions) (page 36);
- (e) to follow s 2.1.1.3 where evidence of the following values listed in Appendix 3 Tables 13 and 14 (Rare or threatened fauna and flora prescriptions) are found in the field in the East Gippsland FMA, using tables 4 and 5 in the Planning Standards for information, as referred to in paragraph 42(e) below:
 - (i) Long-footed Potoroo (*Potorous longipes*) (page 80);
 - (ii) Mountain Galaxias (*Galaxias olidus*) (page 80);
 - (iii) Yellow-bellied Glider (*Petaurus australis*) (page 80);
 - (iv) Blackfellow's Hemp (*Commersonia rossii*) (page 94); and
 - (v) Slender Tree Fern (*Cyathea Cunninghamii*) (page 97).

- (f) to protect all rainforest from timber harvesting operations as follows:
 - (i) exclude non linear stands of rainforest that are 0.1 ha or more in size but less than 0.4 ha from timber harvesting operations;
 - (ii) exclude linear stands that are at least 0.1 ha but are less than 0.2 ha from timber harvesting operations;
 - (iii) exclude linear stands that are at least 0.2 ha but are less than 0.4 ha from timber harvesting operations and protect these stands with a 20 m buffer;
 - (iv) exclude all rainforest stands (including linear stands) equal to or exceeding 0.4 ha from timber harvesting operations and protect these stands with a 40 m buffer (page 40).
- (g) to prepare Forest Coupe Plans that:
 - (i) identify and describe management actions for all relevant coupe values specified within the Code, the Management Procedures and the FMZ scheme (page 24); and
 - (ii) “describe measures employed to protect biodiversity” (page 24);
 - (iii) “include a map which clearly and accurately identifies areas within and adjacent to a coupe that are to be excluded from harvesting and associated activities, or to which special prescriptions apply (including biodiversity protection or habitat enhancement, water quality and aquatic habitat protection” (page 25).

43. The Management Procedures:

- (a) describe rainforest canopy species in the East Gippsland FMA (page 38); and
- (b) include methods to recognise and delineate rainforest (pages 39).

44. At all material times the Planning Standards required that:
- (a) in establishing and maintaining a FMZ scheme, the planning standards contained in the Planning Standards that apply to SPZ and SMZ establishment and amendment be adhered to (Section 2.1.1.1, page 11);
 - (b) in conducting timber harvesting operations, the planning standards that apply to SMZ or SPZ management actions (which may or may not be represented spatially in the corporate FMZ scheme) be adhered to (Section 2.1.2.1, page 11);
 - (c) the management actions outlined in Table 4 (Detection based FMZ rules for fauna) and Table 5 (Detection based FMZ rules for flora) for zoned rare or threatened fauna and flora be applied (pages 36 and 69);.
 - (d) FMZ amendments and reviews be implemented in accordance with Table 4 (Detection based FMZ rules for fauna) and Table 5 (Detection based FMZ rules for flora) for new verified rare or threatened fauna and flora records and FMZ amendment requirements outlined in section 2 (page 36 and 69);
 - (e) the following management actions and FMZ amendment requirements listed in Table 4 (Detection based FMZ rules for fauna) and Table 5 (Detection based FMZ rules for flora) must be applied and adhered to in the East Gippsland FMA:
 - (i) Long-footed Potoroo:
 - A. Establish a SMZ of approximately 150 ha for each Long-footed Potoroo detection site that is outside the Core Protected Area (i.e. within existing SPZ and conservation reserves). As far as possible, SMZ boundaries will follow recognisable landscape features such as ridges, spurs and watercourses;

B. Within each SMZ, at least one third (50 ha) will be protected from timber harvesting and new roading. This will be known as Long-footed Potoroo Retained Habitat. The LFP Retained Habitat will include the best LFP habitat in the SMZ, which will generally be in gullies and on lower, sheltered slopes. The LFP Retained Habitat may include areas otherwise unavailable for timber harvesting due to restrictions under the Code. 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 a SMZ in the same year, the coupes must be separated by at least the equivalent of another coupe width. The SMZ, with the LFP Retained Habitat clearly delineated, will be shown as part of the Forest Management Area zoning scheme. If the 150 ha area includes any part of an existing conservation reserve or SPZ, these areas will retain their existing reservation or zoning status but will be considered for inclusion as part of the area of retained habitat. In such cases, the final area designated as SMZ may be correspondingly smaller (page 44).

ii. Mountain Galaxias:

A. Establish a SPZ extending 100 m from each bank for 1 km upstream and 1 km downstream of verified populations;

B. Avoid constructing new roads in the SPZ (page 45).

iii. Yellow-bellied Glider: Establish a SPZ of approximately 100 ha of suitable habitat where verified records report more than 0.2 individuals per hectare, more than 5 individuals per km or more than 7 individuals per hour of

spotlighting (together, **high densities**), or where substantial populations are located in isolated or unusual habitat (page 47).

iv. Blackfellow's Hemp:

- A. Establish a SMZ of 250 m radius over verified populations;
- B. Conduct a site inspection and detailed planning in consultation with DEPI (now the Department of Environment, Land, Water and Planning, [DELWP]) to ensure the species is adequately protected during timber harvesting operations (page 73).

v. Slender Tree Fern:

- A. Establish a SMZ of 250 m radius over verified populations;
- B. Conduct a site inspection and detailed planning in consultation with DEPI to ensure the species is adequately protected during timber harvesting operations (page 78).

(f) The following rules be applied to detected flora species:

- (i) Include all verified populations of species regarded as threatened at a State or national level in the SPZ or SMZ;
- (ii) Include substantial representative populations of species that are rare in Victoria, and poorly known, have few records or are at the edge of their range in East Gippsland in the SPZ or SMZ;
- (iii) Wherever practicable include populations in larger parts of the SPZ or SMZ in combination with other values;
- (iv) Plan disturbances in SMZ in consultation with DEPI biologists to ensure the species is adequately protected (page 69).

Listed threatened species

45. The following are listed as threatened species or communities under s 16 of the Flora and Fauna Guarantee Act:

- (a) Long-footed Potoroo (*Potorous longipes*);
- (b) East Gippsland Galaxias (*Galaxias aequipinnis*);
- (c) Slender Tree Fern (*Cyathea cunninghamii*);
- (d) Warm temperate rainforest (East Gippsland Alluvial Terraces).

Presence of the listed threatened species and biodiversity values

46. The Long-footed Potoroo:

- (a) is present in all or some of the Kuark forestry coupes;
- (b) alternatively is likely to be present in all or some of the Kuark forestry coupes;
- (c) uses, or is likely to use, all or some of the Kuark forestry coupes for foraging and feeding;
- (d) traverses, or is likely to traverse, all or some of the Kuark forestry coupes as part of its territory, or to travel from one part of its territory to another part.

47. The East Gippsland Galaxias:

- (a) is a species within the Mountain Galaxias (*Galaxias olidus*) species complex;
- (b) is likely to be present in streams and waterways in all or some of the Kuark forestry coupes;
- (c) is likely to be present on a stream, within one kilometre upstream or downstream of the Kuark forestry coupes.

48. The Slender Tree Fern:

- (a) is present within 1 kilometer of all or some of the Kuark forestry coupes;
- (b) is likely to be present in all or some of the Kuark Forestry Coupes.

49. The Blackfellow's Hemp:

- (a) is present in all or some of the Kuark forestry coupes;
- (b) alternatively is likely to be present in all or some of the Kuark forestry coupes.

Presence of new species

50. A Kuark Forest taxon of *Euastacus* (**the new species of crayfish**):

- (a) is a new species of crayfish within the East Gippsland Cray species complex;
- (b) is likely to be present in all or some of the Kuark forestry coupes;
- (c) uses or is likely to use all or some of the Kuark forestry coupes for feeding;
- (d) is present on a stream within about one kilometre of all or some of the Kuark forestry coupes;
- (e) is likely to be present on a stream, within one kilometre upstream or downstream of all or some of the Kuark forestry coupes.

Presence of Gliders

51. The Yellow-bellied Glider:

- (a) is present in all or some of the Kuark forestry coupes;
- (b) alternatively is likely to be present in all or some of the Kuark forestry coupes;
- (c) is present in high densities in all or some of the Kuark forestry coupes;
- (d) is likely to be present in high densities in all or some of the Kuark forestry coupes;
- (e) is present in high densities proximate to all or some of the Kuark forestry coupes;
- (f) uses, or is likely to use, all or some of the Kuark forestry coupes for denning, nesting, breeding, foraging and feeding;
- (g) traverses, or is likely to traverse, all or some of the Kuark forestry coupes as part of its territory, or to travel from one part of its territory to another part.

52. All or some of the Kuark forestry coupes:

- (a) contain suitable habitat for Yellow-bellied Gliders;

- (b) contain high quality habitat for Yellow-bellied Gliders.

Presence of rainforest

53. Rainforest:

- (a) is present in all of some of the Kuark forestry coupes;
- (b) comprises an area, or areas, greater than 0.1 hectare in all or some of the Kuark forestry coupes;
- (c) comprises an area, or areas, greater than 0.2 ha but less than 0.4 ha in all or some of the Kuark forestry coupes;
- (d) comprises an area, or areas, greater than 0.4 hectare in all or some of the Kuark forestry coupes.

Action Statements

- 64. Under s 19 of the Flora and Fauna Guarantee Act, the Secretary “must prepare an action statement for any listed taxon or community of flora or fauna... as soon as possible after that taxon... is listed”.
- 65. At all material times there has been an action statement for each of the following:
 - (a) Long footed Potoroo (*Potorous longippes*);
 - (b) Warm temperate rainforest (East Gippsland Alluvial Terraces) community.
- 66. There was an action statement for the Long-footed Potoroo made in 1994 and an action statement made in 2009. The action statement made in 1994 provides that:
 - (a) it “*is one of the rarest mammals in Australia*” (page 1);

- (b) *“Populations of Long-footed Potoroos in State forest are potentially threatened by habitat loss or fragmentation caused by logging and associated road construction”* (page 2); and
 - (c) *“Given the rarity of Long-footed Potoroos, and the lack of any information which suggests that they respond positively to fire or logging in the long term, areas supporting the species should be protected from fire and logging until more conclusive information is available”* (page 3).
67. The action statement made in 2009 provides that additional protection areas should be established where Long-footed potoroos have been detected in the State forest outside the core protection area (page 8).
68. The Action Statement for the Long-footed Potoroo informed the mandatory timber harvesting instruction responsive to Long-footed Potoroo detections set out in the Planning Standards (page 24 of the Code).
69. The Action Statement for the Warm Temperate Rainforest (East Gippsland Alluvial terraces) community provides that:
- (a) this community is *“in a demonstrable state of decline likely to result in extinction”* and *“significantly prone to future threats which are likely to result in extinction”* ;
 - (b) *“Although there has been no clearing of stands over the last 50 years, their integrity and extent continues to decline.”*
 - (c) *“Where rainforests occur in State forest or on private land, they may be affected by timber harvesting and the construction and maintenance of forest roads. Rainforest stands are excluded for timber harvesting in State forest in*

Victoria. Timber harvesting adjacent to rainforest stands is associated with a number of potential environmental risks, including changes to the rainforest microclimate, physical damage from tree felling or windthrow, spread of weeds and/or disease, altered hydrology, sedimentation and erosion. Regeneration fires may also impact on rainforest stands and surrounding vegetation.”

- (d) *“Rainforest stands (including linear stands) equal to or exceeding 0.4 ha must be protected by a vegetated buffer of a minimum width of 40 m. Aggregated stands must be treated as entire stands.”*

70. The Action Statement for rainforest informed the mandatory timber harvesting instruction for rainforest set out in the Code and Management Procedures (page 24 of the Code).
71. The Secretary has not prepared an Action Statement for the Slender Tree Fern, the East Gippsland Galaxias or the Mountain Galaxias.

Failure to comply with the Code and incorporated documents

72. VicForests has failed to comply with its obligations under the Code, Management Procedures and Planning Standards referred to in paragraphs 36 to 44 above.

Particulars

Long-footed Potoroos

Despite the presence, and likely presence, of Long-footed Potoroos in the Kuark forestry coupes:

- (a) VicForests failed to identify Long-footed Potoroos in some or all of the Kuark forestry coupes prior to commencing timber harvesting operations in the Kuark forestry coupes;
- (b) VicForests failed to apply or adhere to the management actions for the Long-footed Potoroos set out on page 44 of the Planning Standards;
- (c) VicForests failed to make an application to the Secretary or delegate to amend the FMZ scheme in a manner consistent with the management actions for the Long-footed Potoroo set out on page 44 of the Planning Standards prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;
- (d) VicForests commenced timber harvesting operations in some or all of the Kuark forestry coupes prior to the Secretary or delegate determining VicForests' purported application to amend, or amending, the FMZ scheme in some or all of the Kuark forestry coupes consistent with the management actions for the Long-footed Potoroo set out on page 44 of the Planning Standards.

East Gippsland Galaxias

Despite the presence, and likely presence, of the East Gippsland Galaxias in, and/or in streams within one kilometre upstream or downstream of, the Kuark forestry coupes:

- (e) VicForests failed to identify the East Gippsland Galaxias prior to commencing timber harvesting operations in the Kuark forestry coupes;
- (f) VicForests failed to apply or adhere to the management actions set out on page 45 of the Planning Standards for Mountain Galaxias;

- (g) VicForests failed to apply to the Secretary or delegate to make an application to amend the FMZ scheme in a manner consistent with the management actions set out on page 45 of the Planning Standards for Mountain Galaxias prior to commencing timber harvesting operations in the Kuark forestry coupes.
- (h) VicForests commenced timber harvesting operations in some or all of the Kuark forestry coupes prior to the Secretary or delegate determining VicForests' purported application to amend, or amending, the FMZ scheme in some or all of the Kuark forestry coupes consistent with the management actions for the Mountain Galaxias set out on page 45 of the Planning Standards.

Yellow-bellied Glider

Despite the presence, and likely presence, of the Yellow-bellied Glider in the Kuark forestry coupes:

- (i) VicForests failed to identify the Yellow-bellied Glider in the Kuark forestry coupes prior to commencing timber harvesting operations in the Kuark forestry coupes;
- (j) VicForests failed to apply or adhere to the management actions for the Yellow-bellied Glider set out on page 47 of the Planning Standards;
- (k) VicForests failed to apply to the Secretary or delegate to amend the FMZ scheme consistent with the management actions set out on page 47 of the Planning Standards prior to commencing timber harvesting operations in the Kuark forestry coupes.

Blackfellow's Hemp

Despite the presence, and likely presence, of the Blackfellow's Hemp in, and/or within 250 meters of, the Kuark forestry coupes:

- (l) VicForests failed to identify the Blackfellow's Hemp in and/or within 250 meters of the Kuark forestry coupes prior to commencing timber harvesting operations in the Kuark forestry coupes;
- (m) VicForests failed to apply or adhere to the management actions for Blackfellow's Hemp set out on page 73 of the Planning Standards;
- (n) VicForests failed to apply to the Secretary or delegate to amend the FMZ scheme consistent with the management actions set out on page 73 of the Planning Standards for the Blackfellow's Hemp prior to commencing timber harvesting operations in the Kuark forestry coupes.

Rainforest

Despite the presence, and likely presence, of an area or areas of rainforest in the Kuark forestry coupes:

- (o) VicForests failed to identify some or all of the rainforest in the Kuark forestry coupes prior to commencing timber harvesting operations in the Kuark forestry coupes;
- (p) VicForests failed to exclude some or all of the rainforest greater than 0.1ha from timber harvesting operations prior to commencing timber harvesting operations in the Kuark forestry coupes;
- (q) VicForests failed to exclude or to apply the required buffer to some or all of the rainforest greater than 0.2 ha but less than 0.4 ha prior to commencing timber harvesting operations in the Kuark forestry coupes;

- (r) VicForests failed to exclude or to apply the required buffer to some or all of the rainforest greater than 0.4 ha prior to commencing timber harvesting operations in the Kuark forestry coupes.
- 73. Further or alternatively, if not otherwise restrained from conducting future timber harvesting operations in the Kuark forestry coupes, VicForests will fail to comply with its obligations under the Code, the Management Procedures and the Planning Standards referred to in paragraphs 37 to 44 above.
- 74. By reason of matters set out above, in order to plan and conduct timber harvesting in the Kuark forestry coupes in compliance with the obligations in the Code to identify biodiversity values listed in the Management Procedures and to apply management actions in the Planning Standards prior to timber harvesting operations, VicForests must not log the Kuark forestry coupes until:
 - (a) adequate surveys have been undertaken to identify the locations of the biodiversity values listed at paragraph 41 above in and proximate to the Kuark forestry coupes;
 - (b) management actions for biodiversity values identified in and proximate to the Kuark forestry coupes are applied and adhered to consistent with the Management Procedures and Planning Standards;
 - (c) applications are made to the Secretary or delegate to amend the FMZ scheme consistent with the relevant management actions in the Planning Standards;
 - (d) the applications made to the Secretary or delegate are determined and the FMZ scheme is amended consistent with the relevant management actions in the Planning Standards.

Failure to apply the precautionary principle

75. VicForests has failed to take a precautionary approach in its planning for timber harvesting operations to be conducted in the Kuark forestry coupes in relation to the East Gippsland Galaxias.

Particulars

- (a) Failure to conduct any or any adequate surveys (including pre-logging surveys) for the East Gippsland Galaxias in some or all of the Kuark forestry coupes.
 - (b) Failure to conduct any scientific investigations into whether the East Gippsland Galaxias is likely to be present in the Kuark forestry coupes.
 - (c) Failure to conduct any scientific investigations into whether the Kuark forestry coupes provide suitable habitat for the East Gippsland Galaxias.
76. VicForests has failed to take a precautionary approach in its planning for timber harvesting operations to be conducted in the Kuark forestry coupes in relation to the Long-footed Potoroo.

Particulars

- (a) Failure to conduct any or any adequate surveys (including pre logging surveys) for the Long-footed Potoroo in some or all of the Kuark forestry coupes.
- (b) Failure to conduct any scientific investigations into whether the Long-footed Potoroo is likely to be present in the Kuark forestry coupes.
- (c) Failure to conduct any scientific investigations into whether the Kuark forestry coupes provide suitable habitat for the Long-footed Potoroo.
- (d) Despite the presence, and likely presence, of the Long-footed Potoroos in the Kuark forestry coupes, VicForests commenced timber harvesting operations in some or all of the Kuark forestry coupes prior to the Secretary

or delegate determining VicForests' purported application to amend, or amending, the FMZ scheme in some or all of the Kuark forestry coupes consistent with the management actions set out on page 44 of the Planning Standards.

77. VicForests has failed to take a precautionary approach in its planning for timber harvesting operations to be conducted in the Kuark forestry coupes in relation to the Slender Tree Fern.

Particulars

- (a) Failure to conduct any or any adequate surveys (including pre-logging surveys) for the Slender Tree Fern.
 - (b) Failure to conduct any scientific investigations into whether the Slender Tree Fern is likely to be present in or within 250 meters of the Kuark forestry coupes.
 - (c) Failure to conduct any scientific investigations into whether the Kuark forestry coupes provide suitable habitat for the Slender Tree Fern.
 - (d) Failure to act on reports that the Slender Tree Fern is likely to be present in or within 250 meters of the Kuark forestry coupes.
78. VicForests has failed to take a precautionary approach in its planning for timber harvesting operations to be conducted in the Kuark forestry coupes in relation to the Yellow-bellied Glider.

Particulars

- (a) Failure to conduct any or any adequate surveys (including pre-logging surveys) for Yellow-bellied Gliders.
- (b) Failure to conduct any scientific investigations into whether the Yellow-bellied Glider is likely to be present in the Kuark forestry coupes.

- (c) Failure to conduct any scientific investigations into whether the Kuark forestry coupes provide suitable habitat for the Yellow-bellied Glider.
 - (d) Failure to act, or to act proportionately and appropriately, on reports that the Yellow-bellied Glider is present in or around the Kuark forestry coupes.
 - (e) Failure to act, or to act proportionately and appropriately, on reports that the Kuark forestry coupes contain suitable or high quality habitat for the Yellow-bellied Glider.
79. VicForests has failed to take a precautionary approach in its planning for timber harvesting operations to be conducted in the Kuark forestry coupes in relation to the new species of crayfish.

Particulars

- (a) Failure to conduct any or any adequate surveys for fauna which if undertaken would have exposed or would reasonably have been expected to expose the presence or likely presence of new or previously undescribed species including the new species of crayfish.
- (b) Failure to conduct any scientific investigations for fauna which if undertaken would have exposed or would reasonably have been expected to expose the presence or likely presence of new or previously undescribed species, including the new species of crayfish.
- (c) Failure to conduct any scientific investigations into whether the Kuark forestry coupes provide suitable habitat for the new species of crayfish.
- (d) Failure to conduct any scientific investigations into the effect of alternation of habitat in the Kuark forestry coupes on the survival and breeding of the new species of crayfish.

80. VicForests has failed to take a precautionary approach in its planning for timber harvesting operations to be conducted in the Kuark forestry coupes in relation to the Blackfellow's Hemp.

Particulars

- (a) Failure to conduct any or any adequate surveys (including pre-logging surveys) for the Blackfellow's Hemp in some or all of the Kuark forestry coupes, and within 250 meters of some or all of the Kuark forestry coupes.
 - (b) Failure to conduct any scientific investigations into whether the Blackfellow's Hemp is likely to be present in or proximate to the Kuark forestry coupes.
 - (c) Failure to conduct any scientific investigations into whether the Kuark forestry coupes provide suitable habitat for the Blackfellow's Hemp.
 - (d) Failure to act, or to act proportionately and appropriately, on reports that the Blackfellow's Hemp is present in or around the Kuark forestry coupes.
 - (e) Failure to specify any timber harvesting prescriptions consistent with the Planning Standards for the Blackfellow's Hemp in all or some of the Kuark forestry coupes.
81. By reason of the matters set out above, a precautionary approach to the planning and conduct of timber harvesting requires VicForests not to log the Kuark forestry coupes until:
- (a) adequate surveys have been undertaken to determine whether the Kuark forestry coupes contain records of, habitat or potential habitat for:
 - i. any or all of the listed threatened species referred to in paragraph 45(a)-(c) above;
 - ii. the new species of crayfish listed in paragraph 50 above;

- iii. the biodiversity values listed at paragraph 41 above.
 - (b) management actions for biodiversity values identified in the Kuark forestry coupes are applied and adhered to consistent with the Planning Standards;
 - (c) applications made to the Secretary or delegate to amend the FMZ scheme for biodiversity values listed at paragraph 41 above in or proximate to the Kuark forestry coupes are determined and the FMZ scheme is amended consistent with the relevant management actions in the Planning Standards;
 - (d) proportionate and appropriate management actions are applied responsive to the detection of threatened species and the new species of crayfish in the Kuark forestry coupes.
82. VicForests will, unless restrained, fail to take a precautionary approach to the conduct of timber harvesting operations in the Kuark forestry coupes.

Failure to consider scientific information, research and advice

83. By about 8 January 2016, VicForests had been provided with information detailing the presence of a population of East Gippsland Galaxias in a stream within about 500 meters of some of all the Kuark forestry coupes.
84. By about 25 January 2016, VicForests had been provided with information detailing the presence of populations of Blackfellow's Hemp and Slender Tree Fern within about 1 km of some or all of the Kuark forestry coupes.
85. By about 25 January 2016, VicForests had been provided with copies of a report detailing the presence of the new species of crayfish in a stream within about 1 km of the Kuark forestry coupes.
86. By about 25 January 2016, VicForests had been provided with copies of an expert report prepared by Rudie Kuitert concerning the populations of East Gippsland Galaxias located proximate to some or all of the Kuark forestry coupes.

87. By about 8 February 2016, VicForests had been provided with copies of a report detailing the presence of a high density of Yellow-bellied Gliders in some or all of the Kuark forestry coupes.
88. By about 8 February 2016, VicForests had been notified that Blackfellow's Hemp had been detected in some or all of the Kuark forestry coupes.
89. VicForests has not considered and taken into account, properly or at all, the scientific information, research and advice referred to in paragraphs 83 to 88.

Failure to adhere to East Gippsland FMP and FMZ scheme

90. The discovery on survey of high densities of Yellow-bellied Gliders in State forest is an indicator that the area surveyed is, or is likely to be, productive and high quality habitat for Yellow-bellied Gliders.
91. Areas of State forest which support high densities of Yellow-bellied Gliders are, or are likely to, significantly contribute to the sustainability of the Yellow-bellied Glider species.
92. Clause 3.4 of the East Gippsland FMP requires such high quality habitat to be preserved through the establishment of a SPZ within the FMZ scheme made under the East Gippsland FMP.
93. Yellow-bellied Gliders are likely to be present in the Kuark forestry coupes in densities at or near the levels specified in the East Gippsland FMP.
94. Despite the matters required in the FMZ scheme by the East Gippsland FMP and referred to above, in not excluding areas with high densities of Yellow-bellied Gliders within the Kuark forestry coupes from timber harvesting VicForests has failed to comply with:
 - (a) the East Gippsland FMP;
 - (b) the FMZ scheme made under the East Gippsland FMP.

Failure to identify and protect threatened and new species, their prey and their habitat

95. In planning and conducting its timber harvesting operations in the East Gippsland FMA, VicForests is required by the Code, the Management Procedures, the Planning Standards, the Action Statements and the East Gippsland FMP:
- (a) to take appropriate steps to identify the presence of biodiversity values, threatened and new species and communities actually located within and proximate to the Kuark forestry coupes prior to commencing timber harvesting operations in the Kuark forestry coupes;
 - (b) not to reduce high quality habitat for any threatened species;
 - (c) not to damage high quality habitat in which threatened species are actually present;
 - (d) to protect listed biodiversity values consistent with mandatory management actions in the Planning Standards; and
 - (e) to assist, rather than damage, the recovery of populations of threatened species and communities in the East Gippsland FMA to sustainable levels.
96. By reason of:
- (a) the ecological vegetation classes;
 - (b) the presence of hollow bearing trees;
 - (c) the presence or likely presence of the species referred to in paragraph 41, the listed threatened species and community referred to in paragraph 45 and the new species of crayfish referred to in paragraph 50 hereof; and
- timber harvesting in the Kuark forestry coupes is likely
- (d) to reduce high quality habitat in the East Gippsland FMA for threatened and new species,

- (e) to damage high quality habitat in the East Gippsland FMA in which threatened and new species are actually present,
 - (f) to damage a threatened community,
 - (g) to damage, and adversely affect the recovery of, populations of threatened and new species in the East Gippsland FMA to sustainable levels.
97. In conducting forestry operations, VicForests is required to comply with and observe, inter alia:
- (a) the Code;
 - (b) the Management Procedures;
 - (c) the Planning Standards;
 - (d) Action Statements made under the Flora and Fauna Guarantee Act; and
 - (e) the zoning scheme made under in the East Gippsland FMP.
98. In conducting forestry operations, VicForests is required to comply with and observe the principles of ecologically sustainable development including:
- (a) the objective of protecting biological diversity and maintaining the ecological processes and life support systems; and
 - (b) the principle that if there are 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 (the precautionary principle).
99. By reason of s 4(1) and (2) of the Flora and Fauna Guarantee Act, in the planning and conduct of its timber harvesting operations in the Kuark forestry coupes, VicForests is obliged to have regard to the following objectives:

- (a) guaranteeing that the listed threatened species referred to in paragraph 45 and the new species of crayfish referred to in paragraph 50 above can survive and flourish and retain their potential for evolutionary development in the wild;
- (b) conserving the communities of the listed species referred to in paragraph 45 and of Gliders referred to in paragraph 51; and
- (c) managing the loss of hollow-bearing trees in the Kuark area;
- (d) ensuring the genetic diversity of the listed threatened species referred to in paragraph 45 and the new species of crayfish referred to in paragraph 50 is maintained.

100. Any timber harvesting operations in the Kuark forestry coupes by VicForests will be unlawful by reason of:

- (a) the actual, and likely, presence of the species and community referred to in paragraph 41, 45 and 50 above in and proximate to some or all of the Kuark forestry coupes;
- (b) the likely presence of high densities of Yellow-bellied Gliders in and proximate to some or all of the Kuark forestry coupes;
- (c) the failure of VicForests to identify the presence of the species and community referred to in paragraph 41, 45 and 50 prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;
- (d) the failure of VicForests to undertake any surveys, or any adequate surveys, in and proximate to the Kuark forestry coupe for the species and community referred to in paragraph 41, 45 and 50 prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;
- (e) the failure of VicForests to apply or adhere to the rainforest protection measures in the Code and the Management Procedures for the rainforest referred to at

paragraph 53 prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;

- (f) the failure of VicForests to apply or adhere to the management actions in the Planning Standards for each of the species referred to at paragraph 41 prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;
- (g) the failure of VicForests to apply to the Secretary or delegate to amend the FMZ scheme consistent with the management actions for each of the species referred to at paragraph 41 prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;
- (h) the absence of any determination by the Secretary or delegate to amend, or amendment of, the FMZ scheme in some or all of the Kuark forestry coupes consistent with the management actions in the Planning Standards for each of the species referred to at paragraph 41;
- (i) the failure of VicForests to apply proportionate and appropriate management actions for the new and threatened species referred to at paragraph 45 and 50 prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;
- (j) the failure of VicForests to exclude areas within the Kuark forestry coupes from forestry operations consistent with the East Gippsland FMP requirements for SPZs in the FMZ scheme for the species referred to at paragraphs 50 and 51;
- (k) the failure of VicForests to take into account, apply or consider:
 - (i) the principles of ecologically sustainable development and the precautionary principle as applied to the matters set out in this general Endorsement;


- (ii) scientific evidence including the information and reports referred to in paragraphs 83 to 88 above.

Relief Sought

101. The Plaintiff seeks:

- (a) Declaratory orders that the forestry operations in the Kuark forestry coupes are unlawful.
- (b) Injunctions, both interlocutory and final, to restrain the Defendant from undertaking any forestry operations in the Kuark forestry coupes until:
 - (i) targeted surveys are completed for the Yellow-bellied Glider, the East Gippsland Galaxias, the new species of crayfish, the Slender Tree Fern, Blackfellow's Hemp and rainforest stands in and proximate to the Kuark forestry coupes;
 - (ii) the prescribed management actions set out in the Planning Standards are applied and adhered to for the Long-footed Potoroo, East Gippsland Galaxias, Blackfellow's Hemp, Yellow-bellied Glider and rainforest in and proximate to the Kuark forestry coupes.
- (c) An order in the nature of mandamus requiring VicForests to identify and make publicly available the approximate timing of timber harvesting operations in the coupes included on the Timber Release Plan.
- (d) Such further or other orders as the Court sees fit.

DATED 12 February 2016


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Environmental Justice Australia
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 Environmental Justice Australia, solicitor, of Level 3, 60 Leicester Street CARLTON VIC 3053
4. The address of the plaintiff is—
6800 Bonang Highway, Goongerah 3888
5. The address for service of the plaintiff is—
Environmental Justice Australia, solicitor, of Level 3, 60 Leicester Street CARLTON VIC 3053
6. The address of the defendant is—
Level 7, 473 Bourke Street, Melbourne 3000

