

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
VALUATION, COMPENSATION AND PLANNING LIST

No. S CI 00503 of 2016

BETWEEN

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

and

VICFORESTS

Defendant

FURTHER AMENDED STATEMENT OF CLAIM

~~(filed pursuant to the Orders of Justice Emerton made on 12 September 2016)~~

(filed pursuant to the Orders of Justice Riordan made on 15 December 2016)

Date of document:	18 March 2016 12 September 2016 <u>19 December 2016</u>
Filed on behalf of:	Plaintiff
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Parties

1. The Plaintiff (**EEG**) is an association incorporated under the *Associations Incorporation Reform Act 2012* (Vic).
2. 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 a function to undertake the sale and supply of timber resources in Victorian State forests on a commercial basis;

- (e) is required to operate in a framework consistent with Victorian Government policy and priorities;
- (f) is a public authority for the purposes of s 4(2) of the *Flora and Fauna Guarantee Act 1988* (Vic) (**FFG Act**);
- (g) is undertaking and proposes to 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.

PARTICULARS

State Owned Enterprises (State Body – VicForests) Order 2003, *Victoria Government Gazette*, No S198, 28 October 2003;

State Owned Enterprises (State Business Corporation – VicForests) Order 2003, *Victoria Government Gazette*, No S198, 28 October 2003.

Standing

3. At all material times, the objects and purposes of EEG included:
 - (a) the promotion of conservation values and environmental awareness about East Gippsland;
 - (b) the promotion of sustainability in environmental, economic and social terms;
 - (c) the making of representations to Government regarding land use and management;
and
 - (d) the undertaking of research in relation to the matters set out at paragraphs 3(a)-(c) above.

4. 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 for the Long-footed Potoroo, Yellow-bellied Glider and crayfish species;

- (b) produced newsletters, articles, and other written information about the environment of East Gippsland particularly forests;
 - (c) made submissions to Government in relation to land use and management, particularly native forests and forest-dependant species;
 - (d) responded to invitations by the Governments of Victoria and of the Commonwealth to provide comments and submissions on environment-related matters;
 - (e) been represented on committees established by the Victorian 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 the forest in East Gippsland, including in rainforest.
5. Accordingly, EEG has a special interest in the subject matter of this proceeding, including but not limited to the preservation of environmental values in East Gippsland's forests and the enforcement of the statutory framework governing timber harvesting operations in East Gippsland (including the compliance by VicForests with applicable legislative requirements and standards), and has standing to bring this application.

The Allocation Order

6. On or about 1 October 2013, the Minister for Agriculture made an allocation order (the **Allocation Order**) under s 13 of the *Sustainable Forests (Timber) Act 2004 (SFT Act)*.

PARTICULARS

Victoria Government Gazette, No S343, 1 October 2013.

7. On or about 30 October 2014, the Minister amended the Allocation Order.

PARTICULARS

Victoria Government Gazette, No S405, 30 October 2014.

8. The Allocation Order, as amended:
 - (a) allocates timber resources to VicForests by reference to the 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 Forest Management Area (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 forest.

9. The Allocation Order requires VicForests to comply with:
 - (a) all relevant laws, including the SFT Act, the *Forests Act 1958* (Vic) (**Forests Act**), the *Conservation, Forests and Lands Act 1987* (Vic) (**CFL Act**), and the FFG Act;
 - (b) all relevant Codes of Practice as prepared and amended from time to time; and
 - (c) the forest management zoning scheme established pursuant to the East Gippsland FMP described in paragraphs 16 to 19 below.

The Timber Release Plan

10. On or about 1 October 2013, VicForests prepared a Timber Release Plan under s 37 of the SFT Act.

PARTICULARS

Victoria Government Gazette, No S343, 1 October 2013.

11. On or about 31 August 2015, VicForests changed the Timber Release Plan (the **Timber Release Plan**) under s 43 of the SFT Act.

PARTICULARS

Victoria Government Gazette, No S247, 31 August 2015.

12. The Timber Release Plan identifies by map, schedule and coupe number the areas of forest in the East Gippsland FMA that were the subject of release.

12A. Section 38(1) of the SFT Act requires that a plan prepared under s 37 of that Act must include the matters specified in that subsection.

13. Contrary to s 38(1)(b) of the SFT Act, the Timber Release Plan prepared by VicForests failed to detail the approximate timing of timber harvesting in the identified coupes.

14. The Timber Release Plan designated coupe numbers 830-507-0020, 830-507-0021 and 830-507-0023 at Kuark Forest for timber harvesting (the **Kuark forestry coupes**).

15. VicForests:

(a) commenced timber harvesting operations in coupe 830-507-0023 in or about January 2016 and prior to 13 January 2016;

(b) commenced timber harvesting operations in coupe 830-507-0020 in late January or early February 2016 and prior to 8 February 2016;

(c) published a notice on its website stating as at 12 February 2016 (or earlier) that coupe 830-507-0021 had a harvest status of "In Progress".

PARTICULARS

VicForests' Notice of Timber Harvesting Safety Zones, accessed via VicForests' website on or about 12 February 2016.

The East Gippsland Forest Management Plan and Forest Management Zoning System

16. In or about December 1995, the Secretary of the Department of Environment, Land, Water and Planning (the **Secretary**) made a working plan for the East Gippsland FMA under s 22 of the Forests Act (the **East Gippsland FMP**).

17. The Kuark forestry coupes are:

(a) located in the East Gippsland FMA; and

- (b) covered by the East Gippsland FMP.
18. Chapter 2 of the East Gippsland FMP (“Forest Management Strategy”) creates a forest management zoning scheme (**FMZ scheme**) in the East Gippsland FMA.
19. 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”.

The Code of Practice

20. In or about October 2014, pursuant to Part 5 of the CFL Act, the Minister for Environment and Climate Change made a Code of Practice entitled *Code of Forest Practice for Timber Production 2014* (the **Code**).
21. VicForests is required by s 46 of the SFT Act to comply with the Code.
22. The Code:
- (a) regulates timber harvesting operations and associated activities;
 - (b) requires each specific timber harvesting operation to be conducted in accordance with an approved Forest Coupe Plan and all applicable Special Management Zone plans; and

PARTICULARS

Clause 2.5.1.2 of the Code.

- (c) identifies mandatory actions which must be undertaken to comply with the Code;
and
- (d) incorporates the *Management Standards and Procedures for timber harvesting operations in Victoria's State forests 2014* ('**Management Procedures**');
- (e) requires that VicForests:
 - i. plan and manage timber harvesting operations in compliance with relevant biodiversity conservation measures specified within the Management Procedures;

PARTICULARS

Clauses 2.2.2.1 and 2.5.1.1 of the Code.

- ii. identify biodiversity values listed in the Management Procedures prior to roading and harvesting and address risks to these values through management actions consistent with the Management Procedures during planning for forestry operations;

PARTICULARS

Clause 2.2.2.4 of the Code.

- iii. protect areas excluded from harvesting from the impacts of timber harvesting operations.

PARTICULARS

Clauses 2.2.2.5 and 2.5.1.3 of the Code.

The Management Procedures and Planning Standards

- 23. The Management Procedures:

- (a) provide detailed mandatory operational instructions, including region specific instructions for timber harvesting;
- (b) apply to all commercial timber harvesting operations conducted in Victoria's State forests where the Code applies;
- (c) include the *Planning Standards for timber harvesting operations in Victoria's State forests 2014* (the **Planning Standards**);
- (d) require that VicForests:
 - i. apply the management actions for rare and threatened fauna and flora identified within areas affected by timber harvesting operations as outlined in Tables 13 and 14 of Appendix 3;

PARTICULARS

Clauses 4.2 and 4.3 of the Management Procedures.

- ii. apply the management actions for rare or threatened fauna and flora outlined in Table 4 (Detection based FMZ rules for fauna) and Table 5 (Detection based FMZ rules for flora) of the Planning Standards;

PARTICULARS

Clauses 4.3.1.1, 4.3.1.2, 4.5.1.1, and 4.5.1.2.

- iii. adhere to the planning standards that apply to SMZ or SPZ management actions (which may or may not be represented spatially in the corporate FMZ scheme) in conducting timber harvesting operations.

PARTICULARS

Clauses 2.1.1.1 and 2.1.2.1 of the Planning Standards.

24. Clause 2.1.1.3 of the Management Procedures provides that where evidence of a value which requires protection through the establishment or amendment of an SMZ or SPZ is found in the field, VicForests must apply to the Secretary or delegate prior to commencing timber harvesting operations to create or amend the SMZ or SPZ in accordance with the Planning Standards. SMZ applications must be accompanied by an SMZ plan and must be complied with during timber harvesting operations.
25. Clause 2.2.2.2 of the Code requires VicForests to apply the precautionary principle to the conservation of biodiversity values, including rare or threatened flora and fauna in and proximate to the Kuark forestry coupes.

PARTICULARS

The precautionary principle means that, when contemplating decisions that will affect the environment, careful evaluation of management options must be undertaken 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.

26. Clause 2.2.2.3 of the Code requires VicForests to consider the advice of relevant experts and relevant research in conservation biology and flora and fauna management when planning and conducting timber harvesting operations.

Breaches relating to the Long-Footed Potoroo

27. The Long-Footed Potoroo (*Potorous longipes*) is a species of small macropod which:
- (a) is a threatened species listed under s 16 of the FFG Act;
 - (b) is, or 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; and

- (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.

PARTICULARS

A VicForests Pre-Logging Fauna Survey, conducted in 2014, identified evidence of the presence of a Long-Footed Potoroo in coupe 820-507-0020.

Coupe 820-507-0021 is immediately adjacent to coupe 820-507-0020.

The VicForests Long-Footed Potoroo Special Management Plan for the coupe 820-507-0023 dated 12 January 2016 records a third party sighting of a Long-Footed Potoroo in that coupe.

Andrew Lincoln of Fauna and Flora Research Collective Inc detected a Long-footed Potoroo in coupe 830-507-0023 between about 29 December 2016 and 5 January 2016.

Further particulars may be provided.

Failure to comply with the Code and the Management Procedures

28. The Management Procedures:

- (a) list the Long-Footed Potoroo as a rare or threatened fauna species; and
- (b) specify managements actions which must be applied and adhered to if a Long-Footed Potoroo is detected.

29. The management actions for the Long-Footed Potoroo require:

- (a) establishment of a 150 ha SMZ for each detection site; and
- (b) protection of at least 50 ha of that SMZ which includes the best Long-footed Potoroo habitat in the SMZ (the **LFP Retained Habitat**) from timber harvesting operations and new roading; and
- (c) inclusion in the SMZ of a general restriction of one third of the total area that can be harvested in any three year period;

- (d) where more than one coupe in a SMZ is to be harvested in the same year, that the coupes must be separated by at least the equivalent of another coupe width; and
- (e) that the SMZ, with the LFP Retained Habitat clearly delineated, must be shown as part of the FMA zoning scheme.

30. Notwithstanding the evidence of the presence and likely presence of the Long-footed Potoroo, including that referred to at paragraph 27 above, and contrary to the SFT Act, Clauses 2.2.2.1 and 2.2.2.4 of the Code, the Management Procedures and the Planning Standards, VicForests:

- (a) failed to identify, or take adequate steps to identify, the Long-footed Potoroo in coupe 830-507-0023, prior to commencing timber harvesting operations in that coupe as required by Clause 2.2.2.4 of the Code, by failing to conduct adequate surveys for the Long-footed Potoroo;
- (b) did not apply to the Secretary to amend or establish the SMZ as required by Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.2 the Planning Standards;
- (c) alternatively, made an application to the Secretary which did not conform with the requirements of Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.2 the Planning Standards;
- (d) commenced timber harvesting operations in the Kuark forestry coupes, either without making an application as required by Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.2 the Planning Standards, or without waiting for the determination of any such application;

- (e) failed to apply or adhere to the management actions for the Long-footed Potoroo required by Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.1 and 4.3.1.2 the Planning Standards;
 - (f) failed to address risks to the Long-footed Potoroo through management actions consistent with Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.1 and 4.3.1.2 the Planning Standards prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes.
31. Accordingly, the timber harvesting operations conducted and proposed to be conducted in the Kuark forestry coupes are or will be unlawful.

Breach of the precautionary principle

32. At all relevant times, VicForests knew, or ought to have known, that the Long-Footed Potoroo was likely to be present in the Kuark forestry coupes.

PARTICULARS

The Plaintiff refers to and repeats the Particulars to paragraph 27 above.

The Kuark forestry coupes fall within the known distributional range of the Long-footed Potoroo and include forest types preferred by the Long-footed Potoroo.

Further particulars may be provided.

33. In order to comply with the precautionary principle, VicForests was required:
- (a) wherever practical to avoid serious or irreversible damage to the Long-Footed Potoroo;
 - (b) properly to assess the risk-weighted consequences of various management options for to the Long-Footed Potoroo.
34. The East Gippsland FMP requires that:

- (a) 400-500 hectares around confirmed sites of Long-footed Potoroo will be protected;
- (b) the protected area will comprise suitable habitat;
- (c) timber harvesting and new roading will be excluded; and
- (d) once 17,500 hectares around confirmed sites has been protected new Long-footed Potoroo records may be used to adjust the FMZ scheme.

35. In breach of the precautionary principle, VicForests took no steps, or no adequate steps, to address the actual or likely presence of the Long-Footed Potoroo in the Kuark forestry coupes and the risks posed by timber harvesting operations in those coupes. In particular, VicForests did not:

- (a) conduct, or intend or plan to conduct, any or any adequate surveys to determine the presence, and extent of the presence, of the Long-Footed Potoroo in each of coupe 820-507-0021 or coupe 820-507-0023 prior to commencing logging in that coupe;
- (b) conduct any or any adequate surveys to determine the presence, and extent of the presence, of the Long-Footed Potoroo in coupe 820-507-0020 after May 2014;
- (c) apply or adhere to the management actions for the Long-Footed Potoroo to the Kuark forestry coupes consistent with the Management Procedures;
- (d) await the determination of any application to create an SMZ for the Long-footed Potoroo in some or all of the Kuark forestry coupes before commencing timber harvesting operations in those coupes;
- (e) await the establishment of an SMZ or SPZ for the Long-footed Potoroo consistent with the Management Procedures or the East Gippsland FMP in some or all of the Kuark forestry coupes prior to commencing timber harvesting operations in those coupes; or

- (f) await the verification by the Department of Environment, Land, Water and Planning (**DELWP**) of the Long-footed Potoroo detections referred to at paragraph 27 above prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;
- (g) await assessment by DELWP of the best available Long-footed Potoroo habitat to be protected as LFP Retained Habitat in the SMZ consistent with the Management Procedures in some or all of the Kuark forestry coupes prior to commencing timber harvesting operations in those coupes;
- (h) failed to act, or to act proportionately and appropriately, on reports that the Long-footed Potoroo is present in or around the Kuark forestry coupes.

36. Accordingly, VicForests:

- (a) has breached the precautionary principle in its planning and conduct of timber harvesting operations in the Kuark forestry coupes; and
- (b) will, unless restrained, fail to comply with the precautionary principle in the conduct of timber harvesting operations in the Kuark forestry coupes.

Breaches relating to the East Gippsland Galaxias

37. The East Gippsland Galaxias (**Galaxias**):

- (a) is a species within the Mountain Galaxias (*Galaxias olidus*) species complex; and
- (b) is listed as a threatened species under s 16 of the FFG Act;
- (c) is present in streams and waterways within 1 km upstream or downstream of some or all of the Kuark forestry coupes.
- (d) is likely to be present in streams and waterways in or adjacent to all or some of the Kuark forestry coupes;

- (e) is likely to be present in streams and waterways within 1 km upstream or downstream of some or all of the Kuark forestry coupes.

PARTICULARS

The watercourses within the Kuark forestry coupes are within the Arte and/or Little Arte rivers in the headwater catchment of the upper Arte river.

Galaxias range is described as comprising 2 small adjacent streams (the Arte and Little Arte rivers) in a headwater catchment of the upper Arte river in the Flora and Fauna Guarantee Scientific Advisory Committee Final Recommendation on a Nomination for Listing dated 20 October 2014.

VicForests and DELWP were provided with evidence of the Galaxias presence proximate to the Kuark forestry coupes by the Fauna and Flora Research Collective Inc and the Goongerah Environmental Centre by several emails commencing on 8 January 2016.

Andrew Lincoln of Fauna and Flora Research Collective Inc detected the Galaxias in streams within 1km upstream or downstream of some or all of the Kuark forestry coupes on about 7 January 2016, 9 January 2016 and 14 March 2016.

Further particulars may be provided.

Failure to comply with the Code and the Management Procedures

38. The Management Procedures:

- (a) list Mountain Galaxias as a rare or threatened fauna species; and
- (b) specify managements actions which must be applied and adhered to if Mountain Galaxias is detected.

39. The management actions for the Galaxias require:

- (a) establishment of a SPZ extending 100 m from each bank for 1 km upstream and 1 km downstream of verified detection sites; and
- (b) avoiding the construction of new roads in the SPZ.

40. Notwithstanding the presence and likely presence of the Galaxias, VicForests failed to identify, or take adequate steps to identify, the Galaxias in the Kuark forestry coupes, or in watercourses within 1 km upstream or downstream of some or all of the Kuark forestry coupes, prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes, as required by Clause 2.2.2.4 of the Code, by failing to conduct adequate surveys for the Galaxias.
41. Notwithstanding the evidence of the presence and likely presence of Galaxias in watercourses within 1 km upstream or downstream of the Kuark forestry coupes, including that referred to at paragraph 37 above, and contrary to the SFT Act, the Clauses 2.2.2.1 and 2.2.2.4 of Code, the Management Procedures and the Planning Standards, VicForests:
- (a) did not apply to the Secretary to establish a SPZ or SPZs as required by Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.2 the Planning Standards;
 - (b) alternatively, made an application or applications to the Secretary which did not conform with the requirements of Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.2 the Planning Standards;
 - (c) commenced timber harvesting operations in the Kuark forestry coupes, either without making an application or applications as required by Clauses 2.1.1.3 and 4.2 of Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.2 the Planning Standards, or without awaiting the determination of the application or applications that were made;

- (d) alternatively, applied a management action inconsistent with the requirements of Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.1 and 4.3.1.2 the Planning Standards;
- (e) failed to address risks to the Galaxias through management actions consistent with Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.1 and 4.3.1.2 the Planning Standards prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes; and
- (f) failed to apply or adhere to the management action for the Galaxias consistent with Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.1 and 4.3.1.2 the Planning Standards.

42. Accordingly, the timber harvesting operations conducted and proposed to be conducted in the Kuark forestry coupes are or will be unlawful.

Breach of the precautionary principle

43. At all relevant times, VicForests knew or ought to have known that Galaxias were likely to be present in the watercourses in, adjacent to, or within 1 km upstream or downstream, of some or all of the Kuark forestry coupes.

PARTICULARS

The Plaintiff refers to and repeats the Particulars to paragraph 37 above.

The Kuark forestry coupes fall within the known distributional range of the Galaxias.

Further particulars may be provided.

44. In order to comply with the precautionary principle, VicForests was required:
- (a) wherever practical to avoid serious or irreversible damage to the Galaxias;
 - (b) properly to assess the risk-weighted consequences of various management options for to the Galaxias.

45. In breach of the precautionary principle, prior to commencing logging in the Kuark forestry coupes, VicForests took no steps, or no adequate steps, to address the actual or likely presence of Galaxias and the risks to the Galaxias posed by timber harvesting. In particular, VicForests did not:

- (a) conduct, or intend or plan to conduct, any or any adequate surveys to determine the presence, and extent of the presence, of the Galaxias in, and within 1 km upstream and downstream, of the Kuark forestry coupes prior to logging the Kuark forestry coupes;
- (b) apply or adhere to the management actions for the Galaxias in the Kuark forestry coupes consistent with the Management Procedures;
- (c) apply management actions for the Galaxias in the Kuark forestry coupes consistent with the management actions for the Mountain Galaxias in the Management Procedures;
- (d) apply proportionate and appropriate management actions for the Galaxias in the Kuark forestry coupes;
- (e) await DELWP's verification of the reports of Galaxias referred to in paragraph 37 above prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;
- (f) await the establishment of an SPZ consistent with the Management Procedures for the Galaxias prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes; and
- (g) failed to act, or to act proportionately and appropriately, on reports that the Galaxias is present in or around the Kuark forestry coupes.

46. Accordingly, VicForests:

- (a) has breached the precautionary principle in its planning and conduct of timber harvesting operations in the Kuark forestry coupes; and
- (b) will, unless restrained, fail to comply with the precautionary principle in the conduct of timber harvesting operations in the Kuark forestry coupes.

Failure to have regard to scientific information

47. Prior to the commencement of, or during, timber harvesting operations in the Kuark forestry coupes, VicForests and DELWP were provided with evidence of the detection of the Galaxias in the Arte river system within 1 kilometer upstream or downstream of some or all of the Kuark forestry coupes.

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VicForests and DELWP were provided with evidence of the Galaxias presence by the Fauna and Flora Research Collective Inc and the Goongerah Environmental Centre by several emails commencing on 8 January 2016.

Further particulars may be provided.

48. By about December 2014, the East Gippsland Galaxias had been described as a new species within the Mountain Galaxias species complex whose known range includes, or is likely to include, streams within or adjacent to some or all of the Kuark forestry coupes.
49. By about April 2015, the nomination for the East Gippsland Galaxias to be listed as threatened under the FFG Act had been published and accepted.
50. By about May 2015, the East Gippsland Galaxias had been listed as critically endangered on the Threatened Species Advisory List.
51. By about 27 January 2016, VicForests had been provided with a report prepared by Rudie Kuitert relating to the impacts of timber harvesting on the Galaxias, including in some or all of the Kuark forestry coupes.
52. Notwithstanding the matters set out at paragraphs 47 to 51 above, VicForests did not:

- (a) conduct, or intend or plan to conduct, any or any adequate surveys to determine the presence, and extent of the presence, of the Galaxias in, and within 1 km upstream and downstream, of the Kuark forestry coupes prior to logging the Kuark forestry coupes; and
 - (b) apply, or await for DELWP to establish, a 100 m SPZ along the watercourses which flow through the Kuark forestry coupes and comprise part of the Arte river system prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes;
 - (c) await DELWP's verification of the reports of Galaxias detections referred to at paragraph 47 above prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes.
53. Accordingly, in breach of the Code, VicForests failed to consider, adequately or at all, the advice of relevant experts and relevant research when planning and conducting its timber harvesting operations, contrary to Clause 2.2.2.3 of the Code.

Breaches relating to the Yellow-Bellied Glider

54. The Yellow-bellied Glider (**Glider**):
- (a) is present in high densities (within the meaning of the Management Procedures) in and around all or some of the Kuark forestry coupes;
 - (b) is present in high densities in parts of all or some of the Kuark forestry coupes;
 - (c) is likely to be present in high densities in all or some of the Kuark forestry coupes;
 - (d) uses, or is likely to use, all or some of the Kuark forestry coupes for denning, nesting, breeding, foraging and feeding;
 - (e) 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.

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Gliders were detected by surveys carried out by Goongerah Environment Centre and reported to the DELWP on about 8 February 2016 and 25 February 2016.

Gliders were detected by a survey carried out by the DELWP on about 19 February 2016.

Both surveys identify the Glider as being present in and around all or some of the Kuark forestry coupes at densities exceeding 0.2 per hectare.

The Plaintiff's lawyers wrote to VicForests on 25 January 2016 providing evidence that Gliders were present within and proximate to some or all of the Kuark forestry coupes.

Further particulars may be provided.

55. All or some of the Kuark forestry coupes:

- (a) contain suitable habitat for Gliders;
- (b) contain high quality habitat for Gliders.

Failure to comply with the Code and the Management Procedures ~~and Code~~

56. The Management Procedures:

- (a) list the Glider as a rare or threatened fauna species; and
- (b) specify management action which must be applied and adhered to if the Glider is detected.

57. The management actions for the Glider require establishment of 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.

58. Notwithstanding the presence and likely presence of Gliders, VicForests failed to identify, or take adequate steps to identify, the Glider during planning and prior to

commencing timber harvesting operations in some or all of the Kuark forestry coupe as required by Clause 2.2.2.4 of the Code, by failing to conduct adequate surveys for the Glider.

59. Notwithstanding the evidence of the presence and likely presence of more than 0.2 Gliders per hectare in and around the Kuark forestry coupes, including that referred to at paragraph 54 above, and contrary to the SFT Act, Clauses 2.2.2.1 and 2.2.2.4 of the Code, the Management Procedures and the Planning Standards, VicForests:

- (a) did not apply to the Secretary to establish or amend the SPZ or SPZs as required by Clauses 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.3.1.2 of the Planning Standards;
- (b) commenced or continued timber harvesting operations in the Kuark forestry coupes without making an application as required by Clause 2.1.1.3 and 4.2 of the Management Procedures and Clauses 2.1.1.1 and 4.3.1.2 of the Planning Standards;
- (c) failed to address risks to the Glider through management actions consistent with the Management Procedures prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes, contrary to Clauses 2.1.1.3 and 4.2 of the Management Procedures, and Clauses 2.1.1.1, 4.3.1.1 and 4.3.1.2 of the Planning Standards;
- (d) failed to apply or adhere to the management action for the Glider consistent with the Management Procedures, contrary to Clause 2.2.2.1 of the Code, Clauses 2.1.1.3 and 4.2 of the Management Procedures, and Clauses 2.1.1.1, 4.3.1.1 and 4.3.1.2 of the Planning Standards;
- (e) commenced or continued timber harvesting operations in some or all of the Kuark forestry coupes prior to DELWP's verification of the detections detailed in the

report dated 8 February 2016 referred to in the particulars to paragraph 54 above, contrary to Clauses 2.2.2.1 and 2.2.2.4 of the Code, Clauses 2.1.1.3 and 4.2 of the Management Procedures, and Clauses 2.1.1.1, 4.3.1.1 and 4.3.1.2 of the Planning Standards.

60. Accordingly, the timber harvesting operations conducted and proposed to be conducted in the Kuark forestry coupes are or will be unlawful.

Breach of the precautionary principle

61. At all relevant times, VicForests knew, or ought to have known, that:
- (a) the Glider was likely to be present in and around the Kuark forestry coupes at high densities; and
 - (b) the Kuark forestry coupes contained suitable or high quality habitat for the Glider.

PARTICULARS

The Plaintiff refers to and repeats the Particulars to paragraph 54 above.

The Kuark forestry coupes fall within the known distributional range of the Glider and include forest types preferred by the Glider.

All or some of the Kuark forestry coupes contain high densities of hollow-bearing trees and suitable habitat for the Glider.

Further particulars may be provided.

62. In order to comply with the precautionary principle, VicForests was required:
- (a) wherever practical to avoid serious or irreversible damage to the Glider;
 - (b) properly to assess the risk-weighted consequences of various management options for the Glider.
63. The East Gippsland FMP requires that in the event that densities of Yellow-bellied Gliders reach the levels prescribed, the Secretary must declare 100 hectares around the area in which they are found to be a SPZ.

64. In breach of the precautionary principle, prior to commencing or continuing logging in the Kuark forestry coupes, VicForests took no steps, or no adequate steps, to address the actual or likely presence of the Glider and the risks to it posed by timber harvesting. In particular, VicForests did not:
- (a) conduct, or intend or plan to conduct, any or any adequate surveys to determine the presence, and extent of the presence, of the Glider in the Kuark forestry coupes;
 - (b) apply the management actions consistent with the Management Procedures for the Glider in the Kuark forestry coupes;
 - (c) await DELWP's verification of the report of Gliders dated 8 February 2016 referred to in paragraph 54 above prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes;
 - (d) await DELWP's assessment of the extent and location of suitable habitat for the Glider to be included in the 100 ha SPZ or SPZs consistent with the Management Procedures or East Gippsland FMP in some or all of the Kuark forestry coupes prior to commencing or continuing timber harvesting operations in some or all of those coupes;
 - (e) await DELWP's establishment of an SPZ or SPZs consistent with the Management Procedures or the East Gippsland FMP for the Glider prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes;
 - (f) address risks to the Glider through management actions consistent with the Management Procedures prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes; or

- (g) act, or to act proportionately and appropriately, on reports that the Glider is present in or around the Kuark forestry coupes.

65. Accordingly, VicForests:

- (a) has breached the precautionary principle in its planning and conduct of timber harvesting operations in the Kuark forestry coupes; and
- (b) will, unless restrained, fail to comply with the precautionary principle in the conduct of timber harvesting operations in the Kuark forestry coupes.

Failure to have regard to scientific information

66. Prior to the commencement of, and during, timber harvesting operations in the Kuark forestry coupes, VicForests was made aware of the presence of the Glider in and around the Kuark forestry coupes, including in a high density.

PARTICULARS

The Plaintiff refers to and repeats the particulars to paragraph 54 above.

Further particulars may be provided.

67. Notwithstanding paragraph 66, VicForests did not:

- (a) conduct, or intend or plan to conduct, surveys to determine the presence, and extent of the presence of the Glider, prior to commencing or continuing timber harvesting operations; and
- (b) apply, or await for DELWP to establish, a 100 ha SPZ as required for high density glider populations by the Management Procedures prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes;

- (c) await DELWP's verification of the report of the Glider dated 8 February 2016 referred to at paragraph 54 above prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes;
 - (d) await DELWP's assessment of the extent and location of suitable habitat for the Glider to be included in the 100 ha SPZ or SPZs consistent with the Management Procedures in some or all of the Kuark forestry coupes prior to commencing or continuing timber harvesting operations in some or all of those coupes.
68. Accordingly, in breach of the Code, VicForests failed to consider, adequately or at all, the advice of relevant expert and relevant research when planning and conducting its timber harvesting operations, contrary to Clause 2.2.2.3 of the Code.

Breaches in relation to Blackfellow's Hemp

69. Blackfellow's Hemp is a species of flora which is:
- (a) present within some or all of the Kuark forestry coupes;
 - (b) present within 250 meters of all or some of the Kuark forestry coupes; and
 - (c) likely to be present within the Kuark forestry coupes.

PARTICULARS

Fauna and Flora Research Collective Inc and Goongerah Environment Centre provided DELWP with some locations of Blackfellow's Hemp in and adjacent to the Kuark forestry coupes by email dated 29 January 2016 and map dated 2 February 2016.

The Plaintiff's lawyers provided VicForests with details of the location of some Blackfellow's Hemp in and adjacent to coupe 830-507-0020 and 830-507-0021 by letter and map dated 10 February 2016.

The Plaintiff's lawyers provided VicForests and DELWP with details of locations of Blackfellow's Hemp proximate to some or all of the Kuark forestry coupes by letter dated 25 January 2016, with enclosed map and photographs.

Andrew Lincoln of Fauna and Flora Research Collective Inc detected Blackfellow's Hemp within and proximate to some or all of the Kuark forestry

coupes on about 24 January 2016, 26 January 2016, 13 February 2016 and 18 February 2016.

Some of the Blackfellow's Hemp plants detected by Mr Lincoln on 13 February 2016 were damaged or destroyed.

Jill Redwood of the Plaintiff detected a Blackfellows Hemp plant within or proximate to coupe 830-507-0020 on or about 22 February 2016. This plant was damaged or destroyed.

Further particulars may be provided.

Failure to comply with the Code and the Management Procedures

70. The Management Procedures:

- (a) list Blackfellow's Hemp as a rare or threatened flora species; and
- (b) specify management action which must be applied if Blackfellow's Hemp is detected.

71. Clause 4.5.2 of the Planning Standards requires the following rules be applied to detected flora species in the East Gippsland FMA:

- (a) include all verified populations of species regarded as threatened at a State or national level in the SPZ or SMZ;
- (b) 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;
- (c) wherever practicable include populations in larger parts of the SPZ or SMZ in combination with other values;
- (d) plan disturbances in SMZ in consultation with DEPI biologists to ensure the species is adequately protected.

72. The management actions for Blackfellow's Hemp require:

- (a) establishment of a SMZ of 250 m radius over verified populations;
 - (b) that a site inspection and detailed planning be conducted in consultation with DEPI (now DELWP) to ensure the species is adequately protected during timber harvesting operations.
73. Notwithstanding the presence and likely presence of Blackfellow's Hemp, VicForests failed to identify, or take adequate steps to identify, Blackfellow's Hemp during planning and prior to commencing timber harvesting operations in some or all of the Kuark forestry coupe as required by Clause 2.2.2.4 of the Code, by failing to conduct adequate surveys for Blackfellow's Hemp.
74. Notwithstanding the evidence of the presence and likely presence of Blackfellows Hemp in and around the Kuark forestry coupes, including that referred to at paragraph 69 above, and contrary to the SFT Act, Clauses 2.2.2.1 and 2.2.2.4 of the Code, the Management Procedures and the Planning Standards, VicForests:
- (a) did not apply to the Secretary to establish or amend the SMZs as required by Clause 2.1.1.3 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.5.1.2 and 4.5.2 of the Planning Standards;
 - (b) alternatively, made an application to the Secretary which did not conform with the requirements of Clause 2.1.1.3 and 4.3 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.5.1.2 and 4.5.2 of the Planning Standards;
 - (c) did not conduct site inspections and carry out detailed site planning in consultation with DELWP biologists to ensure Blackfellow's Hemp is adequately protected in the Kuark forestry coupes prior to commencing or continuing timber harvesting operations, contrary to Clauses 2.1.1.3 and 4.3 of the Management Procedures and Clauses 2.1.2.1 and 4.5.1.1 and 4.5.2 of the Planning Standards;

- (d) commenced or continued timber harvesting operations in the Kuark forestry coupes, either without making an application as required by Clause 2.1.1.3 and 4.3 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.5.1.2 and 4.5.2 of the Planning Standards, or without awaiting the determination of the application that was made;
- (e) failed to address risks to the Blackfellow's Hemp through management actions consistent with Clause 2.1.1.3 and 4.3 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.5.1.1, 4.5.1.2 and 4.5.2 of the Planning Standards prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes;
- (f) failed to apply or adhere to the management action for the Blackfellow's Hemp consistent with Clause 2.1.1.3 and 4.3 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.5.1.1, 4.5.1.2 and 4.5.2 of the Planning Standards;
- (g) commenced or continued timber harvesting operations prior to DELWP's verification of Blackfellow's Hemp detections referred to in the particulars to paragraph 69 above, contrary to Clauses 2.1.1.3 and 4.3 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.5.1.1, 4.5.1.2 and 4.5.2 of the Planning Standards;
- (h) damaged or destroyed Blackfellow's Hemp in or adjacent to coupe 830-507-0020, contrary to Clause 2.1.1.3 and 4.3 of the Management Procedures and Clauses 2.1.1.1, 2.1.2.1, 4.5.1.1, 4.5.1.2 and 4.5.2 of the Planning Standards.

75. Accordingly, the timber harvesting operations conducted and proposed to be conducted in the Kuark forestry coupes are and will be unlawful.

Breach of the precautionary principle

76. At all relevant times, VicForests knew, or ought to have known, that Blackfellow's Hemp:

- (a) was present in, and within 250 m of, the Kuark forestry coupes; and
- (b) was likely to be present within the Kuark forestry coupes.

PARTICULARS

The Plaintiff refers to and repeats the Particulars to paragraph 69 above.

The Kuark forestry coupes fall within the known distributional range of Blackfellow's Hemp and include forest types in which Blackfellow's Hemp occurs.

VicForests employees, agents or contractors saw Blackfellow's Hemp plant/s but did not identify those plant/s as comprising Blackfellow's Hemp proximate to some or all of the Kuark forestry coupes.

VicForests employees, agents or contractors affixed a sign onto a Blackfellow's Hemp plant proximate to some or all of the Kuark forestry coupes on a date prior to 14 January 2016.

Further particulars may be provided.

77. In order to comply with the precautionary principle, VicForests was required:
- (a) wherever practical to avoid serious or irreversible damage to Blackfellow's Hemp;
 - (b) properly to assess the risk-weighted consequences of various management options for Blackfellow's Hemp.
78. In breach of the precautionary principle, prior to commencing logging in the Kuark forestry coupes, VicForests took no steps, or no adequate steps, to address actual or likely presence of Blackfellow's Hemp and the risk to it posed by timber harvesting. In particular, VicForests:

- (a) VicForests did not conduct any or any adequate surveys to determine the presence, and extent of the presence, of Blackfellow's Hemp in and within 250 m of the Kuark forestry coupes;
- (b) did not apply the management actions for Blackfellow's Hemp in the Kuark forestry coupes;
- (c) did not await DELWP's verification of reports of Blackfellow's Hemp in and proximate to the Kuark forestry coupes prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes;
- (d) did not await DELWP's establishment of SMZs, site inspection and detailed planning consistent with the Management Procedures for the Blackfellow's Hemp prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes;
- (e) failed to address risks to the Blackfellow's Hemp through management actions consistent with the Management Procedures prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes;
- (f) failed to act, or to act proportionately and appropriately, on reports that the Blackfellow's Hemp is present in or around the Kuark forestry coupes;
- (g) damaged or destroyed Blackfellow's Hemp in or adjacent to coupe 830-507-0020.

79. Accordingly, VicForests:

- (a) has breached the precautionary principle in its planning and conduct of timber harvesting operations in the Kuark forestry coupes; and
- (b) will, unless restrained, fail to comply with the precautionary principle in the conduct of timber harvesting operations in the Kuark forestry coupes.

Failure to have regard to scientific information

80. VicForests was informed of the presence of Blackfellow's Hemp:
- (a) within less than 250 meters of coupe 830-507-0023 on about 25 January 2016;
 - (b) within about 500 m of coupes 830-507-0020 and 830-507-0021 on about 25 January 2016;
 - (c) within and adjacent to coupes 830-507-0020 and 830-507-0021 on about 8 February 2016.

PARTICULARS

The Plaintiff refers to and repeats the particulars to paragraph 69 above.

The Plaintiff refers to the letter from the Plaintiff's lawyers to VicForests dated 8 February 2016.

81. Notwithstanding paragraph 80, VicForests did not:
- (a) conduct any or any adequate surveys to determine the presence, and extent of the presence of Blackfellow's Hemp, prior to commencing or continuing timber harvesting operations;
 - (b) apply a 250 ha SMZ to Blackfellow's Hemp as required by the Management Standards;
 - (c) undertake a site inspection and carry out detailed site planning in consultation with DELWP; or
 - (d) await DELWP's verification of the reports of the Blackfellows Hemp dated 25 and 29 January 2016 referred to at paragraph 69 above prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes.

82. Accordingly, in breach of the Code, VicForests failed to consider, adequately or at all, to the advice of relevant expert and relevant research when planning and conducting its timber harvesting operations, contrary to Clause 2.2.2.3 of the Code.

~~Breaches in relation to the Slender Tree Fern~~

~~83. The Slender Tree Fern is a flora species which is:~~

- ~~(a) listed as a threatened species under s 16 of the FFG Act;~~
- ~~(b) present within less than 250 m of coupe 830-507-0023;~~
- ~~(c) present within 1 km of all or some of the Kuark forestry coupes;~~
- ~~(d) likely to be present in all or some of the Kuark forestry Coupes;~~
- ~~(e) likely to be present within 250 m of all or some of the Kuark forestry coupes.~~

PARTICULARS

~~The Plaintiff's lawyers provided VicForests with details of locations of Slender Tree Fern proximate to some or all of the Kuark forestry coupes by letter dated 25 January 2016, with enclosed map and photographs.~~

~~Andrew Lincoln of Fauna and Flora Research Collective Inc detected Slender Tree Fern proximate to some or all of the Kuark forestry coupes on about 24 January 2016.~~

~~Further particulars may be provided.~~

~~Failure to comply with the Code and the Management Procedures~~

~~84. The Management Procedures:~~

- ~~(a) list the Slender Tree Fern as a rare or threatened flora species; and~~
- ~~(b) specify management action which must be applied if the Slender Tree Fern is detected.~~

~~85. The Plaintiff refers to and repeats paragraph 71 above.~~

~~86. The management actions for the Slender Tree Fern require:~~

- ~~(a) establishment of a SMZ of 250 m radius over verified populations;~~
- ~~(b) a site inspection and detailed planning to be conducted in consultation with DEPI (now DELWP) to ensure the species is adequately protected during timber harvesting operations.~~

~~87. Notwithstanding the presence, and likely presence, of Slender Tree Fern in or within 250 meters of the Kuark forestry coupes, and contrary to the SFT Act, the Code, the Management Procedures and the Planning Standards, VicForests:~~

- ~~(a) failed to identify, or take steps to identify, the Slender Tree Fern during planning and prior to commencing timber harvesting operations in some or all of the Kuark forestry coupe as required by the Code;~~
- ~~(b) failed to address risks to the Slender Tree Fern through management actions consistent with the Management Procedures prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes.~~

~~88. Accordingly, the timber harvesting operations conducted and proposed to be conducted in the Kuark forestry coupes are or will be unlawful.~~

~~*Breach of the precautionary principle*~~

~~89. At all relevant times, VicForests knew, or ought to have known, Slender Tree Fern was, and was likely present in, or within 250 m of, the Kuark forestry coupes.~~

PARTICULARS

~~The Plaintiff refers to and repeats the Particulars to paragraph 83 above.~~

~~The Kuark forestry coupes fall within the known distributional range of the Slender Tree Fern and contain or are adjacent to forest types in which Slender Tree Fern occurs.~~

~~Further particulars may be provided.~~

~~90. In order to comply with the precautionary principle, VicForests was required:~~

~~(a) wherever practical to avoid serious or irreversible damage to Slender Tree Fern;~~

~~(b) properly to assess the risk-weighted consequences of various management options for Slender Tree Fern.~~

~~91. Prior to commencing logging in the Kuark forestry coupes, VicForests took no steps, or no adequate steps, to address the actual and likely presence of Slender Tree Fern and the risks to it posed by timber harvesting. In particular, VicForests:~~

~~(a) did not conduct any or any adequate surveys to determine the presence, and extent of the presence, of Slender Tree Fern in and within 250 meters of the Kuark forestry coupes;~~

~~(b) failed to act, or to act proportionately and appropriately, on reports that the Slender Tree Fern is present in or around the Kuark forestry coupes~~

~~(c) failed to address risks to the Slender Tree Fern through management actions consistent with the Management Procedures prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes.~~

~~92. Accordingly, VicForests:~~

~~(a) has breached the precautionary principle in its planning and conduct of timber harvesting operations in the Kuark forestry coupes; and~~

~~(b) will, unless restrained, fail to comply with the precautionary principle in the conduct of timber harvesting operations in the Kuark forestry coupes.~~

~~*Failure to have regard to scientific information*~~

~~93. VicForests was informed of the presence of Slender Tree Fern proximate to the Kuark forestry coupes on 25 January 2016.~~

PARTICULARS

~~The Plaintiff refers to and repeats the particulars to paragraph 83 above.~~

~~94. Notwithstanding paragraph 93, VicForests did not conduct surveys to determine the presence, and extent of the presence of Slender Tree Fern, prior to commencing timber harvesting operations in coupe 830-507-0020.~~

~~95. Accordingly, in breach of the Code, VicForests failed to consider, adequately or at all, the advice of relevant experts and relevant research when planning and conducting its timber harvesting operations.~~

Breaches in relation to rainforest

96. The Code contains the following definition of “rainforest”:

‘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.

97. Rainforest communities, including within the definition of the Code, are listed as threatened under the FFG Act.

98. Clause 2.2.2.7 of the Code provides that rainforest communities in State forests must not be harvested.

99. Rainforest within the definition in the Code (**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;
- (e) alternatively, is likely to be present and comprise an area or areas as described at sub-paragraphs 99(b)-(d) above.

100. Sections 4.4.7 and 4.4.8 of the Management Procedures:

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

101. Section 4.4.9 of the Management Procedures requires that rainforest be protected from timber harvesting operations through the implementation of the following specific measures:

- (a) the exclusion of non linear stands that are 0.1 ha or more in size but less than 0.4 ha from timber harvesting operations.
- (b) the exclusion of linear stands that are at least 0.1 ha but are less than 0.2 ha from timber harvesting operations.
- (c) the exclusion of linear stands that are at least 0.2 ha but are less than 0.4 ha from timber harvesting operations, and protection of these stands with a 20 m buffer;
- (d) the exclusion of all rainforest stands (including non-linear and linear stands) equal to or exceeding 0.4 ha from timber harvesting operations, and protection of these stands with a 40 m buffer; and
- (e) the distribution of slash away from retained rainforest stands or buffers.

PARTICULARS

Clause 4.4.9.1 of the Management Procedures.

102. Despite the presence and likely presence of an area or areas of rainforest in and proximate to coupe 830-507-0020, and contrary to Clauses 2.2.2.1 and 2.2.2.4 of the Code and Clause 4.4.9.1 of the Management Procedures, VicForests:

- (a) failed to identify, or take adequate steps to identify, some or all of the rainforest in the Kuark forestry coupes prior to commencing timber harvesting operations in coupe 830-507-0020;
- (b) failed to exclude some or all of the rainforest greater than 0.1 ha from timber harvesting operations prior to commencing timber harvesting operations in coupe 830-507-0020;
- (c) 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 coupe 830-507-0020;
- (d) 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 coupe 830-507-0020.

Breach of the precautionary principle

103. At all relevant times, VicForests knew, or ought to have known, that there was rainforest within coupe 820-507-0020.

104. In order to comply with the precautionary principle, VicForests was required:

- (a) wherever practical to avoid serious or irreversible damage to rainforest;
- (b) properly to assess the risk-weighted consequences of various management options for rainforest.

105. Prior to commencing logging in the Kuark forestry coupes, VicForests took no steps, or no adequate steps, to address the actual and likely presence of rainforest in coupe 820-507-0020 and the risks to it posed by timber harvesting.
106. In particular, VicForests did not conduct any or any adequate surveys to determine the presence, and extent of the presence, of rainforest in coupe 830-507-0020 consistent with Clause 4.4.8 of the Management Procedures, contrary to Clauses 2.2.2.2 and 2.2.2.4 of the Code.
107. Accordingly, VicForests:
- (a) has breached the precautionary principle in its planning and conduct of timber harvesting operations in some or all of the Kuark forestry coupes; and
 - (b) will, unless restrained, fail to comply with the precautionary principle in the conduct of timber harvesting operations in some or all of the Kuark forestry coupes.

Breaches in relation to Euastacus crayfish

108. On about 24 January 2016, a new species of Euastacus crayfish (**Crayfish**), forming part of the East Gippsland Cray species complex, was discovered in the Arte river system on a stream within 1 km upstream or downstream of coupe 830-507-0023, and within about 1 km of coupe 830-507-0020 and 830-507-0021.
109. The Crayfish:
- (a) is likely to be present in all or some of the Kuark forestry coupes;
 - (b) uses or is likely to use all or some of the Kuark forestry coupes for feeding;
 - (c) is present on a watercourse within about one kilometre of all or some of the Kuark forestry coupes;

- (d) is likely to be present on a watercourse, within one kilometre upstream or downstream of all or some of the Kuark forestry coupes;
- (e) is present on a watercourse, within one kilometre upstream or downstream of all or some of the Kuark forestry coupes.

PARTICULARS

On or about 9 January 2016, 24 January 2016 and 16 March 2016, Andrew Lincoln of the Fauna and Flora Research Collective Inc detected undescribed species of *Euastacus* crayfish within 1 kilometer upstream or downstream of some or all of the Kuark forestry coupes.

On or about 12 or 13 March 2016, 28 May 2016 and 29 May 2016, Robert McCormack of Australian Aquatic Biological Pty Ltd detected undescribed species of *Euastacus* crayfish within 1 kilometer upstream or downstream of some or all of the Kuark forestry coupes.

Breach of the precautionary principle

- 110. On 25 January 2016, VicForests was advised of the existence of the Crayfish and its presence as set out at paragraph 108 above.
- 111. In order to comply with the precautionary principle, VicForests was required:
 - (a) wherever practical to avoid serious or irreversible damage to the Crayfish;
 - (b) properly to assess the risk-weighted consequences of various management options for the Crayfish.
- 112. 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 be included in a SPZ.
- 113. VicForests failed 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 Crayfish, contrary to Clause 2.2.2.2 of the Code.

114. Following notification of the presence of the Crayfish as set out at paragraph 110 above, VicForests took no steps, or no adequate steps, to determine whether it was present in or within 1km upstream or downstream of the Kuark forestry coupes, and if so, what action should be taken to avoid harming it, contrary to Clause 2.2.2.2 of the Code. In particular, contrary to Clause 2.2.2.2 of the Code VicForests:

- (a) did not conduct any or any adequate surveys to determine the presence, and extent of the presence, of the Crayfish in and around the Kuark forestry coupes;
- (b) did not apply management action for the Crayfish consistent with the East Gippsland FMP in the Kuark forestry coupes;
- (c) did not apply management actions for the Crayfish in the Kuark forestry coupes consistent with the management actions in the Management Procedures applicable to other East Gippsland cray species; and
- (d) did not apply proportionate and appropriate management actions to protect the Crayfish in the Kuark forestry coupes.

115. Accordingly, VicForests:

- (a) has breached the precautionary principle in its planning and conduct of timber harvesting operations in the Kuark forestry coupes; and
- (b) will, unless restrained, fail to comply with the precautionary principle in the conduct of timber harvesting operations in the Kuark forestry coupes.

Failure to have regard to scientific information

116. By reasons of the facts alleged in paragraphs 108 to 114, in breach of Clause 2.2.2.3 of the Code, VicForests failed to have regard to the advice of relevant experts and relevant research in planning and conducting its timber harvesting operations.

Breaches in relation to Burrowing Crayfish

~~116A. Most species of *Engaeus* crayfish in Australia are endangered or critically endangered.~~

~~116B. On about 28 or 29 May 2016, a species of burrowing crayfish suspected to be a new, undescribed *Engaeus* species (**Burrowing Crayfish**) was detected in coupe 830-507-0020.~~

PARTICULARS

~~On about 28 or 29 May 2016, Robert McCormack of Australian Aquatic Biological Pty Ltd, detected a burrowing crayfish in coupe 830-507-0020 that he suspected to be a new, undescribed *Engaeus* crayfish.~~

~~116C. The Burrowing Crayfish:~~

- ~~(a) is present in all or some of the Kuark forestry coupes;~~
- ~~(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;~~

~~116D. On 2 August 2016, VicForests was advised of the discovery of the Burrowing Crayfish in coupe 830-507-0020.~~

PARTICULARS

~~On 2 August 2016, the Plaintiff's solicitors provided the Defendant's solicitors with a survey report detailing the Burrowing Crayfish detection. The survey report was prepared by Robert McCormack of Australian Aquatic Biological Pty Ltd, a crayfish expert engaged by the Plaintiff.~~

Breach of the precautionary principle

~~116E. In order to comply with the precautionary principle, VicForests is required:~~

- ~~(a) wherever practical to avoid serious or irreversible damage to the Burrowing Crayfish;~~
- ~~(b) properly to assess the risk-weighted consequences of various management options for the Burrowing Crayfish.~~

~~116G. VicForests failed 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 Burrowing Crayfish.~~

~~116H. Since it was notified of the presence of the Burrowing Crayfish as set out at paragraph 116D above, VicForests has not taken any steps, or any adequate steps, to determine the species of *Engaeus* crayfish found, whether it is present in or within the Kuark forestry coupes, and if so, what action should be taken to prevent or minimise any threat of harm to it. In particular, prior to commencing or continuing timber harvesting operations in some or all of the Kuark forestry coupes, VicForests:~~

- ~~(a) has not conducted, and does not intend or plan to conduct, any or any adequate surveys to investigate or determine the species or conservation status of *Engaeus* crayfish found in coupe 830-507-0020;~~
- ~~(b) has not conducted, and does not intend or plan to conduct, any or any adequate surveys to determine the presence and the extent of the Burrowing Crayfish in and around the Kuark forestry coupes;~~

- ~~(e) has not applied, and does not intend or plan to apply, any management action for the Burrowing Crayfish;~~
- ~~(d) has not applied, and does not intend or plan to apply, proportionate and appropriate management actions to protect the Burrowing Crayfish in the Kuark forestry coupes;~~
- ~~(c) has not applied for, and does not intend to apply or await for DELWP to establish management zones to adequately protect the Burrowing Crayfish found in the Kuark forestry coupes;~~
- ~~(f) has not applied for, and does not intend to apply or await for DELWP's verification of the reports of Burrowing Crayfish detections referred to at paragraph 116D;~~
- ~~(g) does not intend to await for DELWP or third parties to undertake adequate surveys or studies to investigate or determine the species or conservation status of Burrowing Crayfish in coupe 830-507-0020;~~

~~116I. Accordingly, VicForests:~~

- ~~(a) has breached the precautionary principle in its planning and conduct of timber harvesting operations in the Kuark forestry coupes; and~~
- ~~(b) will, unless restrained, fail to comply with the precautionary principle in the conduct of timber harvesting operations in the Kuark forestry coupes;~~

~~*Failure to have regard to scientific information*~~

~~116J. By reasons of the facts alleged in paragraphs 116A to 116H, in breach of the Code,~~

~~VicForests:~~

- ~~(a) has failed to consider, adequately or at all, the advice of relevant experts and relevant research in planning and conducting its timber harvesting operations in some or all of the Kuark forestry coupes;~~

~~(b) will unless restrained, fail to consider adequately or at all, the advice of relevant experts and relevant research in planning and conducting its timber harvesting operations in some or all of the Kuark forestry coupes.~~

Breaches in relation to Large Brown Tree Frog

117. The Large Brown Tree Frog (*Littoria Littlejohnii*) is a species of amphibian which:

- (a) is a threatened species listed under s 16 of the FFG Act;
- (b) is likely to be present in all or some of the Kuark forestry coupes;
- (c) is likely to use all or some of the Kuark forestry coupes for foraging and feeding;
- (d) is likely to use all or some of the Kuark forestry coupes for breeding; and
- (e) 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.

118. In 2015, an action statement for the Large Brown Tree Frog (the **Action Statement**) was made under s 19 of the FFG Act.

119. The Action Statement specifies management action to be applied if the Large Brown Tree Frog is detected as an adult, sub-adult, tadpole or egg cluster and the record is verified by DEPI (now DELWP).

120. The Action Statement requires:

- (a) establishment of a 28 ha protected area by creating a SPZ that includes the detection site;
- (b) as far as possible, the SPZ boundaries should follow recognizable landscape features such as ridges, spurs, watercourses or roads but must not be less than 300 m wide at any point.

Failure to comply with the Code

121. Notwithstanding the likely presence of Large Brown Tree Frog in the Kuark forestry coupes, VicForests failed to identify, or take steps to identify, the Large Brown Tree Frog during planning and prior to commencing timber harvesting operations in some or all of the Kuark forestry coupe as required by Clause 2.2.2.2 of the Code.

Failure to comply with precautionary principle

122. Contrary to the purpose and terms of the Code, the management action in the Action Statement for the Large Brown Tree Frog has not been included in the Management Procedures.

123. The absence of a management action in the Management Procedures for the Large Brown Tree Frog requires a precautionary approach to be taken by VicForests in timber harvesting operations to be conducted in areas which are potential habitat for the Large Brown Tree Frog.

124. In order to comply with the precautionary principle, VicForests was required:

- (a) wherever practical to avoid serious or irreversible damage to the Large Brown Tree Frog;
- (b) properly to assess the risk-weighted consequences of various management options for the Large Brown Tree Frog.

125. In breach of the precautionary principle, VicForests has failed to take a precautionary approach or to comply with the precautionary principle in its timber harvesting operations in the Kuark forestry coupes in relation to the Large Brown Tree Frog. In particular, VicForests has:

- (a) failed to conduct any or any adequate surveys;
- (b) failed to specify any management actions to protect the Large Brown Tree Frog;

- (c) failed to specify management actions to protect the Large Brown Tree Frog consistent with the Action Statement.

Breaches relating to Forest Coupe Plan

126. Clause 2.3.1 of the Code and Clause 2.3 of the Management Procedures require VicForests:

- (a) prior to the commencement of each timber harvesting operation, to prepare a Forest Coupe Plan which specifies operational requirements in accordance with the requirements of the Code and which (among other things):

PARTICULARS

Clause 2.3.1.2(i) of the Code.

- i. contains a map identifying the area and a schedule incorporating the specifications and conditions under which the timber harvesting operation is to be administered and controlled;

PARTICULARS

Clause 2.3.1.2 of the Management Procedures.

Page 13 of the Code.

- ii. communicates the intended boundaries, activities and requirements in adequate detail to enable operators to complete work to the required standard, and to comply with the Code and the Management Procedures for the life of the coupe;

PARTICULARS

Clause 2.3.1.2(ii) of the Code.

- iii. identifies and describes management actions for all relevant coupe values specified within the Code, the Management Procedures and the FMZ scheme; and

PARTICULARS

Clause 2.3.1.1 (g) of the Management Procedures.

- iv. is sanctioned (assessed and approved) by the managing authority, and approved by the Minister or delegate under Part 6 of the CFL Act;

PARTICULARS

Clauses 2.3.1.2(iii) and 2.3.1.2(iv) of the Code.

127. Prior to commencing timber harvesting operations in some or all of the Kuark forestry coupes, and despite the presence or likely presence in some or all of the Kuark forestry coupes of:

- (a) Long-Footed Potoroo;
- (b) Galaxias;
- (c) the Glider;
- (d) Blackfellow's Hemp;
- (e) Slender Tree-Fern;
- (f) Large Brown Tree Frog; and
- (g) Rainforest,

VicForests failed to prepare a Forest Coupe Plan for some or all of the Kuark forestry coupes that clearly and accurately identifies areas within some or all of the Kuark forestry coupes that are to be excluded from harvesting and associated activities or to which prescribed management actions apply, or alternatively failed to prepare a Forest Coupe

Plan for some or all of the Kuark forestry coupes that identifies and describes management actions consistent with Clause 2.3.1.2 of the Code and Clause 2.3.1.2 of the Management Procedures.

128. By reason of s 4(1) and (2) of the FFG 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 above, ~~and~~ and the Crayfish ~~and the Burrowing Crayfish~~ can survive and flourish and retain their potential for evolutionary development in the wild;
- (b) conserving the communities of the listed threatened species and communities referred to above, ~~and~~ and the Crayfish ~~and the Burrowing Crayfish~~; and
- (c) ensuring the genetic diversity of the listed threatened species referred to above, ~~and~~ and the Crayfish ~~and the Burrowing Crayfish~~ is maintained.

129. VicForests failed to have regard to the objectives referred to at paragraph 128 above in its planning and conduct of timber harvesting operations in the Kuark forestry coupes.

Relief sought

130. 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 Glider, the Long-footed Potoroo, the Galaxias, the Crayfish, the Slender Tree Fern, Blackfellow's Hemp, Large~~

~~Brown Tree Frog, the Burrowing Crayfish and rainforest stands in and proximate to the Kuark forestry coupes;~~

~~ii. the prescribed management actions set out in the Code, Management Procedures and Planning Standards are applied and adhered to for the Long-footed Potoroo, the Galaxias, Blackfellow's Hemp, the Slender Tree Fern, the Glider and rainforest in and proximate to the Kuark forestry coupes;~~

~~iii. management action is applied and adhered to for the Crayfish consistent with:~~

~~A. the prescribed management actions set out in the Planning Standards for other cray species in the East Gippsland Cray species complex; and/or~~

~~B. the prescribed management actions set out in the East Gippsland FMP for rare and threatened cray species;~~

~~iv. surveys and studies are completed to determine the species and conservation status of the Burrowing Crayfish detected in coupe 830-507-0020;~~

~~v. proportionate and appropriate management action is applied and adhered to in order to protect the Burrowing Crayfish, the Crayfish and the Galaxias 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.

Injunctions

A. The Defendant (VicForests) shall not, whether itself or by its servants agents contractors or otherwise, conduct any timber harvesting operations within the meaning of the

Sustainable Forests (Timber) Act 2004 (Vic) (timber harvesting operations) in Webbed Feet coupe unless and until:

Yellow-bellied Glider

- (1) the verification survey described in Exhibit EJH-28 to the Affidavit of Edward Hill made 22 November 2016 has been conducted by or on behalf of DELWP and to the satisfaction of the Secretary of DELWP, and any management actions (including the establishment of any SPZ) required by DELWP in accordance with the Code and Management Procedures as a result of that verification survey have been implemented;
- (2) the preparation of a Forest Coupe Plan for Webbed Feet coupe that:
 - i. is consistent with the forest management zone amendments made by DELWP on 21 April 2016 as depicted on the map at page 3 of Exhibit DJ-52 to the Affidavit of Danya Jacobs sworn 20 July 2016; and
 - ii. identifies any Yellow-bellied Glider SPZ established by DELWP as a result of the verification survey that DELWP has stated it will conduct in Webbed Feet coupe as described in Exhibit EJH-28 to the Affidavit of Edward Hill made 22 November 2016;
- (3) the completion of clear marking in the field to exclude timber harvesting operations from any established SPZ set out in the Forest Coupe Plan prepared in accordance with paragraph A(2) above;

Blackfellow's Hemp

- (4) an assessment and verification of the Blackfellows Hemp detection report authored by Stephen Mueck dated 6 October 2016 and submitted to DELWP on 13 October 2016 (as contained at Exhibit JDA-124 to the Affidavit of Jeremy Allen made 25 November 2016) has been completed by or on behalf of DELWP and to the satisfaction of the Secretary of DELWP, and any management actions (including the establishment of any SMZ) required by DELWP in accordance with the Code and Management Procedures as a result of that assessment and verification have been implemented;
- (5) VicForests has implemented management actions for the protection of Blackfellows Hemp in Webbed Feet coupe by producing an SMZ plan that delineates by map Blackfellows Hemp exclusion areas;

- i. comprising all Wet Forest delineated on the map at Figure 4 on page 14 of Mr Mueck's expert report dated 31 October 2016 that occurs within the SMZ in Webbed Feet coupe;
 - ii. further and alternatively, designed in consultation with at least 2 appropriately qualified DELWP biologists, having regard to the expert advice of Stephen Mueck contained in Mr Mueck's expert reports dated 31 October 2016 and 9 December 2016, and to the satisfaction of the Secretary of DELWP.
- (6) the preparation of a Forest Coupe Plan for Webbed Feet coupe that:
 - i. identifies Blackfellow's Hemp exclusion areas within the Blackfellow's Hemp SMZ planned and delineated in accordance with paragraph A(5) above;
 - ii. further and alternatively to paragraph A(6)(i), identifies a minimum 20 meter diameter width timber harvesting exclusion area around all Blackfellow's Hemp plant records that are located within, or within 20 meters of, Webbed Feet coupe as recorded in Mr Mueck's report dated 6 October 2016, in which no harvesting, roading or associated disturbance is permitted and in which all reasonable attempts must be made to eliminate high intensity post harvesting burning activity;
- (7) the completion of clear marking in the field to exclude timber harvesting operations from any established SPZ and Blackfellows Hemp exclusion area set out in the Forest Coupe Plan prepared in accordance with paragraph A(6) above;

Long-footed Potoroo

- (8) VicForests has implemented management actions to protect the Long-footed Potoroo in Webbed Feet coupe by producing an SMZ plan that complies with the Management Procedures and Planning Standards and that delineates by map the Long-footed Potoroo Retained Habitat designed in consultation with one or more suitably qualified experts and to the satisfaction of the Secretary of DELWP;

Crayfish

- (9) a 100m buffer within the meaning of the Code has been applied to all branches of Arte River which are within 1 km upstream or downstream of a verified crayfish detection and are potentially capable of being affected by the conduct of timber harvesting operations;

(10) the preparation of a Forest Coupe Plan for Webbed Feet coupe that identifies the crayfish stream buffers applied consistent with paragraph A(9) above;

(11) the completion of clear marking in the field to exclude timber harvesting operations from any crayfish stream buffer set out in the Forest Coupe Plan prepared in accordance with paragraph A(10) above.

Large Brown Tree Frog

(12) a survey for the presence of the Large Brown Tree Frog has been carried out during appropriate climatic conditions by appropriately qualified persons in accordance with a survey methodology approved by the Secretary of DELWP in consultation with one or more suitably qualified experts;

Rainforest

(13) the completion of the current investigation by DELWP into rainforest at Webbed Feet coupe;

(14) buffers consistent with clause 4.4.9.1 the Management Procedures have been implemented on all stands of rainforest found by DELWP in and within 40m of Webbed Feet according to the size and boundaries of those areas of rainforest as delineated by the DELWP investigation referred to in paragraph A(13) above;

(15) the preparation of a forest coupe plan for Webbed Feet coupe that identifies the rainforest buffers implemented consistent with paragraph A(14) above;

(16) the completion of clear marking in the field to exclude timber harvesting operations from any rainforest buffer set out in the Forest Coupe Plan prepared in accordance with paragraph A(15) above.

B. VicForests shall not, whether itself or by its servants agents contractors or otherwise, conduct any timber harvesting operations in Drop Bear coupe unless and until;

Yellow-bellied Glider

(1) a survey has been carried out for the presence of Yellow-bellied Gliders in Drop Bear coupe by appropriately qualified persons in accordance with a survey methodology approved by the Secretary of DELWP in consultation with one or more suitably qualified experts;

Blackfellow's Hemp

(2) a survey has been carried out for the presence of Blackfellows Hemp in Drop Bear coupe by appropriate qualified persons in accordance with a survey methodology

approved by the Secretary of DEWLP in consultation with one or more suitably qualified experts;

- (3) any management actions (including the establishment of any SMZ) required by DELWP in accordance with the Code and Management Procedures as a result of the assessment and verification referred to at paragraph A(4) have been implemented;

Galaxias

- (4) a survey has been carried out for the presence of the East Gippsland Galaxias in the stream along the northern boundary of Drop Bear coupe and within 1 km downstream of the coupe boundary during appropriate climatic conditions by appropriately qualified persons in accordance with a survey methodology approved by the Secretary of DELWP in consultation with one or more suitably qualified experts;

Long-footed Potoroo

- (5) a survey has been carried out for the presence of the Long-footed Potoroo during appropriate climatic conditions by appropriately qualified persons in accordance with a survey methodology approved by the Secretary of DEWLP in consultation with one or more suitably qualified experts;

Large Brown Tree Frog

- (6) a survey has been carried out for the presence of the Large Brown Tree Frog during appropriate climatic conditions by appropriately qualified persons in accordance with a survey methodology approved by the Secretary of DELWP in consultation with one or more suitably qualified experts;

Rainforest

- (7) a survey has been carried out for the presence of the rainforest by appropriately qualified persons in accordance with clause 4.4.8 of the Management Procedures and utilising a survey methodology approved by the Secretary of DELWP in consultation with one or more suitably qualified experts.

C. VicForests shall not, whether itself or by its servants agents contractors or otherwise, conduct any timber harvesting operations in Tin Shed within 100m of any watercourse.

D. VicForests shall:

- (a) provide to the plaintiff within 14 days of their final approval by DELWP maps delineating any SPZ, SMZ, SMZ plan or Retained Habitat within Tin Shed, Drop Bear and Webbed Feet coupes;
- (b) provide to the plaintiff within 14 days of its final sanction by VicForests the Forest Coupe Plan for Webbed Feet coupe;
- (c) provide to the Plaintiff 28 days written notice of the commencement or resumption of any timber harvesting operations in Webbed Feet, Tin Shed or Drop Bear coupes.

Declarations

E. Declare that the timber harvesting operations conducted by VicForests in Tin Shed coupe between 8 January 2016 and 4 February 2016 and in Webbed Feet coupe between 8 February 2016 and 13 February 2016 were contrary to the *Sustainable Forests (Timber) Act 2004*, the Code and the Management Procedures and were unlawful, and in particular that:

- (a) contrary to clause 2.2.2.4 of the Code, VicForests failed to identify biodiversity values listed in the Management Procedures present in Webbed Feet and Tin Shed coupes, and to address risks to those biodiversity values by taking management action consistent with the Management Procedures, prior to commencing timber harvesting operations in those coupes,
- (b) contrary to clause 2.2.2.3 of the Code, VicForests failed to consider the advice of relevant experts or relevant research in conservation biology and fauna management when planning for, and during, timber harvesting operations in Tin Shed and Webbed Feet coupes.
- (c) contrary to clause 2.2.2.2 of the Code, VicForests failed to apply the precautionary principle to the conservation of biodiversity values present, or likely to be present, when planning for, and during, timber harvesting operations in Tin Shed and Webbed Feet coupes;
- (d) contrary to clause 2.2.2.1 of the Code, clauses 2.1.1.3, 4.2 and 4.3 of the Management Procedures, and clauses 2.1.1.1, 2.1.2.1, 4.3.1.1, 4.3.1.2, 4.5.1.1, 4.5.1.2 and 4.5.2 of the Planning Standards, VicForests failed to plan and manage timber harvesting operations in Tin Shed and Webbed Feet coupes compliant with relevant biodiversity conservation measures specified within the Management

Procedures prior to and during the timber harvesting operations conducted in those coupes;

- (e) contrary to clause 2.3.1.2 of the Code and clause 2.3.1.2 of the Management Procedures, VicForests failed to prepare Forest Coupe Plans that identified the areas within and adjacent to the coupes to be excluded from harvesting or to which special prescriptions apply for biodiversity protection in Webbed Feet and Tin Shed coupes prior to commencing timber harvesting operations in those coupes,.
- (f) contrary to clause 2.2.2.4 of the Code and clause 4.4.9.1 of the Management Procedures, VicForests unlawfully failed to identify, delineate and protect areas of rainforest within the north east part of Webbed Feet coupe and along the southern boundary of Webbed Feet coupe in accordance with the Code and the Management Procedures prior to commencing timber harvesting operations.

Long-footed Potoroo

F. Declare that:

- (a) VicForests' application to DELWP to amend the forest management zoning scheme in respect of the Long-footed Potoroo dated 13 January 2016 does not comply with the Planning Standards, and is contrary to clause 2.1.1.1 of the Code, clauses 2.1.1.3 and 4.3 of the Management Procedures and clauses 2.1.1.1 and 4.3.1.2 of the Planning Standards.
- (b) VicForests intended management action for the Long-footed Potoroo contained in VFSMP55 dated 13 January 2016, and in VicForests Forest Coupe Plans for Tin Shed and Webbed Feet coupes dated 13 January 2016 and 8 February 2016 respectively, is inconsistent with the management action required by the Planning Standards for the Long-footed Potoroo, contrary to clauses 2.2.2.1 of the Code, clauses 2.1.1.3 and 4.3 of the Management Procedures, and clauses 2.1.1.1 and 2.1.2.1 and 4.3.1.1 of the Planning Standards.

DATED ~~18 March 2016~~ ~~12 September 2016~~ 19 December 2016

K.P.Hanscombe

Chris Horan

Nicola Collingwood

Rupert Watters

Environmental Justice Australia
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Environmental Justice Australia

Solicitors for the Plaintiff