**Selected sections from Justice Richards Judgment in the Environment East Gippsland v VicForests ( No. 4) 2022**

**From the 162 page judgment**

I have concluded that VicForests does not currently apply the precautionary principle to the protection of greater gliders. P5.

VicForests does not currently apply the precautionary principle to the protection of yellow-bellied gliders. P7

(VicForests) does not meet its obligation to identify whether and where greater gliders and yellow-bellied gliders are present in a coupe, when planning to harvest the coupe. The spotlight surveys it relies on to detect gliders are limited to a one kilometre transect through (or beside) a coupe. This leaves most of the coupe unsurveyed, and provides incomplete information…P9

At present, VicForests is not guided by the ten principles for determining suitable habitat when designing a protection area of suitable habitat for a threshold population of gliders, and it does not propose to adopt them. P 10

According to Ms Dawson, VicForests’ adoption of variable retention harvesting (leaving 10-20 trees per ha) ‘means that its operations can support the persistence of arboreal marsupials…’ P 32

It is a substantive, overarching obligation that is imposed on VicForests by the Code … P 45

Section 2.2.2.2 means that VicForests, … must always apply the precautionary principle to the conservation of biodiversity values when planning and conducting timber harvesting operations in State forests. … in some circumstances, s 2.2.2.2 will ‘operate to fill gaps left by more specific management prescriptions’. P 46

The (Precautionary) principle involves two inquiries: (a) are there threats of serious or irreversible environmental damage; (b) about which there is a lack of scientific certainty? If the answer to both of those inquiries is ‘yes’, measures to prevent environmental degradation should not be postponed. P 49-50

s 2.2.2.4 of the Code is a mandatory action that requires more of VicForests than compliance with the prescriptions in … the Standards. It requires VicForests, during planning, to identify whether and where the biodiversity values (species listed) are present in a coupe, before undertaking timber operations… p 57

In short, the southern greater glider has been listed as endangered because the species is at risk of extinction. This is a form of environmental damage that is both serious and irreversible… P 69

Overall, the evidence left me in no doubt that VicForests’ timber harvesting operations in East Gippsland and the Central Highlands present a threat of serious or irreversible harm to the greater glider as a species. P 71

VicForests’ post-harvest survey program, …evidence from Michael Ryan, a forest scientist in VicForests’ biodiversity team… conducted post-harvest surveys of selected coupes in the Dandenong, Central and North-East FMAs, … to determine whether greater gliders have persisted… resulted in greater glider populations persisting in or adjacent to most harvest areas. Mr Ryan was cross-examined at some length about the basis for his conclusions … it was clear that his conclusions were, at best, preliminary hypotheses based on incomplete data. The spreadsheet was no more than a data dump. P 71-72

I am unable to place any weight on his conclusion that VicForests’ adaptive harvesting methods resulted in greater glider populations persisting in or next to harvested coupes. P 72

VicForests was at pains to point out that, over that time, it will harvest only a small proportion of remaining glider habitat. The unstated premise of that submission was that any greater gliders that may die as a result of that harvesting are expendable. I do not accept that premise… the destruction of individual gliders cannot be considered in isolation; the effect of intensive timber harvesting on the species is additive and cumulative. P 73

The actions that VicForests takes to conserve greater gliders that have been detected within a coupe scheduled for harvest are inadequate and, in many cases, unlikely to be effective… VicForests only applies the 40% retention prescription where three or more greater gliders are detected per spotlight kilometre. The evidence revealed no scientific basis for this detection threshold. P 83

VicForests led no evidence that its variable retention systems were developed by reference to ‘relevant monitoring and research’ or the ‘advice of relevant experts and relevant research in conservation biology and flora and fauna management’…. The plaintiffs sought to demonstrate that the retained basal area of eucalypts in the harvested area of four coupes harvested using the VR1 harvesting method was between 8 and 11%.156 Both ecologists considered a basal area retention of 10% to be in effect clearfall harvesting. P 85

Dr Wagner (VicForests’ expert witness) said that (VicForests’) proposed use of VR1 and VR2 systems would lead to ‘severe decreases in population size and density’… Ms Dawson confirmed that it has no concrete plans at present to move to selective harvesting. P 88

**The ecological evidence was clear - greater gliders that live in coupes that are harvested in accordance with VicForests’ current practices will probably die as a result of the harvesting operations.** P 89

As with greater gliders, there is a question whether VicForests is currently observing this requirement. P 91

I have concluded that VicForests’ current timber harvesting methods in East Gippsland and the Central Highlands are closer to clearfall harvesting than to selective harvesting… The effect of timber harvesting on yellow-bellied gliders as a species is additive and cumulative. P 93

VicForests did not seek to demonstrate that its variable retention systems were developed by reference to ‘relevant monitoring and research’ or the ‘advice of relevant experts and relevant research in conservation biology and flora and fauna management’… variable retention harvesting as it is practised by VicForests may involve the retention of as little as 10% of the basal area in the harvested area of a coupe, the equivalent of clearfelling. P 100

**yellow-bellied gliders that live in coupes that are harvested in accordance with VicForests’ current practices will probably die as a result of the harvesting operations.** P 101

Mr Hellyer’s (VicForests’ health and safety expert) expectation of an increased number of injuries was based on a false premise, and appeared to me to be exaggerated. Further, Ms Dawson’s position (VicForests CEO) was not supported by the opinions of two health and safety experts who were asked to consider the plaintiffs’ survey protocol. P 115

I find that Ms Dawson and Mr Hellyer’s safety concerns were overstated and inconsistent with VicForests’ existing job safety analysis… P 117

An extra cost of $17,000 to $20,000 per coupe to generate a return of about $600,000 does not seem disproportionate to the objective of avoiding serious and irreversible damage to the environment, namely the extinction of greater gliders and yellow-bellied gliders. P 119

It must do so using a survey method that is likely to detect any gliders that may be present in the coupe, so as to locate the gliders’ home ranges wherever practicable…The survey protocol proposed by the plaintiffs is an effective survey method. P 120

It may also be unnecessary to apply the plaintiffs’ survey protocol in every coupe, to its full extent. Coupes that were clearfelled after 1939 would not have to be surveyed for gliders before being logged again, because they are unsuitable habitat in which gliders are unlikely to be present. P 121

VicForests is not applying s 2.2.2.4 of the Code in East Gippsland. … I reach the same conclusions in relation the Central Highlands, for similar reasons. P 123

VicForests had failed to comply with cl 2.1.1.3 and other ‘SPZ Provisions’ of the 2014 Standards in several specific instances, … is likely to breach the Protection Area Provisions by failing to apply a protection area of approximately 100 hectares of suitable habitat… P 126

The overall impression is that the design was guided by the recovery of merchantable timber, and not by Principle 1 — Precaution, prevention and futureproofing. Two features of the proposed SPZ stand out. … the odd shape of the proposed SPZ … is linear, rather than round or square. It appears to have been designed around waterways where VicForests is already required to set aside a buffer… There is minimal connection proposed with the existing SPZ, … does not have ‘minimum edge effect’, because the glider detections noted are not a maximum distance from the edges and almost all of the boundaries will be hostile rather than suitable habitat… P 135

The shapes of all of the proposed SPZs (now called protection areas) that Mr Lewis (VicForests) provided by way of example were unsuitable, being linear rather than round or square, and not designed to minimise edge effects. VicForests does not at present intend to apply the ten principles for determining suitable habitat…I am satisfied that VicForests is likely to misapply cl 4.2.1.3 of the Standards in future. P 143 & 144

…VicForests’ position in relation to s 2.2.2.2 of the Code and the precautionary principle was strikingly similar to its position in the Leadbeater’s Possum litigation (Federal Court). It maintained that s 2.2.2.2 should be construed narrowly, … only engaged in circumstances where (logging) present a threat of serious or irreversible environmental damage. That position was rejected by Mortimer J and the Full Court, and it has been rejected again in these proceedings… P 151

I have also found that VicForests’ current survey practice and its … variable retention harvesting fall well short of what the precautionary principle requires for the conservation of greater gliders. In particular, VicForests still does not thoroughly survey coupes for greater gliders when planning timber harvesting operations. It still plans to harvest areas of forest that greater gliders are known to inhabit, in the face of scientific opinion that this is likely to cause the destruction of those gliders…
P 151