

BETWEEN:

**WOTCH INC**

Plaintiff

-and-

**VICFORESTS**

Defendant

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**ORDER**

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JUDGE OF THE COURT: The Honourable Justice McMillan

DATE MADE: 13 May 2020

ORIGINATING PROCESS: Writ filed 28 January 2020

HOW OBTAINED: On return of the plaintiff's summons filed 1 May 2020 and on return of the defendant's summons filed 4 May 2020

ATTENDANCE: Ms J Watson and Ms C Mintz, both of counsel, for the plaintiff  
Ms F Hudgson of counsel for the defendant

OTHER MATTERS: This order is signed by the Judge pursuant to r 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*.

**THE COURT ORDERS THAT:**

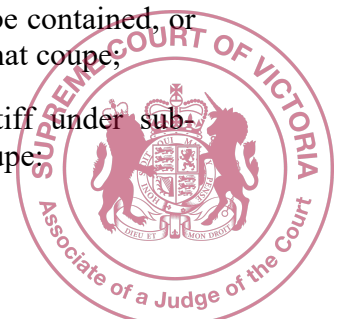
**Categories of discovery**

- 1 The plaintiff make discovery of the documents listed in Schedule 1.
- 2 The defendant make discovery of the documents listed in Schedule 2.

**Further particulars**

- 3 If the plaintiff provides to the defendant:
  - (a) details of any coupe/s additional to those referred to in the particulars to paragraph 22 of the statement of claim which it asserts contain or are likely to contain fire-affected threatened species (within the meaning of paragraph 17 of the statement of claim) and / or their habitat; and
  - (b) for each coupe referred to in sub-paragraph (a) above, details of the fire-affected threatened species (within the meaning of paragraph 17 of the statement of claim) which it asserts are contained or likely to be contained, or whose habitat is contained or is likely to be contained, within that coupe;

the defendant will within 7 days of the notification by the plaintiff under sub-paragraphs (a) and (b) above inform the plaintiff in relation to each coupe;



- (c) whether it is scheduled to be harvested before the date scheduled for trial of this proceeding; and
  - (d) if it is scheduled to be harvested, when that is scheduled to occur.
- 4 Following any notification by the defendant under paragraphs 3(c) and 3(d) above, the plaintiff will notify the defendant within 7 days of any further particulars under paragraph 22 of the statement of claim which it seeks to provide.

**Trial directions timetable — extensions of time**

- 5 The orders of the Honourable Justice McMillan made 27 March 2020 be varied by extending time as follows:
- (a) for the parties to make discovery under order 5 to 4.00pm on 25 May 2020;
  - (b) for the plaintiff to file and serve any further affidavits upon which it intends to rely to 4.00pm on 12 June 2020;
  - (c) for the defendant to file and serve any further affidavits upon which it intends to rely by 4:00 pm to 3 July 2020;
  - (d) for the plaintiff to file and serve any affidavits in reply to 4.00 pm on 17 July 2020;
  - (e) for the parties to agree on a book of maps for use at trial, to no later than 22 June 2020;
  - (f) for the plaintiff to file and serve any expert evidence to 4.00pm on 7 August 2020; and
  - (g) for the defendant to file and serve any expert evidence to 4.00pm on 21 August 2020.
- 6 Pursuant to r 3.02(3) of the *Supreme Court (General Civil Procedure) Rules 2015*, the parties may, by consent, extend any order fixing time in orders 5(a)–(g), but must provide to the Court a signed minute of consent.
- 7 Costs reserved.
- 8 Liberty to apply.
- 9 The proceeding be listed for directions, including any directions as to any joint expert report processes and electronic trial, on 28 August 2020.

DATE AUTHENTICATED:

13 MAY 2020

*Justice McMillan*

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The Honourable Justice McMillan



## SCHEDULE 1

- 1 Documents (including correspondence) containing survey reports and results, maps and datasets, all GPS files (track logs and waypoints), photos and videos from flora and fauna surveys conducted in Central Highlands (CH) since 28 December 2017 in relation to VicForests' coupes which are the subject of an injunction or an application for an injunction in the proceeding.
- 2 Documents (including correspondence) recording observations by, and reports or communications to, the plaintiff since 28 December 2017 in relation to sightings of threatened species which the plaintiff says are now fire-affected, and observations of timber harvesting in VicForests' coupes referred to in affidavits filed by the plaintiff, which are the subject of an injunction or an application for an injunction in the proceeding.
- 3 Documents (including correspondence) recording or referring to scientific or other advice concerning the planning of the actual flora and fauna surveys conducted in the Central Highlands (CH) since 28 December 2017 in relation to VicForests' coupes which are the subject of an injunction or an application for an injunction in the proceeding.
- 4 Documents which identify or record the methodology or means by which WOTCH undertakes the flora and fauna surveys in Category 1 including but not limited to:
  - (a) the resources, personnel and equipment used by WOTCH to undertake such surveys;
  - (b) the identify and qualifications of the lead surveyor and/or person with the primary conduct of such surveys;
  - (c) scientific or other advice concerning the development, use or application of survey standards;
  - (d) any peer or external review of survey results; and
  - (e) communication of those results outside WOTCH.
- 5 Documents which record the decisions of the WOTCH Committee of Management or at an Annual or Special General Meeting in relation to undertaking survey activity in



the Central Highlands since November 2019 or in response to the 2019/2020 Bushfires.

- 6 Documents which record the decisions of the WOTCH Committee of Management or at an Annual or Special General Meeting in relation to the commencement of litigation against VicForests insofar as it relates to its purposes of:
  - (a) historically recording flora and fauna found within the Central Highland of Victoria; and
  - (b) promoting and educating the public about the importance of biodiversity in this area.
- 7 Documents (including correspondence) from the WOTCH Committee of Management or any Officeholder to the State concerning the State's bushfire biodiversity response or to the Commonwealth concerning the Commonwealth's bushfire biodiversity response.
- 8 Documents (including drafts, correspondence and spatial data) arising from or concerning the State or Commonwealth bushfire biodiversity responses.



## SCHEDULE 2

- 1 Documents (including drafts, correspondence and spatial data) referring to, arising from or concerning the consequences for areas not affected by the bushfires which occurred in the 2019/2020 fire season ('the Bushfires') of the impact of the bushfires on one or more of the species listed as threatened under Part 3 of the *Fauna and Flora Guarantee Act 1988* and listed in particular (p) to paragraph 22 of the statement of claim ('Threatened Species') or habitat of Threatened Species, excluding documents which refer to such matters in a purely administrative way.
- 2 Documents (including drafts, correspondence and spatial data) concerning whether and/or how VicForests should alter its timber harvesting practices in areas not affected by the Bushfires to address or take into account the impact of the Bushfires on one or more Threatened Species or habitat of Threatened Species, excluding documents which refer to such matters in a purely administrative way.
- 3 Documents (including drafts, correspondence and spatial data) arising from or concerning the State or Commonwealth bushfire biodiversity responses (as defined in paragraphs 18-19 of the statement of claim).
- 4 Documents from 20 November 2019 (including drafts, correspondence and spatial data) recording, comprising, concerning, arising from, informing or considered in the course of any work undertaken with DELWP "to understand the prescriptions and controls needed to harvest in areas not affected by the Bushfires, considering the whole post-fire landscape, excluding documents which refer to such matters in a purely administrative way.
- 5 Documents created or amended since 20 November 2019 (including drafts, correspondence and spatial data) referring to, arising from or concerning the impact of timber harvesting in areas not affected by the Bushfires on one or more Threatened Species or habitat of Threatened Species, excluding documents which refer to such matters in a purely administrative way.
- 6 Any documents from 20 November 2019 recording decisions of the defendant's Board or meetings of the defendant's Board or correspondence involving the defendant relating to alterations to planned timber harvesting in areas not affected by the Bushfires due to the impact of the Bushfires on one or more Threatened Species



or Threatened Species habitat, excluding documents which refer to such matters in a purely administrative way.

- 7 Any documents from 20 November 2019 (including drafts, correspondence and spatial data) recording, comprising, concerning, arising from, informing or considered in the course of the “precautionary principle assessment”, “preliminary conclusions” or “additional adaptive management measures” referred to at paragraphs 21(c), 23(c) or 27(c) of the defence, or otherwise concerning the application of the precautionary principle in light of the Bushfires, excluding documents which do not make substantive reference to such matters.
- 8 Documents (including drafts, correspondence and spatial data) recording, comprising, concerning or arising from whether:
  - (a) DELWP has finalised the IPAs; and
  - (b) VicForests has incorporated the IPAs in its spatial systems and whether it has done so accurately.
- 9 Documents (including correspondence) recording or concerning the allegation that “DELWP is not currently reviewing the boundaries of the IPAs” at paragraph 24(c) of the defence.
- 10 In relation to paragraphs 25(d) and 26(d) of the defence, documents (including correspondence) recording or concerning the allegations that “DELWP is not currently reviewing” the Action Statements for the Powerful Owl or Sooty Owl with a view to amending either “nor is it currently reviewing” the POMAs or SOMAs
- 11 In relation to paragraphs 23(a) and 27(a) of the defence, documents (including correspondence) recording or concerning the allegation that the State bushfire biodiversity response is “not expected to include” certain things.
- 12 In relation to paragraphs 23(b) and 27(b) of the defence, documents (including correspondence) recording or concerning the allegation that the Commonwealth bushfire biodiversity response “will not include” certain things.
- 13 Manuals, guidelines, policies, instructions, handbooks or procedures:
  - (a) used or in effect as at 20 November 2019 or following as part of VicForests pre-harvest planning process; or



- (b) which concern the precautionary principle (including drafts).
- 14 Spatial data recording the extent and/or impact / or severity / time of the Bushfires.
  - 15 The coupe file for each coupe particularised at paragraph 22 of the statement of claim, including the coupe plan and all partial versions or drafts thereof, the coupe plan map and all the spatial data depicted in such maps (including drafts), the documents (including correspondence) considered in pre-harvest planning for such coupes, and all documents (including drafts) prepared during or recording the planning of harvesting specific to any such coupe.
  - 16 Correspondence or advice (including drafts) since 20 November 2019 concerning the application of the precautionary principle to one or more Threatened Species present or likely to be present in areas not affected by the Bushfires, excluding documents which refer to such matters in a purely administrative way.
  - 17 Correspondence, and records of correspondence including minutes or emails, between VicForests and the OCR since 20 November 2019 concerning the precautionary principle, the Bushfires or any Threatened Species.
  - 18 Documents concerning either the identification and finalisation or any review / proposed review of the Immediate Protection Areas or any review / proposed review of Sooty Owl Management Areas or Powerful Owl Management Areas in light of the Bushfires.
  - 19 Documents (other than coupe planning documents and emails) from 1 November 2019 concerning the implementation of the Greater Glider Action Statement.
  - 20 The current spatial data comprising the State Forest Resource Inventory for any coupes particularised in paragraph 22 of the statement of claim.

