



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

Case: S ECI 2020 00373

Filed on: 05/02/2020 04:28 PM

S ECI 2020 00373

BETWEEN

WOTCH INC

Plaintiff

and

VICFORESTS

Defendant

STATEMENT OF CLAIM

Date of document:	5 February 2020	
Filed on behalf of:	Plaintiff	
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Parties

1. The Plaintiff:

(a) is an Association incorporated under the *Associations Incorporation Reform Act 2012* (Vic); and

(b) is capable of suing in its own name.

2. The Defendant (**VicForests**):

(a) is established as a State body under s 14 of the *State Owned Enterprises Act 1992* (Vic); and

(b) is a body corporate capable of being sued in its own name.

Standing

3. The Plaintiff:

- (a) is an incorporated association engaged primarily in recording flora and fauna, and promoting and educating the public about the importance of biodiversity.

Particulars

The Plaintiff refers to its Rules of Association, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected upon request.

- (b) conducts field surveys for threatened fauna, flora and ecological communities that attract protection under legislative instruments in Victorian State forests;

Particulars

Since 2015 the Plaintiff has conducted approximately 250 surveys in the field in Victoria to document and report on the presence of biodiversity values.

- (c) has submitted at least 130 reports to the Victorian government in support of requests for protection of species or habitat in the Central Highlands;
- (d) sits on the stakeholder reference group for the Office of Conservation Regulator at the Victorian Department of Environment, Land, Water and Planning (**DELWP**);
- (e) receives specialised survey equipment such as infrared cameras from DELWP on loan for the purposes of the group's survey activities.

4. The Plaintiff has had (at all material times) and continues to have standing to commence this proceeding.

Threatened species

- 5. Under s 10 of the *Flora and Fauna Guarantee Act 1988* (Vic) (**FFG Act**), the Governor in Council may, on the recommendation of the Minister, and by Order published in the Government Gazette, specify, in a list, any taxon or community of flora and fauna that is "threatened".

6. Under s 11 of the FFG Act, a species is eligible to be listed if it is in a demonstrable state of decline that is likely to result in extinction or if it is significantly prone to future threats which are likely to result in extinction.
7. Once a species is listed, s 19 requires the Secretary to DELWP to prepare an action statement for that species as soon as possible, which sets out what has been done to conserve and manage that species and what is intended to be done and may include information on what needs to be done.

VicForests conducts timber harvesting

8. On or about 24 December 2019, VicForests published a timber release plan (TRP) comprising a schedule and online map of coupes selected for timber harvesting by VicForests from 2019 to 2021.
9. VicForests is the person who will undertake, whether by itself or, its servants, agents or contractors, any timber harvesting operations in the coupes selected for harvesting.

VicForests' obligation to comply with the Code

10. VicForests is required by s 46(a) of the *Sustainable (Forests) Timber Act 2004* (Vic) (SFT Act) to comply with any relevant Code of Practice relating to timber harvesting.

The Code & the Planning Standards

11. In 2014, the Department of Environment and Primary Industries, as it was then known, published a Code of Practice under Part 5 of the *Conservation, Forest and Lands Act 1987* (Vic) (the CFL Act), styled "Code of Practice for Timber Production 2014" (the Code).
12. Section 2.2.2.2 of the Code requires, as a "mandatory action", application of the "precautionary principle" (as defined in the Code) to the conservation of biodiversity values, consistent with relevant monitoring and research that has improved the understanding of the effects of forest management on forest ecology and conservation values.
13. The "precautionary principle" is defined in the Code as follows: "when contemplating decisions that will affect the environment, careful evaluation of management options 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”.

14. Section 2.2.2.3 of the Code requires, as a “mandatory action”, consideration of the advice of relevant experts and relevant research in conservation biology and flora and fauna management when planning and conducting timber harvesting operations.
15. Two documents that are incorporated into the Code under s 31(2) of the CFL Act are: (a) the Management Standards and Procedures for timber harvesting operations in Victoria’s State forests 2014; and (b) Appendix 5 to the Management Standards and Procedures for timber harvesting operations in Victoria’s State forests 2014: the Planning Standards for Timber harvesting operations in Victoria’s State Forests 2014 (the **Planning Standards**).

2019/2020 bushfires and governmental responses

16. In the 2019/2020 fire season, Victoria experienced catastrophic bushfires (the **bushfires**).
17. The bushfires have caused (and are continuing to cause) significant losses of flora and fauna throughout Victoria, including losses of species listed as threatened under Part 3 of the FFG Act (**fire-affected threatened species**) and loss of the habitat of such species.
18. From about early 2020, DELWP commenced planning a biodiversity response to the bushfires (the **State bushfire biodiversity response**), including by publishing on 20 January 2020 a preliminary report into response and recovery.

Particulars

A copy of DELWP’s report titled ‘Victoria’s bushfire emergency: Biodiversity response and recovery preliminary report – Version 1’ dated 20 January 2020 is in the possession of the plaintiff’s solicitors and available for inspection upon request.

19. From about early 2020, the Commonwealth Department of Environment and Energy commenced a wildlife and threatened species bushfire recovery process, including by convening an Expert Panel (the **Commonwealth bushfire biodiversity response**) and releasing communiques.

Particulars

A copy of the 'Wildlife and threatened species bushfire recovery expert panel communiques' dated 15 and 24 January 2020 are in the possession of the plaintiff's solicitors and available for inspection

20. Neither the State nor the Commonwealth bushfire biodiversity response is complete.

VicForests is continuing to harvest the habitat of fire-affected threatened species

21. Notwithstanding the bushfires, and notwithstanding the fact the State and Commonwealth bushfire biodiversity responses are ongoing, VicForests is continuing to plan and conduct timber harvesting operations in Victorian forests.

Particulars

By letter of 22 January 2020, VicForests advised the plaintiff's solicitor that logging was continuing and that 34 coupes were "presently active".

A copy of the 22 January 2020 letter is in the possession of the plaintiff's solicitors and available for inspection upon request.

Further particulars of VicForests' current timber harvesting operations and planned timber harvesting operations may be provided after discovery.

22. Of the coupes scheduled for harvesting in the TRP, VicForests has commenced timber harvesting (or is proposing to imminently commence timber harvesting) in coupes that contain or are likely to contain fire-affected threatened species, or habitat of fire-affected threatened species.

23. Particulars

- (a) Coupe 298-516-0003 (**Mount Despair Pony Coupe**) was observed on 27 January 2020 by members of the plaintiff to contain timber harvesting equipment and was part harvested. On 29 January 2020, VicForests' counsel advised the Court that no timber harvesting operations were presently being conducted due to re-deployment of contractors for bushfire related work, but may commence in 2-4 weeks. The coupe contains Greater Glider and its habitat.
- (b) Coupe 298-516-0002 (**Mount Despair Brumby Coupe**) is listed in VicForests' document "North East Schedule Dec 2019 to Jun 2020" and marked as "Jan:Feb:March 2020". On 29 January 2020, VicForests' counsel advised the Court that no timber harvesting operations were presently being conducted, but may commence in 2-4 weeks. The coupe contains Greater Glider and its habitat.

A copy of the document “North East Schedule Dec 2010 to Jun 2020” is in the possession of the plaintiff’s solicitors and available for inspection upon request.

- (c) Coupe 297-501-0006 (**Castella East Coupe**). By letter dated 18 December 2019 VicForests advised a local community member that harvesting operations are scheduled to commence in this coupe in early to mid-February 2020. On 29 January 2020, VicForests’ counsel advised the Court that no timber harvesting operations are underway in this coupe, but are scheduled to commence in late February or early March. The coupe contains Greater Glider and its habitat.

A copy of the letter is in the possession of the plaintiff’s solicitors and available for inspection upon request.

- (d) Coupe 298-504-0001 (Propeller) (**Mount Klondyke Coupe**) was observed by members of the plaintiff on 27 January 2020 to contain timber harvesting equipment and was part harvested. On 29 January 2020, VicForests’ counsel advised the Court that no timber harvesting operations were presently being conducted due to re-deployment of contractors for bushfire related work, but may commence in 2-4 weeks. The coupe contains:

- i. Greater Glider and its habitat;
- ii. Powerful Owl and/or its habitat.

- (e) Coupe 312-510-0012 (Kumba) (**Big River Kumba Coupe**) is (on the basis of information provided by VicForests) presently active, save for the interim injunction that is in place. It contains:

- i. Greater Glider and its habitat;
- ii. Powerful Owl and/or its habitat;
- iii. Sooty Owl and/or its habitat;
- iv. Smoky Mouse and its habitat.

- (f) Coupe 458-501-0010 (Rock a Rhyme) (**Upper Thompson Coupe**) is (on the basis of information provided by VicForests) presently active save for the interim injunction that is in place. It contains Greater Glider and its habitat.

- (g) Coupe 349-502-0014 (**LaTrobe Coupe**) was observed on 23 January 2020 by members of the plaintiff to contain timber harvesting equipment and was part harvested. On 29 January 2020, VicForests’ counsel advised the Court that roading works were underway, and while no other logging had commenced, it is scheduled to commence shortly after completion of the roadworks which may take 2-3 weeks. The coupe contains:

- i. Greater Glider and its habitat;
 - ii. Sooty Owl and/or its habitat;
- (h) Coupe 347-518-0005 (Dowse) (**Learmonth Creek Coupe**) is (on the basis of information provided by VicForests) presently active, save for the interim injunction that is in place. It contains Greater Glider and its habitat.
- (i) Coupe 345-528-0001 (Apu) (**Big Pats Creek Coupe**) is listed in VicForests' document "West Gippsland Three Month Rolling Plan" as "Proposed Start Date Feb 2020". On 29 January 2020 VicForests' counsel advised the Court that no timber harvesting operations were presently being conducted, but may commence in 3 weeks. The coupe contains Greater Glider and its habitat.

A copy of the "West Gippsland Three Month Rolling Plan" document is in the possession of the plaintiff's solicitors and available for inspection upon request.

- (j) Coupe 312-510-0010 (Rumba) (**Big River Rumba Coupe**) is identified in VicForests' undated document "Notice of Timber Harvesting Safety Zone" in which it is stated that timber harvesting operations in the coupe commence on 3 February 2020. The coupe contains:
- i. Greater Glider and its habitat;
 - ii. Sooty Owl and/or its habitat.

A copy of the "Notice of Timber Harvesting Safety Zone" is in the possession of the plaintiff's solicitors and available for inspection upon request.

- (k) Coupe 312-510-0011 (Pumba) (**Big River Pumba Coupe**) is identified in VicForests' undated document "Notice of Timber Harvesting Safety Zone" in which it is stated that timber harvesting operations in the coupe commence on 3 February 2020. The coupe contains:
- i. Greater Glider and its habitat;
 - ii. Sooty Owl and/or its habitat.

A copy of the "Notice of Timber Harvesting Safety Zone" is in the possession of the plaintiff's solicitors and available for inspection upon request.

- (l) Coupe 388-505-0002 (Wales) (**Timbertop Wales Coupe**) has been identified in correspondence from VicForests and/or its solicitors dated 22 January and 3 February 2020 as presently active. The coupe contains Greater Glider and its habitat.

A copy of the letters dated 22 January 2020 and 3 February 2020 are in the possession of the plaintiff's solicitors and available for inspection upon request.

- (m) Coupe 388-505-0004 (Princess Di) (**Timbertop Princess Di Coupe**) has been identified in correspondence from VicForests and/or its solicitors dated 22 January and 3 February 2020 as presently active. The coupe contains Greater Glider and its habitat.

A copy of the letters dated 22 January 2020 and 3 February 2020 are in the possession of the plaintiff's solicitors and available for inspection upon request.

- (n) Coupe 535-504-0001 (Wabby) (**Frazer Creek coupe**) has been identified in correspondence from VicForests and/or its solicitors dated 22 January and 3 February 2020 as presently active. The coupe contains Alpine Tree Frog and its habitat.

A copy of the letters dated 22 January 2020 and 3 February 2020 are in the possession of the plaintiff's solicitors and available for inspection upon request.

- (o) Coupe 686-510-0012 (**Mt Wills Ck coupe**) has been identified in correspondence from VicForests and/or its solicitors dated 22 January and 3 February 2020 as presently active. The coupe contains Sooty Owl and/or its habitat.

A copy of the letters dated 22 January 2020 and 3 February 2020 are in the possession of the plaintiff's solicitors and available for inspection upon request.

- (p) The Greater Glider, Sooty Owl, Powerful Owl, Smoky Mouse and Alpine Tree Frog are fire-affected threatened species.

The reference to "threatened species" is a reference to species identified as threatened pursuant to the *Flora and Fauna Guarantee Act 1988* (Vic).

Further particulars may be provided.

- 23. By planning and conducting timber harvesting operations following the bushfires in coupes known to VicForests or to DELWP to contain fire-affected threatened species or known to be likely to contain such species, or habitat of such species, VicForests has failed, and will fail, to comply with s 2.2.2.2 of the Code.

Particulars

- (a) The State bushfire biodiversity response has already included (by way of published preliminary results), and Phases 2 and/or 3 of the State bushfire biodiversity response are likely to include, relevant

monitoring and research that improves the understanding of the effects of forest management on forest ecology and conservation values, with which VicForests must apply the precautionary principle consistently to the conservation of biodiversity values under s 2.2.2.2 of the Code.

- (b) The Commonwealth bushfire biodiversity response has already included (by way of published preliminary results), and the short and/or medium term response of the Commonwealth bushfire biodiversity response is likely to include, relevant monitoring and research that improves the understanding of the effects of forest management on forest ecology and conservation values, with which VicForests must apply the precautionary principle consistently to the conservation of biodiversity values under s 2.2.2.2 of the Code.
- (c) It was and remains probable or seriously possible that timber harvesting in coupes that contain fire-affected threatened species detections or habitat, posed and continues to pose a threat of serious or irreversible damage to fire-affected threatened species and there was and remains scientific uncertainty as to that threat.
- (d) VicForests has failed, is failing, and will fail to apply the precautionary principle to the conservation of biodiversity values at all, or consistent with relevant monitoring and research, by:
 - i. planning and conducting timber harvesting operations in coupes known to it or to DELWP to contain (or be likely to contain) fire-affected threatened species or habitat of such species, prior to the conclusion of Phase 2 and 3, alternatively Phase 2, of the State bushfire biodiversity response.
 - ii. planning and conducting timber harvesting operations in coupes known to it or to DELWP to contain (or be likely to contain) fire-affected threatened species or habitat of such species, prior to the conclusion of the medium term responses in the Commonwealth bushfire biodiversity response.
 - iii. failing to develop and implement timber harvesting prescriptions to avoid serious or irreversible damage to fire-affected threatened species, wherever practical, that:
 - A. have regard to the impact of the Bushfires on the threatened species;
 - B. are proportionate to the threat posed by timber harvesting operations to fire-affected threatened species.
 - iv. failing to carefully evaluate management options for fire-affected threatened species.
 - v. failing to properly assess the risk-weighted consequences for fire-affected threatened species of various options.

Further particulars may be provided.

24. By planning and conducting timber harvesting operations following the bushfires in coupes known to VicForests or to DELWP to contain Greater Glider or known to be likely to contain Greater Glider, or its habitat, prior to the identification and finalisation of Immediate Protection Areas for the Greater Glider, VicForests has failed, and will fail, to comply with s 2.2.2.2 of the Code.

Particulars

- (a) In about November 2019, DELWP published a document titled Action Statement for Greater Glider, which included an “indicative” map of 96,000ha designated as “Immediate Protection Areas” for the species.
- (b) The boundaries of the Immediate Protection Areas are yet to be finalised.
- (c) Between December 2019 and January 2020, a substantial proportion of the indicative Immediate Protection Areas for the Greater Glider were burnt and otherwise impacted by the bushfires.
- (d) It was and remains probable or seriously possible that timber harvesting in coupes that contain or are likely to contain Greater Glider or its habitat, posed and continues to pose a threat of serious or irreversible damage to Greater Glider and there was and remains scientific uncertainty as to that threat.
- (e) VicForests has failed, is failing, and will fail to apply the precautionary principle to the conservation of biodiversity values at all, or consistent with relevant monitoring and research, by planning and conducting timber harvesting operations in coupes known to it or to DELWP to contain (or be likely to contain) Greater Gliders or habitat of such species, prior to the finalisation of the Immediate Protection Areas for the Greater Glider.

Further particulars may be provided.

25. By planning and conducting timber harvesting operations following the bushfires in coupes known to VicForests or to DELWP to contain Powerful Owls or known to be likely to contain such species, or its suitable habitat, prior to review of the Powerful Owl Management Area (**POMA**) allocation, VicForests has failed, and will fail, to comply with s 2.2.2.2 of the Code.

Particulars

- (a) The Action Statement for the Powerful Owl, the Planning Standards, and the Forest Management Plans intend to establish and maintain a system of management areas containing suitable habitat that is protected for 500 breeding pairs of Powerful Owls Victoria. These are termed the Powerful Owl Management Areas (**POMAs**).
- (a) The prescription for the Powerful Owl in the Action Statements, Planning Standards and the Forest Managements Plans requires review of the POMA allocation in circumstances including new information about owl populations, habitat requirements and sightings.
- (b) Between December 2019 and January 2020, the POMAs were impacted by the bushfires.
- (c) There are now less than 500 POMAs of suitable Powerful Owl habitat.
- (d) It was and remains probable or seriously possible that timber harvesting in coupes that contain or are likely to Powerful Owl or its suitable habitat, posed and continues to pose a threat of serious or irreversible damage to Powerful Owl and there was and remains scientific uncertainty as to that threat.
- (e) VicForests has failed, is failing, and will fail to apply the precautionary principle to the conservation of biodiversity values at all, or consistent with relevant monitoring and research, by planning and conducting timber harvesting operations in coupes known to it or to DELWP to contain (or be likely to contain) Powerful Owls or suitable habitat of such species, since the bushfires and prior to review by DELWP of the POMA allocation.

Further particulars may be provided.

- 26. By planning and conducting timber harvesting operations following the bushfires in coupes known to VicForests or to DELWP to contain Sooty Owls or known to be likely to contain such species, or its suitable habitat, prior to review of the Sooty Owl Management Area (**SOMA**) allocation, VicForests has failed, and will fail, to comply with s 2.2.2.2 of the Code.

Particulars

- (a) The Action Statement for the Sooty Owl, the Planning Standards, and the Forest Management Plans intend to establish and maintain a system of management areas containing suitable habitat that is protected for 500 breeding pairs of Sooty Owls across Victoria. These are termed the Sooty Owl Management Areas (**SOMAs**).

- (b) The prescription for the Sooty Owl in the Action Statement, Planning Standards and Forest Managements Plans require review of the SOMA allocation when further research and surveys into owl populations, habitat requirements and sightings becomes available.
- (c) Between December 2019 and January 2020, the SOMAs were impacted by the bushfires.
- (d) There are now less than 500 SOMAs of suitable Sooty Owl habitat.
- (e) It was and remains probable or seriously possible that timber harvesting in coupes that contain or are likely to Sooty Owl or its suitable habitat, posed and continues to pose a threat of serious or irreversible damage to Sooty Owl and there was and remains scientific uncertainty as to that threat.
- (f) VicForests has failed, is failing, and will fail to apply the precautionary principle to the conservation of biodiversity values at all, or consistent with relevant monitoring and research, by planning and conducting timber harvesting operations in coupes known to it or to DELWP to contain (or be likely to contain) Sooty Owls or suitable habitat of such species, since the bushfires and prior to review by DELWP of the SOMA allocation.

Further particulars may be provided.

27. By planning and conducting timber harvesting operations following the bushfires in coupes known to VicForests or to DELWP to contain fire-affected threatened species or known to be likely to contain such species, or habitat of such species, VicForests has failed, and will fail, to comply with s 2.2.2.3 of the Code.

Particulars

- (b) The State bushfire biodiversity response has already included (by way of published preliminary results), and Phases 2 and 3 of the State bushfire biodiversity response are likely to include, advice of relevant experts and relevant research in conservation biology and flora and fauna management which must be considered by VicForests when planning and conducting timber harvesting operations under s 2.2.2.3 of the Code.
- (c) The Commonwealth bushfire biodiversity response has already included (by way of published preliminary results), and is likely to include, advice of relevant experts and relevant research in conservation biology and flora and fauna management which must be considered by VicForests when planning and conducting timber harvesting operations under s 2.2.2.3 of the Code.

- (d) Because VicForests is continuing to conduct timber harvesting operations without waiting for:
 - i. completion of Phase 2 and/or 3 of the State bushfire biodiversity response; and/or
 - ii. medium term Commonwealth bushfire biodiversity responses required to support the recovery of fire affected threatened species,

VicForests has failed, is failing, and will fail to properly consider the advice at (a) and (b) in planning and conducting timber harvesting operations in coupes containing detections or habitat of fire-affected threatened species.

- (e) VicForests has failed, is failing, and will fail to comply with s 2.2.2.3 of the Code by failing to positively obtain and consider advice of relevant experts and relevant research in conservation biology and flora and fauna management when planning and conducting timber harvesting operations in the fire affected threatened species coupes.

- 28. Any breach of the Code by VicForests (whether of s 2.2.2.2 or s 2.2.2.3) is a breach of its obligation under s 46 of the SFT Act to comply with relevant Codes of Practice.
- 29. VicForests will, unless restrained, fail to take a precautionary approach and/or breach 2.2.2.3 of the Code in conducting timber harvesting operations in coupes that are known to it or to DELWP to contain or be likely to contain fire-affected threatened species or habitat of fire-affected threatened species.

AND THE PLAINTIFF CLAIMS AGAINST THE DEFENDANT

- A. A declaration that any ongoing timber harvesting operations within the meaning of s 3 of the *Sustainable Forests (Timber) Act 2004* (Vic) in the coupes particularised in paragraph 22 above are unlawful.
- B. A declaration that it is unlawful for VicForests to conduct timber harvesting operations within the meaning of s 3 of the *Sustainable Forests (Timber) Act 2004* (Vic) in any coupe known to VicForests or DELWP to contain or be likely to contain a fire affected threatened species (as defined in paragraph 17 above) or habitat of such species, until:
 - i. Phases 2 and 3, alternatively Phase 2, of the State biodiversity response (as defined in the paragraph 18 above) have, or alternatively has concluded;

- ii. The medium term response of the Commonwealth bushfire biodiversity response (as defined in paragraph 19 above) has completed;
 - iii. Relevant advice and research arising from Phases 2 and 3, alternatively Phase 2, of the State biodiversity response has been considered by VicForests in planning and conducting any timber harvesting operation in such coupes as required by s 2.2.2.3 of the Code;
 - iv. Relevant advice and research arising from the medium term response of the Commonwealth biodiversity response has been considered by VicForests in planning and conducting any timber harvesting operation in such coupes as required by s 2.2.2.3 of the Code;
 - v. VicForests has evaluated management options, and properly assessed the risk weighted consequences of those options, in planning and conducting timber harvesting in coupes that contain fire-affected threatened species and their habitat to, wherever practical, avoid serious or irreversible damage to fire-affected threatened species, consistent with relevant monitoring and research arising from the State and Commonwealth bushfire biodiversity responses as required by cl 2.2.2.2 of the Code;
 - vi. VicForests has developed and implemented timber-harvesting prescriptions to, wherever practical, avoid serious or irreversible damage to fire-affected threatened species in light of:
 - 1. Phases 2 and 3, alternatively Phase 2, the State bushfire biodiversity response;
 - 2. the medium term Commonwealth bushfire biodiversity response, consistently with cl 2.2.2.2 of the Code.
 - vii. VicForests, having regard to the impact of the bushfires on threatened species, has developed and implemented timber-harvesting prescriptions to, wherever practical, avoid serious or irreversible damage to fire-affected threatened species, consistently with cl 2.2.2.2 of the Code.
- C. Injunctions, both interlocutory and final, to restrain the Defendant (whether by itself, its officers, its employees, agents, contractors or howsoever otherwise) from carrying out timber harvesting operations within the meaning of s 3 of the *Sustainable Forests*

(*Timber*) Act 2004 (Vic) in the following coupes: 298-516-0003 (Pony), 298-516-0002 (Brumby), 297-501-0006 (Castella East), 298-504-0001 (Propeller), 312-510-0012 (Kumba), 458-501-0010 (Rock a Rhyme), 349-502-0014 (LaTrobe), 347-518-0005 (Dowse), 345-528-0001 (Apu), 312-510-0010 (Rumba), 312-510-0011 (Pumba), 388-505-0002 (Wales), 388-505-0004 (Princess Di), 535-504-0001 (Wabby) and 686-510-0012 (Mt Wills Ck).

D. A final injunction to restrain the Defendant (whether by itself, its officers, its employees, agents, contractors or howsoever otherwise) from carrying out timber harvesting operations within the meaning of s 3 of the *Sustainable Forests (Timber) Act 2004* (Vic) in any coupe known to VicForests or DELWP to contain or be likely to contain a fire-affected threatened species (as defined in paragraph 17 above) or habitat of such species unless and until:

- i. Phases 2 and 3, alternatively Phase 2, of the State biodiversity response (as defined in the paragraph 18 above) have, or alternatively has concluded;
- ii. The medium term response of the Commonwealth bushfire biodiversity response (as defined in paragraph 19 above) has completed;
- iii. Relevant advice and research arising from Phases 2 and 3, alternatively Phase 2, of the State biodiversity response has been considered by VicForests in planning and conducting any timber harvesting operation in such coupes as required by s 2.2.2.3 of the Code;
- iv. Relevant advice and research arising from the medium term response of the Commonwealth biodiversity response has been considered by VicForests in planning and conducting any timber harvesting operation in such coupes as required by s 2.2.2.3 of the Code;
- v. VicForests has evaluated management options, and properly assessed the risk weighted consequences of those options, in planning and conducting timber harvesting in coupes that contain fire-affected threatened species and their habitat to, wherever practical, avoid serious or irreversible damage to fire-affected threatened species, consistent with relevant monitoring and research arising from the State and Commonwealth bushfire biodiversity responses as required by cl 2.2.2.2 of the Code;

- vi. VicForests has developed and implemented timber-harvesting prescriptions to, wherever practical, avoid serious or irreversible damage to fire-affected threatened species in light of:
 - 1. Phases 2 and 3, alternatively Phase 2, the State bushfire biodiversity response;
 - 2. the medium term Commonwealth bushfire biodiversity response, consistently with cl 2.2.2.2 of the Code.
 - vii. VicForests, having regard to the impact of the bushfires on threatened species, has developed and implemented timber-harvesting prescriptions to, wherever practical, avoid serious or irreversible damage to fire-affected threatened species, consistently with cl 2.2.2.2 of the Code.
- E. A declaration that it is unlawful for VicForests to conduct timber harvesting operations within the meaning of s 3 of the *Sustainable Forests (Timber) Act 2004* (Vic) in any coupe known to VicForests or DELWP to contain or be likely to contain Greater Glider or its habitat, unless and until the boundaries of the Immediate Protection Area for the Greater Glider are finalised.
- F. A final injunction to restrain the Defendant (whether by itself, its officers, its employees, agents, contractors or howsoever otherwise) from carrying out timber harvesting operations within the meaning of s 3 of the *Sustainable Forests (Timber) Act 2004* (Vic) in any coupe known to VicForests or DELWP to contain or be likely to contain Greater Glider or its habitat, unless and until the boundaries of the Immediate Protection Area for the Greater Glider are finalised.
- G. A declaration that it is unlawful for VicForests to conduct timber harvesting operations within the meaning of s 3 of the *Sustainable Forests (Timber) Act 2004* (Vic) in any coupe known to VicForests or DELWP to contain or be likely to contain:
 - i. the Powerful Owl or suitable Powerful Owl habitat; and/or
 - ii. the Sooty Owl or suitable Sooty Owl habitat,unless and until the POMA and/or SOMA allocation are reviewed by DELWP in light of the 2019/2020 bushfires.
- H. A final injunction to restrain the Defendant (whether by itself, its officers, its employees, agents, contractors or howsoever otherwise) from carrying out timber harvesting

operations within the meaning of s 3 of the *Sustainable Forests (Timber) Act 2004* (Vic) in any coupe known to VicForests or DELWP to contain or be likely to contain:

- i. the Powerful Owl or suitable Powerful Owl habitat; and/or
- ii. the Sooty Owl or suitable Sooty Owl habitat,

unless and until the POMA and/or SOMA allocation are reviewed by DELWP in light of the 2019/2020 bushfires.

I. Such further or other orders as the Court sees fit.

DATE: 5 February 2020

KATHLEEN FOLEY

JULIA WATSON

COLETTE MINTZ

Counsel for the Plaintiff

Environmental Justice Australia
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Environmental Justice Australia

Solicitors for the Plaintiff