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IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN REGISTRY

VID 1228/2017

BETWEEN:

FRIENDS OF LEADBEATER'S POSSUM INC

Applicant

and

VICFORESTS

Respondent

CLOSING SUBMISSIONS ON BEHALF OF VICFORESTS

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CLOSING SUBMISSIONS ON BEHALF OF VICFORESTS

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GLOSSARY

3FASOC	Third Further Amended Statement of Claim dated 3 June 2019
Applicant	Friends of Leadbeater's Possum Inc
Brown Mountain	<i>EEG v VicForests</i> (2010) 30 VR 1 (Osborn J) [legislation and authorities; item 8.1]
CFL Act	<i>Conservation, Forests and Land Act 1987</i> (Vic)
CH FMP	Forest Management Plan for the Central Highlands dated May 1998
CH RFA	Central Highlands Regional Forest Agreement dated 27 March 1998
Code	<i>Code of Practice for Timber Production 2014</i>
Defence	Further Amended Defence to Second Further Amended Statement of Claim dated 22 February 2019
Department (or DELWP)	Department of Environment, Land, Water and Planning (and its predecessor names)
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
FFGA	<i>Flora and Fauna Guarantee Act 1988</i> (Vic)
Fifth Paul Affidavit	Affidavit of William Edward Paul affirmed 31 May 2019
First Baker Report	Expert report of Professor Patrick Baker dated 11 February 2019
First Davey Report	Expert report of Stuart Davey dated 25 January 2019
First McKenzie Affidavit	Affidavit of Jake McKenzie affirmed 14 September 2019
First Mueck Report	Expert report of Stephen Mueck dated 10 January 2019
First Paul Affidavit	Affidavit of William Edward Paul affirmed 1 May 2018
First Smith Report	Expert report of Dr Andrew Peter Smith dated 7 January 2019
First Woinarski Report	Expert report of Professor JCM Woinarski dated 18 January 2019
FMA	Forest Management Area
FMP	Forest Management Plan
FMZ	Forest Management Zone
Fourth Paul Affidavit	Affidavit of William Edward Paul affirmed 11 February 2019
Fourth Smith Report	Expert report of Dr Andrew Peter Smith dated 7 May 2019
GMZ	General Management Zone
Greater Glider	<i>Petauroides Volans</i>
Guidelines	Matters of National Environmental Significance Significant Impact Guidelines (2013) [CB 4.2.2.14]

Leadbeater's Possum	<i>Gymnobelideus leadbeateri</i>
Logged Coupes	The coupes listed in paragraph 10 of the 3FASOC
Management Standards and Procedures	Management Standards and Procedures for timber harvesting in Victoria's State forests
McBride Affidavit	Affidavit of Timothy Charles McBride affirmed 15 October 2018
MyEnvironment	<i>MyEnvironment Inc v VicForests</i> [2012] VSC 91 (Osborn JA) [legislation and authorities; item 10]
MyEnvironment Appeal	<i>MyEnvironment Inc v VicForests</i> (2013) 42 VR 456 [legislation and authorities; item 24]
Planning Standards	Appendix 5 to the Management Standards and Procedures
RFA	Regional Forest Agreement
RFA Act	<i>Regional Forest Agreement Act 2002</i> (Cth)
Scheduled Coupes	The coupes listed in paragraph 9 of the 3FASOC
Second Baker Report	Expert report of Professor Patrick Baker dated 17 April 2019
Second Davey Report	Expert report of Dr Stuart Davey dated 18 April 2019
Second Mueck Report	Expert report of Mr Stephen Mueck dated 22 January 2019
Second Paul Affidavit	Affidavit of William Edward Paul affirmed 15 October 2018
Second Smith Report	Expert report of Dr Andrew Peter Smith dated 9 January 2019
Separate Question reasons	<i>Friends of Leadbeater's Possum Inc v VicForests</i> (2018) 260 FCR 1 (Mortimer J) [CB 1.4]
SFT Act	<i>Sustainable Forests (Timber) Act 2004</i> (Vic)
SMZ	Special Management Zone
SPZ	Special Protection Zone
Telstra	<i>Telstra Corporation v Hornsby Shire Council</i> (2006) 67 NSWLR 256 (Preston CJ) [legislation and authorities; item 11]
THEZ	Timber Harvesting Exclusion Zone
Third Baker Report	Expert report of Professor Patrick Baker dated 9 May 2019
Third Lincoln Affidavit	Affidavit of Andrew Lincoln affirmed 23 January 2019
Third Paul Affidavit	Second Affidavit of William Edward Paul affirmed 15 October 2018
Third Smith Report	Expert report of Dr Andrew Peter Smith dated 11 February 2019
Third Woinarski Report	Expert report of Professor JCM Woinarski dated 2 April 2019
TRP	Timber Release Plan

A. NATURE OF THE APPLICANT'S CASE

A.1. Primary relief sought under the EPBC Act

1. The applicant's case against VicForests contains allegations concerning coupes that have already been harvested (**Logged Coupes**) and coupes listed on the TRP that may be harvested at some time in the future (**Scheduled Coupes**).
2. Insofar as the Scheduled Coupes are concerned, the applicant seeks a prohibitory injunction under s 475(2) of the EPBC Act.¹ Insofar as the Logged Coupes are concerned, the applicant seeks additional orders under s 475(3) of the EPBC Act.²
3. Orders under s 475(3) of the EPBC Act are “[a]dditional orders with prohibitory injunctions” and only available “[i]f the court grants an injunction restraining a person from engaging in conduct *and* in the Court's opinion it is desirable to do so.”
4. In VicForests' submission, relief under the EPBC Act concerning the Logged Coupes is dependent upon relief being obtained concerning the Scheduled Coupes. Although that was a position initially accepted by the applicant,³ that appears no longer to be the case.⁴
5. It follows that the logical starting point in the enquiry is whether the jurisdiction to grant a prohibitory injunction under s 475(2) of the EPBC Act has been enlivened and, if enlivened, whether the discretion to grant an injunction should be exercised.⁵ Subsection 475(2) provides:

Prohibitory injunctions

- (2) If a person has engaged, is engaging or is proposing to engage in conduct constituting an offence or other contravention of this Act or the regulations, the Court may grant an injunction restraining the person from engaging in the conduct.

¹ 3FASOC, paragraph 120(1).

² 3FASOC, paragraph 120(2), (3).

³ T 36:15 (hearing on 14 February 2019).

⁴ T 693:34.

⁵ VicForests does not dispute that the applicant is an “interested person” within the meaning of s 475(7) of the EPBC Act and thus has the requisite standing under s 475(1) to apply for a prohibitory injunction.

6. Although not expressly pleaded in its 3FASOC, the applicant appears to seek prohibitory injunctive relief in respect of the Scheduled Coupes on the basis that VicForests:
 - (a) has engaged in conduct constituting a contravention of the EPBC Act by reason of its forestry operations in each, some, or all of the Logged Coupes;⁶ and
 - (b) is proposing to engage in conduct constituting a contravention of the EPBC Act by reason of its proposed forestry operations in each, some, or all of the Scheduled Coupes.⁷
7. The applicant faces significant difficulties in seeking to establish an entitlement to prohibitory injunctive relief on either of these bases.⁸
8. Insofar as the applicant seeks prohibitory injunctive relief in respect of the Scheduled Coupes on the basis that VicForests has engaged in conduct constituting a contravention of the EPBC Act by reason of its forestry operations in each, some or all of the Logged Coupes, the applicant must establish:
 - (a) first, that VicForests' relevant forestry operations in each, some or all of the Logged Coupes are not covered by the exemption under s 38 because they were not undertaken in accordance with the CH RFA;
 - (b) secondly, if the exemption does not apply, that VicForests' relevant forestry operations in each, some or all of the Logged Coupes contravened s 18 of the EPBC Act; and
 - (c) thirdly, that the conduct to be restrained (namely, VicForests' proposed forestry operations in each, some or all of the Scheduled Coupes) is the same conduct

⁶ 3FASOC, paragraphs 115AA-115EB under the heading "Past logging is a contravention of the EPBC Act".

⁷ 3FASOC, paragraphs 116BA-116BD under the heading "Proposed logging is a contravention of the EPBC Act" and paragraphs 119A-119B under the heading "Past and proposed logging is a breach of the EPBC Act".

⁸ See Section F.1 below.

that has been found to have contravened s 18 of the EPBC Act in each, some or all of the Logged Coupes.

9. For the reasons set out in detail below, VicForests submits that the applicant has failed to establish any of these matters.
10. Insofar as the applicant seeks prohibitory injunctive relief in respect of the Scheduled Coupes on the basis that VicForests is proposing to engage in contravening conduct in each, some, or all of the Scheduled Coupes, the applicant must establish:
 - (a) first, the precise nature and extent of VicForests' proposed conduct in each, some, or all of the Scheduled Coupes (which would not be possible in respect of incomplete, undeveloped or hypothetical plans);
 - (b) secondly, that the relevant forestry operations in each, some, or all of the Scheduled Coupes are not covered by the exemption under s 38 because they will not be undertaken in accordance with the CH RFA; and
 - (c) thirdly, if the exemption does not apply, that VicForests' relevant forestry operations in each, some, or all of the Scheduled Coupes will contravene s 18 of the EPBC Act.
11. Again, for the reasons set out in detail below, VicForests submits that the applicant has failed to establish any of these matters.
12. The prayer for relief makes clear that this case is not about protection of the Greater Glider and Leadbeater's Possum at large. Such matters are quintessentially within the domain of the executive branch of government, and the Crown in either capacity is not a named party.⁹ Rather, this case is about whether any forestry operations (to the extent they are to occur) in the Scheduled Coupes should be enjoined by reason that such operations will be unlawful. Primarily, the case as crafted raises questions of law concerning the proper construction of the Code and the EPBC Act as applied to factual matters. This case is not, as the applicant submits, essentially one of factual questions

⁹ Thus questions of whether the Commonwealth or the State are failing in any alleged obligation to adequately protect either species, or their habitat, do not arise in this proceeding.

about the threat posed by the impact of forestry operations on Greater Glider and Leadbeater's Possum.¹⁰ The manner in which the applicant frames the case subverts the logical order of the issues for determination and invites the Court to, in effect, use a purported judicial power for an executive or legislative purpose.

13. The applicant alleges that VicForests will contravene s 18(2)(b) and s 18(4)(b) (contained within Part 3 of the EPBC Act) by conducting forestry operations in each, some or all of the Scheduled Coupes.¹¹
14. Part 3 of the EPBC Act does not apply, however, to an RFA forestry operation that is undertaken in accordance with an RFA.¹² The question then arises as to whether forestry operations in each, some or all of the Scheduled Coupes will be undertaken other than in accordance with an RFA.
15. The only basis on which it is alleged that “proposed” forestry operations in each, some or all of the Scheduled Coupes will not be undertaken in accordance with an RFA is contained in paragraph 113H of the 3FASOC. There it is alleged that the proposed forestry operations in each, some or all of the Scheduled Coupes are not in accordance with cl 47 of the CH RFA because VicForests has failed and will fail to comply with the precautionary principle in each, some, or all of the Scheduled Coupes, thus, leading to the loss of exemption from the application of Part 3 of the EPBC Act.¹³
16. Clause 47 of the CH RFA relevantly provides that the Commonwealth accredits Victoria's forest management system for the Central Highlands, including Victorian legislation and the systems and processes established by the Code.
17. Clause 2.2.2.2 of the Code provides that the precautionary principle must be applied to the conservation of biodiversity values.

¹⁰ Paragraph 1 of the applicant's outline of opening submission.

¹¹ See paragraphs 116BA–116BD, 119A and 119B and 120(1) of the 3FASOC.

¹² Subsection 38(1) of the EPBC Act; s 6(4) of the RFA Act.

¹³ See paragraph 113I of the 3FASOC.

18. The particulars of VicForests' alleged failure to comply with the Code are set out in paragraph 113A of the 3FASOC and concern Greater Glider only (not Leadbeater's Possum, and not the preparation of a TRP).
19. It follows that the logical starting point of the inquiry is whether any forestry operations in each, some or all of the Scheduled Coupes will fail to comply with the precautionary principle. If that question is answered in the negative it necessarily follows that:
 - (a) the applicant will have failed to establish that any forestry operations in the Scheduled Coupes will not be undertaken in accordance with the CH RFA;
 - (b) without establishing (a), and in the absence of any other alleged basis upon which those forestry operations would not be in accordance with the CH RFA, there is no basis upon which the forestry operations could be held not to be exempt from the application of Part 3 of the EPBC Act;
 - (c) questions of significant impact under Part 3 of the EPBC Act therefore do not arise and any relief in relation to the Scheduled Coupes cannot be granted; and
 - (d) if relief is not granted in relation to the Scheduled Coupes, relief under the EPBC Act cannot be granted in relation to the Logged Coupes.

A.2. Present case fundamentally different in nature from that originally alleged

20. The applicant commenced this proceeding by the filing of an originating application,¹⁴ and statement of claim on 13 November 2017. The relief sought in the claim as presently articulated is (subject to the substitution of the phrase "forestry operations" in lieu of "logging") consistent with that sought in the originating application as amended,¹⁵ although the alleged basis for that relief has fundamentally changed.
21. The most significant changes were the amendments made on 29 March 2018 under r 16.51(1). That amended pleading:

¹⁴ [CB 1.1].

¹⁵ [CB 11B].

- (a) was made after the Court handed down the Separate Question reasons, at which point there was nothing left of the applicant’s case and it was doomed to fail;¹⁶ and
 - (b) put forward an entirely new case,¹⁷ by which allegations concerning the failure to conduct five yearly reviews of the CH RFA were deleted and replaced with allegations predominantly concerning breaches of the precautionary principle.
22. In oral closing submissions, counsel for the applicant advanced a further unpleaded mutation to the effect that, in listing the Scheduled Coupes on the TRP “for the designated silviculture methods without any system in place that takes into account the vulnerability of the Greater Glider”, VicForests has conducted a forestry operation in breach of the Code and thus lost exemption from Part 3 of the EPBC Act.¹⁸ Not only is such a matter not pleaded, it is also inconsistent with the pleading: “forestry operations” in the 3FASOC has always been used as synonymous with “logging”, i.e. the harvesting of forest products, and not the managing of trees before they are harvested.¹⁹ In any event, for reasons set out in section B.3. below, the Code has no sphere of operation in respect of the preparation of, and publication of notice of, a TRP, and thus there has been no breach of the Code leading to a loss of the exemption on this basis.

B. LOSS OF EXEMPTION FROM PART 3 OF THE EPBC ACT

B.1. What is a “forestry operation” for the purposes of the Act?

23. On the proper construction of s 38 of the EPBC Act and s 6(4) of the RFA Act, any loss of exemption from Part 3 of the EPBC Act is limited to the forestry operation or operations that is or are not undertaken in accordance with the CH RFA and does not extend to other forestry operations in the same coupe (or “coupe groups”) that are undertaken in accordance with the CH RFA.²⁰

¹⁶ *Friends of Leadbeater’s Possum Inc v VicForests (No 2)* [2018] FCA 532, [47]. [CB 1.5].

¹⁷ *Friends of Leadbeater’s Possum Inc v VicForests (No 2)* [2018] FCA 532, [30]. [CB 1.5].

¹⁸ T 736:43; T 746:34.

¹⁹ See the definition of “Forestry Operations” in the CH RFA [CB 6.12], 5. Although the word “logging” has been replaced with the phrase “forestry operations” in some parts of the 3FASOC, it remains in several paragraphs and sub-headings.

²⁰ See subparagraph 113G(b) of the defence.

24. To understand why that is so, it is necessary first to set out the relevant organising principles that govern the task of statutory construction. It is then necessary to consider the relevant statutory provisions in the context of those organising principles. Regard must then be had to the manner in which this case has been pleaded and advanced, in particular, on a *coupe by coupe* basis.

B.1.1. Organising principles

25. In *SZTGM v Minister for Immigration and Border Protection*²¹ the plurality observed:

The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose. Context should be regarded at this first stage and not at some later stage and it should be regarded in its widest sense. This is not to deny the importance of the natural and ordinary meaning of a word, namely how it is ordinarily understood in discourse, to the process of construction. Considerations of context and purpose simply recognise that, understood in its statutory, historical or other context, some other meaning of a word may be suggested, and so too, if its ordinary meaning is not consistent with the statutory purpose, that meaning must be rejected.

26. The majority judgment in *Project Blue Sky Inc v Australian Broadcasting Authority*,²² neatly encapsulates the matters that form part of the context in which a statute must be construed:

However, the duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning. In *Statutory Interpretation*, Mr Francis Bennion points out:

“The distinction between literal and legal meaning lies at the heart of the problem of statutory interpretation. An enactment consists of a verbal formula. Unless defectively worded, this has a grammatical meaning in itself. The

²¹ (2017) 262 CLR 362, [14] (Kiefel CJ, Nettle and Gordon JJ); see also *FER17 v Minister for Immigration, Citizenship and Multicultural Affairs* [2019] FCAFC 106, [59]-[60] (Kerr, White and Charlesworth JJ).

²² (1998) 194 CLR 355, [78] (McHugh, Gummow, Kirby and Hayne JJ).

unwary reader of this formula (particularly if not a lawyer) may mistakenly conclude that the grammatical meaning is all that is of concern. If that were right, there would be little need for books on statutory interpretation. Indeed, so far as concerns law embodied in statute, there would scarcely be a need for law books of any kind. Unhappily this state of being able to rely on grammatical meaning does not prevail in the realm of statute law; nor is it likely to. In some cases the grammatical meaning, when applied to the facts of the instant case, is ambiguous. Furthermore there needs to be brought to the grammatical meaning of an enactment due consideration of the relevant matters drawn from the context (using that term in its widest sense). Consideration of the enactment in its context may raise factors that pull in different ways. For example the desirability of applying the clear literal meaning may conflict with the fact that this does not remedy the mischief that Parliament intended to deal with.” (footnotes omitted)

27. However, the duty of a court is to give the words of a statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning.
28. As was stated in the Separate Question reasons, context and purpose are particularly important in the constructional choices to be made about s 38(1) of the EPBC Act and s 6(4) of the RFA Act.²³ The nature of s 38(1), which operates as an exemption from both the controlled actions approval process in Part 9 of Chapter 4 and the prohibitions in Part 3 of Chapter 2, is also an important consideration.²⁴ A construction that promotes clarity and a practical understanding of what is required in order to claim the benefit of the exemption in s 38 is to be preferred over one that promotes uncertainty or ambiguity.²⁵
29. An interpretation that best achieves the purpose or object of the EPBC Act and the RFA Act is required by s 15AA of the *Acts Interpretation Act 1901* (Cth). However, that approach does not always assist. This may happen where statutory provisions strike a

²³ [48].

²⁴ [49].

²⁵ [49].

balance between competing interests, or have many purposes, some which tend towards one construction, and others in favour of another construction.²⁶ As Gleeson CJ stated in *Carr v The State of Western Australia*:²⁷

...In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act is to be preferred to a construction that would not promote that purpose or object. As to federal legislation, that approach is required by s 15AA of the *Acts Interpretation Act 1901 (Cth)* ... That general rule of interpretation, however, may be of little assistance where a statutory provision strikes a balance between competing interests, and the problem of interpretation is that there is uncertainty as to how far the provision goes in seeking to achieve the underlying purpose or object of the Act. Legislation rarely pursues a single purpose at all costs. Where the problem is one of doubt about the extent to which the legislation pursues a purpose, stating the purpose is unlikely to solve the problem. For a court to construe the legislation as though it pursued the purpose to the fullest possible extent may be contrary to the manifest intention of the legislation and a purported exercise of judicial power for a legislative purpose.

30. This is so in the present case. Whilst the objects of the EPBC Act were described in the Separate Question reasons as “having a common focus on the policies of environmental protection and biodiversity conservation”,²⁸ and a “singular emphasis”,²⁹ it is to be recalled that the current form of Division 4 of the EPBC Act and the present text of s 38 (which commenced on 3 May 2002) resulted from the passage of the RFA Act,³⁰ and the text of s 38 directs attention to the RFA in respect of the definition of “RFA forestry operations”. It is acknowledged that the current form of s 38(1) is not entirely derived from the RFA Act and s 38(1) did exist in a different form prior to the passage of the RFA Act.
31. Nevertheless, in construing s 38, it is appropriate to have regard to the text, context and purpose of the RFA Act.³¹ This draws the focus of the task away from the “singular emphasis” of environmental protection and biodiversity conservation, towards a

²⁶ P Herzfeld, T Prince, S Tully, *Interpretation and use of legal sources*, Thomson Reuters (2013) [23.1.860].

²⁷ (2007) 232 CLR 138, [5].

²⁸ [67].

²⁹ [220].

³⁰ [104].

³¹ Including the extrinsic materials to the RFA Act: Separate Question reasons, [59].

consideration of the RFA Act, and the CH RFA, when making constructional choices regarding s 38(1) of the EPBC Act. As was noted in the Separate Question reasons, “an understanding of s 6(4) and the RFA Act generally is a key component in understanding the correct construction of s 38(1)”.³²

B.1.2. Relevant statutory provisions

32. Section 38 occurs within Division 4, which deals with forestry operations in certain regions. Subdivision A—in which s 38 occurs—relates to regions covered by regional forestry agreements. Subdivision B applies to regions subject to a process of negotiating an RFA and regions not yet covered by an RFA. Subdivision C provides a limitation on the application of subdivisions A and B in some circumstances (not presently relevant).

B.1.2.1. Division 4, Subdivision A — Regions covered by regional forest agreements

33. Section 38 of the EPBC Act provides:

38 Part 3 not to apply to certain forestry operations

- (1) Part 3 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.
- (2) In this Division:

RFA or *regional forest agreement* has the same meaning as in the *Regional Forest Agreements Act 2002*.

RFA forestry operation has the same meaning as in the *Regional Forest Agreements Act 2002*.

Note: This section does not apply to some RFA forestry operations. See section 42.

34. The terms of s 6(4) of the RFA Act are practically identical: s 38(1) and s 6(4) refer to an RFA forestry operation that is undertaken in accordance with an RFA. The focus of the provisions is on the undertaking of forestry operations.³³

35. The Revised Explanatory Memorandum to the *Regional Forests Agreements Bill 2002*—which introduced the current text of s 38(1)—explained that the RFA Bill sought to

³² [52].

³³ Separate Question reasons, [100].

underpin the RFAs by, importantly, preventing the application of Commonwealth environmental and heritage legislation as they relate to the effect of forestry operations where an RFA, based on comprehensive regional assessments, is in place.³⁴

36. Section 38(2) directs attention to the definition of “RFA forestry operation” contained in the RFA Act. Section 38(2) refers to “RFA forestry operation” in the singular.
37. Section 4 of the RFA Act provides the definition of “RFA forestry operations”.

RFA forestry operations means:

- (a) forestry operations (as defined by an RFA as in force on 1 September 2001 between the Commonwealth and New South Wales) that are conducted in relation to land in a region covered by the RFA (being land where those operations are not prohibited by the RFA); or
- (b) forestry operations (as defined by an RFA as in force on 1 September 2001 between the Commonwealth and Victoria) that are conducted in relation to land in a region covered by the RFA (being land where those operations are not prohibited by the RFA); or
- (c) harvesting and regeneration operations (as defined by an RFA as in force on 1 September 2001 between the Commonwealth and Western Australia) that are conducted in relation to land in a region covered by the RFA (being land where those operations are not prohibited by the RFA); or
- (d) forestry operations (as defined by an RFA as in force on 1 September 2001 between the Commonwealth and Tasmania) that are conducted in relation to land in a region covered by the RFA (being land where those operations are not prohibited by the RFA).

For the purposes of paragraph (b), the East Gippsland RFA (as in force on 1 September 2001) is taken to include a definition of forestry operations that is identical to the definition of forestry operations in the Central Highlands RFA (as in force on 1 September 2001).

38. The CH RFA³⁵ contains the following definitions:

“Forestry Operations” means

- (a) the planting of trees; or
- (b) the managing of trees before they are harvested; or

³⁴ Revised EM [Legislation and authorities bundle 20 at, p 4].

³⁵ [CB 6.12; p 5]

(c) the harvesting of Forest Products

for commercial purposes and includes any related land clearing, land preparation and regeneration (including burning), and transport operations;

“Forest Products” means all live and dead trees, ferns or shrubs or parts thereof.

B.1.2.2. Division 4, Subdivision B — Regions subject to a process of negotiating a regional forest agreement

39. Subdivision B of Division 4 of the EPBC Act relates to regions subject to a process of negotiating a regional forest agreement.

40. As at the date of the trial of the Separate Question, the South East Queensland RFA Region (defined in s 41(1)(h)) was the only RFA Region that engaged the operation of these provisions.³⁶

41. Section 39 of the EPBC Act provides:

The purpose of this Subdivision is to ensure that an approval under Part 9 is not required for forestry operations in a region for which a process (involving the conduct of a comprehensive regional assessment, assessment under the *Environment Protection (Impact of Proposals) Act 1974* and protection of the environment through agreements between the Commonwealth and the relevant State and conditions on licences for the export of wood chips) of developing and negotiating a regional forest agreement is being, or has been, carried on.

42. Section 40 provides that a person may undertake forestry operations in an RFA Region in a State or Territory without approval under Part 9 for the purposes of a provision of Part 3 of the EPBC Act where there is not a regional forest agreement in force for any of the region. Section 40 uses the same active voice as the former s 38(1) prior to the introduction of the current text in 2002.

43. Section 40(2) of the EPBC Act uses a definition of “forestry operations” that is almost identical to the definition contained in the CH RFA.³⁷ The forestry operations to which

³⁶ Separate Question reasons, [128].

³⁷ In closing address, counsel for the applicant submitted at T. 740:36-46 that the introductory words in s 40(2) “forestry operations means any of the following done for commercial purposes” do not appear

the exemption applies are those that are in an RFA Region in a State or Territory. Section 41 provides the definition of “RFA Region” by reference to broad geographic areas depicted on a range of maps published in 1998 and 1999.³⁸

44. As noted in the Separate Question reasons, the purpose of ss 39, 40 and 41, was to recognise that as at July 2000, when the EPBC Act commenced, there were a number of RFAs that were yet to be concluded,³⁹ and that remained the case as at 2002 with the introduction of the RFA Act and the amendments to Division 4 of the EPBC Act.
45. Logically, the exemption in s 40 should be given a broad and permissive reading because the purpose of s 40 was to exempt forestry operations (as defined in s 40(2) of the EPBC Act) from the entirety of a geographic area known as an RFA Region in order to permit the RFA development and negotiation process to conclude. That process was one of compromise and negotiation between various competing interests, particularly between the timber industry and conservation of the environment,⁴⁰ and a broad exemption facilitated that process until a consensus (embodied in the RFA) was reached.
46. At the conclusion of that negotiation process, s 38 then operates to exempt from Part 3 of the EPBC Act an RFA forestry operation (being a forestry operation as defined in the CH RFA that is conducted in relation to land in the CH RFA Area) where conducted in accordance with an RFA. As developed in further detail below, in this case, that exemption must logically operate in a more limited way.

B.1.2.3. Division 4, Subdivision C — Limits on application

47. Although s 42 is a stand-alone provision which reapplies the EPBC Act provisions to forestry operations in circumstances not relevant to this case, the provision makes reference to both RFA forestry operations (where the forestry operations as defined in an RFA are conducted in relation to land to which an RFA applies) and forestry

in the definition of “forestry operations” in the CH RFA. The words “for commercial purposes” appear at the conclusion of that definition in the CH RFA.

³⁸ The RFA regions are now depicted on a map published by the Commonwealth Department of Agriculture available at: <http://www.agriculture.gov.au/forestry/policies/rfa/regions/map> (accessed 16 July 2019).

³⁹ [128].

⁴⁰ *Forestry Tasmania v Brown* (2007) 167 FCR 34, [44] (Sundberg, Finkelstein and Dowsett JJ).

operations as defined in s 40(2) of the EPBC Act (where forestry operations are undertaken in an RFA Region where there is not a RFA in force for any of the region).

48. The use of the plural “RFA forestry operations” has the consequence of reapplying the controlling provisions of the EPBC Act to each of the five operative parts of the definition of RFA forestry operations in the RFA Act where those RFA Forestry Operations are in a property in the World Heritage List, in a Ramsar wetland or are incidental to another action whose primary purpose does not relate to forestry.

B.1.3. The meaning of “an RFA forestry operation” in s 38(1)

49. Because s 38(1) picks up the definition of “forestry operations” in the CH RFA through the RFA Act, the logical starting point is the RFA Act itself.
50. The definition of “RFA forestry operations” in s 4 of the RFA Act is set out in paragraph 37 above. Here we are concerned with the definition of “RFA forestry operations” in cl (b) of the definition in the RFA Act, which provides:

... (b) forestry operations (as defined by an RFA as in force on 1 September 2001 between the Commonwealth and Victoria) that are conducted in relation to land in a region covered by the RFA (being land where those operations are not prohibited by the RFA);
...

51. That definition directs attention to the definition of “forestry operations” in the CH RFA (which was in force on 1 September 2001 between the Commonwealth and the State of Victoria). It is the definition in cl (b) of “RFA Forestry Operations” which is linked to s 38(1).
52. The applicant submits that each of the matters set out in cl (a) to (c) of the definition of “forestry operations” in the CH RFA is a single forestry operation.⁴¹ That submission ignores the geographic connection to the relevant forestry operation imported by the use of the words “conducted in relation to land in a region covered by the RFA”.
53. The CH RFA Area (being the region covered by the CH RFA) is a geographic area comprising approximately 621,436 hectares,⁴² and stretches from Bonnie Doon in the

⁴¹ T.735: 12-41 (Watson address).

⁴² [CB 3.4.28].

North to Warragul in the South, Heathcote Junction in the East and Baw Baw National Park in the West.⁴³ In respect of that region, there may be many separate RFA forestry operations occurring simultaneously in relation to land in geographically disparate places. Those RFA forestry operations include site preparation (such as coupe marking, marking habitat trees and marking area to be excluded which arguably fall within cl (b) of the definition), harvesting, regeneration and transportation. The question therefore is: what is the land in the region covered by the RFA on which the relevant RFA forestry operation has been, or is to be, conducted?

54. In relation to the Logged Coupes, at paragraph 9 of the 3FASOC,⁴⁴ the applicant pleads:

Between 2004 and 2017, VicForests conducted forestry operations in the following coupes within the CH RFA Area which are identified in the Timber Release Plan ...

55. In relation to the Scheduled Coupes, at paragraph 10, the applicant pleads:

The Approved Timber Release Plan shows that the following coupes are proposed for forestry operations by the clear-fell or seed tree retention methods between 2017 and 2018 within the CH RFA Area ...

56. The language of both pleas tracks the language of the definition of RFA forestry operations in s 4 of RFA Act. The applicant identifies the singular coupes as the relevant land in the CH RFA to which the RFA forestry operations relates. The applicant pleaded and advanced this case on a coupe by coupe basis.⁴⁵ This is not a product of VicForests creating “a temporal or geographic limit through the introduction of coupes” (as was suggested by counsel for the applicant),⁴⁶ but rather a product of the case as pleaded and advanced by the applicant on a coupe by coupe basis.

B.1.3.1. Scope of exemption in s 38(1)

57. Subsection 38(1) of the EPBC Act provides that Part 3 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.

⁴³ [CB 7.0.3a] Central Highlands RFA Area.

⁴⁴ [CB 11A].

⁴⁵ See paragraphs 9 and 10 of the 3FASOC.

⁴⁶ T. 735:17 (Watson address).

58. There is a connection between the use of the singular term “an RFA forestry operation” and “an RFA” under consideration. The use of the singular focuses attention on a particular forestry operation that is conducted in relation to land (coupes) in the CH RFA Area.
59. Two matters are apparent from the terms of s 38(1). *First*, that in respect of an area, there may be many separate forestry operations in relation to land, and therefore many separate “actions”. *Secondly*, by the use of the singular “RFA forestry operation” the focus in s 38(1) of the EPBC Act is a particular forestry operation.
60. In this case, forestry operations are the actions that the EPBC Act seeks to regulate so as to avoid a significant impact on a listed threatened species included in the critically endangered category (s 18(2)) or a listed threatened species included in the vulnerable category (s 18(4)). It is the taking of the action (that is, the actual conduct of a forestry operation) that must be undertaken “in accordance with” the RFA.⁴⁷
61. The only alleged breach said to arise in respect of the forestry operations in the Scheduled Coupes is the alleged failure by VicForests to comply with cl 2.2.2.2 of the Code in respect of the Greater Glider.⁴⁸ If the exemption in s 38(1) were lost in respect of some or all of the Scheduled Coupes, it would be because the conduct of the proposed forestry operations did not comply with cl 2.2.2.2 of the Code in respect of the Greater Glider.
62. The effect is that any loss of exemption must be limited to the forestry operation that is not undertaken in accordance with the RFA. It follows, therefore, that any consideration of significant impact in Part 3 of the EPBC Act is likewise limited by reference to the “action” under consideration.
63. As such, any loss of exemption in respect of the Scheduled Coupes is limited to proposed forestry operations insofar as they affect the Greater Glider, and questions of significant impact to other values (such as Leadbeater’s Possum) do not arise.
64. Likewise, the alleged breach said to arise in respect of the forestry operations in the Logged Glider Coupes is the alleged failure by VicForests to comply with cl 2.2.2.2 of

⁴⁷ Separate Question reasons, [198].

⁴⁸ Paragraph 113H of the 3FASOC [CB 11A].

the Code in respect of the Greater Glider.⁴⁹ If the exemption in s 38(1) were lost in respect of the Logged Glider Coupes, it would be because the conduct of the past forestry operations did not comply with cl 2.2.2.2 of the Code in respect of the Greater Glider. The exemption would continue to apply to forestry operations that are in accordance with the RFA and questions of significant impact are limited to the Greater Glider.

65. The general exemption in s 38 forms part of a Division which provides for a substitute regime built upon RFAs which itself takes account of environmental and other values in relation to forests and forestry operations that are subject to such an RFA.⁵⁰ The regulation for which the RFAs provide is an active and ongoing one,⁵¹ and largely a State-based system. The construction of s 38(1) advanced by the applicant, where a breach of the Code concerning a Tree Geebung would expose the entirety of the forestry operations to the EPBC Act,⁵² would render the substitute regime otiose once the exemption in s 38(1) no longer applies and open up questions of significant impact on every matter of national environmental significance. That construction is inconsistent with the purpose of the RFA Act and the CH RFA itself which were intended to create a substitute regime through which the use, development and conservation of Australia's forests would be regulated. The applicant's construction is illogical, contrary to the substitute regime envisaged by Part 4, Div 4 of the EPBC Act and ought to be rejected.
66. Another matter to be considered is the temporal operation of s 38. Does the exemption in s 38 only apply to a forestry operation to be undertaken in the future, or does it also apply to a forestry operation that has been undertaken in the past?
67. Part 3 of the EPBC Act prohibits the taking of an action that has, will have or is likely to have a significant impact on a listed threatened species in particular categories unless an approval of the taking of the action is in operation under Part 9⁵³ or Part 4 lets the person take the action without an approval under Part 9.⁵⁴

⁴⁹ Paragraph 113A of the 3FASOC [CB 11A].

⁵⁰ *Wilderness Society v Turnbull* (2007) 166 FCR 154, [32] (Branson and Finn JJ).

⁵¹ Separate Question reasons, [139].

⁵² Applicant's outline of opening submission, [141]–[142] [CB 1.16].

⁵³ Section 19(1) of the EPBC Act.

⁵⁴ Section 19(3)(a) of the EPBC Act.

68. Section 38 is within Part 4 and exempts certain forestry operations from the operation of Part 3 of the EPBC Act. Exempted forestry operations therefore do not require an approval under Part 4.
69. There is no reason why the exemption in s 38 should have any temporal limitation. The exemption in s 38 may apply to a forestry operation to be undertaken in the future or to a forestry operation that has already been undertaken.
70. The Court is empowered to grant a prohibitory injunction pursuant to s 475(2) where a person has engaged, is engaging or proposes to engage in conduct constituting an offence or other contravention of the EPBC Act.
71. In determining whether its jurisdiction to grant such an injunction is enlivened, the Court must determine whether the (past, present or future) conduct in question constitutes an offence or other contravention of the EPBC Act. That in turn requires the Court to determine whether the (past, present or future) forestry operation in question is covered by the exemption under s 38.
72. This further demonstrates that the exemption in s 38 may apply to past, present or future forestry operations.

B.2. When is the exemption lost, and in respect of what “forestry operation”?

73. In the Separate Question reasons, the Court observed in relation to s 38(1):⁵⁵

The use of the passive voice (“a forestry operation that is undertaken”) increases the emphases of the section on the particular “action” for which the exemption is provided. The “action” is the undertaking of a forestry operation, and no wider than that. As I set out below, it is that action – that conduct – which must be “in accordance with” an RFA.

74. The loss of exemption is therefore limited to the forestry operation (the action) that is not undertaken in accordance with the RFA.
75. In respect of the Scheduled Coupes, the applicant cannot identify with sufficient precision an RFA forestry operation in each of the Scheduled Coupes that will constitute

⁵⁵ [132].

a breach of cl 2.2.2.2 of the Code, and therefore not be undertaken in accordance with the CH RFA. The question of whether a breach of cl 2.2.2.2 of the Code can ever amount to a loss of exemption in any event is dealt with in section B.4 below.

76. For the purposes of cl 2.2.2.2 of the Code, the harvesting of Forest Products necessarily encompasses a range of silvicultural systems (encompassing harvesting and regeneration) that VicForests may employ,⁵⁶ ranging from clear-fell and seed tree operations to single tree selection. In respect of the Scheduled Coupes, the evidence is that further planning is required,⁵⁷ including the identification of the presence of conservation values which will, in turn, determine the adaptive silvicultural system to be selected for harvesting and regeneration of each Scheduled Coupe and the areas to be excluded from harvesting.⁵⁸ At present, the silvicultural system that may be used in each of the Scheduled Coupes is unknown.⁵⁹ In part, that is because VicForests' silvicultural systems are undergoing a process of development as part of the FSC 2020 Project; a process which is ongoing and has not concluded.⁶⁰ It is also because planning for the Scheduled Coupes is not sufficiently advanced and has, in effect, been put on hold pending the outcome of this proceeding.
77. Mr Paul's evidence in respect of the Scheduled Coupes is that if they go back on the harvesting schedule for the next 18 months they would be subject to more detailed surveys (including by the Department under its own survey program).⁶¹ Further, Mr Paul said that the planning of the Scheduled Coupes is not complete,⁶² and in any event, is on hold.⁶³ His evidence is that any future forestry operations in those coupes would be:⁶⁴

⁵⁶ Harvesting and Regeneration Systems Document dated 31 May 2019 [CB 12.2].

⁵⁷ Second Paul Affidavit, [CB 3.4; paragraph [443]-[444]]; Fourth Paul Affidavit [CB 3.6; paragraph [118]]; Fifth Paul Affidavit [CB 3.8; paragraph [19]].

⁵⁸ Fourth Affidavit of Bill Paul [CB 3.4; paragraph [119]].

⁵⁹ Second Paul Affidavit [CB 3.4; paragraph [443]-[444]]; Fourth Paul Affidavit [CB 3.6; paragraph [118]]; Fifth Paul Affidavit [CB 3.8; paragraph [19]]; T 326:3 (B Paul XXN).

⁶⁰ T. 209:47-T.210:4 (B. Paul XXN);

⁶¹ T. 213:20-22; T. 213:29-30; T. 205:37-40 (B. Paul XXN). Mr Paul's evidence (at T. 205:37-40) was that, assuming some level of harvesting is to occur in the Scheduled Coupes) was that "they [the Scheduled Coupes] would then be lined up for the department's survey program". That proposition, i.e. that the Scheduled Coupes would be subject to a survey, was not challenged in cross-examination. The cross-examination regarding the survey program was pitched at a level of generality regarding the percentage of coupes the Department was aiming to survey (80%): T. 269:1-T. 270:27.

⁶² T. 212:17 (B. Paul XXN).

⁶³ T. 212:25; T. 212: 44-46; T. 213:6-7; T. 214:14-15 (B. Paul XXN).

⁶⁴ T. 212:29-32 (B. Paul XXN).

subject to [VicForests] rerunning [its] planning, and [VicForests] will replan them in light of FSC as well, given that [VicForests] expects that to be in place by mid-July, [VicForests] will rerun all [its] planning over those coupes with that new process and principles.

78. It is therefore impossible to identify the requisite “forestry operation” in respect of the Scheduled Coupes for the purposes of s 38 and, consequently, the relevant “action” in the Scheduled Coupes against which any significant impact is to be assessed. This is another indicator of the premature nature of the applicant’s case.
79. In order to overcome this difficulty, the applicant was driven to two courses.
80. The *first* course was to rely on VicForests’ harvesting practices in a range of coupes not the subject of this proceeding, so as to invite this Court to draw inferences as to the manner and method by which the Scheduled Coupes are likely to be harvested. VicForests’ submissions as to how the Court is to treat that evidence (and what inferences, if any, can properly be drawn from it) are set out in section C.2.1 below.
81. The *second* course was to advance—for the first time in oral closing address—the unpleaded proposition that the drafting and publication,⁶⁵ and approval of a timber release plan listing coupes in which Greater Glider was detected constituted a forestry operation within the meaning of cl (b) of the definition in the CH RFA because it related to the management of trees as a resource.⁶⁶ Counsel for the applicant advanced the proposition that, in respect of the Scheduled Coupes and the Logged Coupes, the breach of the Code occurred when those coupes were listed on the TRP with a designated silvicultural system without provision in the substitute regime for the protection of the Greater Glider.⁶⁷ Ostensibly, the applicant advanced this course to overcome the hurdle of identifying a requisite RFA forestry operation in respect of the Scheduled Coupes.
82. The preparation of the TRP is governed by provisions contained in Part 5 of the SFT Act entitled “Management of timber resources by VicForests”. Part 5 of the SFT Act relates to timber resources which have vested in VicForests on publication of the allocation order in accordance with s 13 of the SFT Act. Part 5 specifies in part how those timber

⁶⁵ T. 743:22 (Watson address).

⁶⁶ T. 736:8-10 (Watson address).

⁶⁷ T.737:18 (Watson address).

resources are to be managed from the point of vesting through to the conduct of operations, i.e. in accordance with any timber release plan.

83. Section 37(1) requires VicForests to prepare a plan in respect of an area to which an allocation order applies for the purposes of harvesting and/or selling timber resources and undertaking associated management activities in relation to those timber resources. Relevantly, VicForests prepared TRPs in January 2017,⁶⁸ and April 2019.⁶⁹
84. “Timber resources” are defined in s 3 of the SFT Act as “timber from the trees or parts of trees which are specified as available for timber harvesting in an allocation order but does not include firewood collected for domestic use”. The area of State forest specified as available for harvest is set out in cl 9 and Table 1 of the Amended Allocation Order dated 24 April 2019.⁷⁰
85. Section 37(3)(b) provides that VicForests must ensure that a plan prepared under that section is consistent with any relevant Code of Practice relating to timber harvesting.
86. Section 38 of the SFT Act sets out the requirements for the contents of the plan, including a schedule of coupes selected for timber harvesting and associated access road requirements, details of the location and approximate timing of timber harvesting in the proposed coupes, details of any associated access roads and any other matters necessary or convenient to be included.
87. Section 41 requires VicForests to publish notice of a plan in the Government Gazette.⁷¹ Section 44 requires VicForests to carry out its functions and powers under the SFT Act in relation to vested timber resources, or in relation to an area to which an allocation order applies, in accordance with any timber release plan.
88. Therefore, a construction of cl (b) of the definition of “forestry operations” in the CH RFA does, on balance, encompass the preparation, review of and changes to, and publication of, a TRP.

⁶⁸ [CB 6.6].

⁶⁹ [CB 6.8A].

⁷⁰ [CB 6.5A].

⁷¹ That relevantly occurred on 5 January 2017 [CB 6.8] and 24 April 2019 [CB 6.8B].

89. That conclusion does not, however, advance the applicant’s case.
90. The applicant contends that the exemption in s 38(1) is lost at the “management stage”, and then it is “confirmed to be lost” or is “lost on another basis” at the point of harvesting.⁷² The practical effect of that analysis is that an action that purports to have a significant impact for the purpose of s 18 of the EPBC Act may be something different to the action which causes a loss of exemption under s 38(1).⁷³ That proposition fails on a proper reading of s 38(1) and s 18.
91. Assuming the preparation, review of, changes to, and publication of a TRP are a “forestry operation” within the meaning of the CH RFA, then the focus of the exemption in s 38(1) is on conduct—that is, the undertaking of a forestry operation that is “in accordance with” an RFA.⁷⁴ Therefore, in the applicant’s scenario, the loss of exemption in s 38(1) relates to the preparation and publication of a TRP, being a “forestry operation” within cl (b) of the definition in the CH RFA. There is no allegation that the preparation, review of and changes to, and publication of, a TRP constitutes a forestry operation within the meaning of the CH RFA. VicForests does not admit that the identification of coupes proposed for forestry operations in the CH RFA Area by the preparation of the TRP constitutes an “action for the purposes of the EPBC Act.”⁷⁵ In this regard see further section E.1.2 below.
92. Logically, because any loss of exemption under s 38(1) relates to the conduct of the relevant forestry operation in cl (b), any breach of s 18 could only relate to the conduct of the preparation and publication of the TRP. There is no allegation that that conduct *per se* has, will have, or is likely to have a significant impact on any listed species or matter of national environmental significance. All of the allegations concerning the question of significant impact concern the harvesting of Forest Products (cl (c) of the definition in the CH RFA) and not the preparation and publication of the TRP.⁷⁶

⁷² T.737:37-46; T.745:3-41 (Watson address).

⁷³ T.748:44-T.479:5 (Watson address).

⁷⁴ Separate Question reasons, [132].

⁷⁵ Paragraph [8] of the 3FASOC; paragraph [8] of the defence to 2FASOC [CB 1.14]; cf T.748:12-15 (Watson address).

⁷⁶ T.747:46 – T. 748:3 (Watson address).

B.3. Where there is a breach of the Code what protection is lost under the EPBC Act?

B.3.1. Scheduled Coupes

93. The only alleged breach said to arise in respect of the forestry operations in the Scheduled Coupes is the alleged failure by VicForests to comply with cl 2.2.2.2 of the Code in respect of the Greater Glider.⁷⁷
94. If the exemption in s 38(1) of the EPBC Act were lost in respect of the Scheduled Coupes, it would be lost because the conduct of the proposed forestry operations did not (or will not) comply with cl 2.2.2.2 of the Code in respect of the Greater Glider. But the exemption would continue to apply to proposed forestry operations that are (or will be) undertaken in accordance with the CH RFA.
95. The effect is that any loss of exemption must be limited to the forestry operation that is not, or will not be, undertaken in accordance with the RFA. It follows, therefore, that any consideration of significant impact in Part 3 of the EPBC Act is logically limited by reference to the “action” under consideration, which on this analysis, would be the forestry operation that is not undertaken in accordance with the RFA.
96. As such, any loss of the exemption contained in s 38(1) of the EPBC Act in respect of the Scheduled Coupes is limited to forestry operations insofar as they affect the Greater Glider, and questions of significant impact in respect of other values (such as Leadbeater’s Possum) do not arise.

B.3.2. Logged Coupes

97. With the exception of the miscellaneous allegations contained in paragraphs 113B–F of the 3FASOC and dealt with in Section D below) the only basis on which it is alleged that forestry operations in the Logged Coupes were undertaken otherwise than in accordance with the CH RFA is the alleged failure by VicForests to comply with cl 2.2.2.2 of the Code in respect of the Greater Glider.⁷⁸ These coupes are defined in the 3FASOC as the **Logged Glider Coupes**.

⁷⁷ 3FASOC, paragraph 113H.

⁷⁸ 3FASOC, paragraph 113A.

98. If the exemption in s 38(1) were lost in respect of the Logged Glider Coupes, it would be because the conduct of the past forestry operations did not comply with cl 2.2.2.2 of the Code in respect of the Greater Glider. But the exemption would continue to apply to other forestry operations in the Logged Glider Coupes that are undertaken in accordance with the RFA.
99. Therefore, subject to the miscellaneous allegations, any loss of the exemption contained in s 38(1) of the EPBC Act in respect of the Logged Coupes is limited to forestry operations insofar as they affect the Greater Glider. Questions of significant impact in respect of other values (such as Leadbeater's Possum) do not arise.

B.3.3. The preparation of the TRP

100. As has been noted, in oral closing submissions, counsel for the applicant submitted that, in listing the Scheduled Coupes on the TRP “for the designated silviculture methods without any system in place that takes into account the vulnerability of the Greater Glider”, VicForests has undertaken a forestry operation in breach of the Code and thus lost the exemption from Part 3 of the EPBC Act.⁷⁹ The submission was advanced on the basis that the listing of the Scheduled Coupes on the TRP was “the managing of trees before they are harvested” and thus a “forestry operation” within the meaning of the CH RFA. Even assuming that to be the case, for the reasons set out below, the Code is not concerned with the preparation of a TRP, and thus no part of the Code can be breached by the preparation of a TRP.
101. First, the legislative scheme makes clear that the Code is concerned with the management of timber harvesting itself, and not the management of timber resources in the preparation of a TRP. Put another way, the legislative scheme is inconsistent with an intention that the Code is to apply to the preparation of a TRP.
102. Power to make a Code of Practice is given by Part 5 of the CFL Act. The Code is a Code of Practice within the meaning of Part 5 of the CFL Act and is a prescribed legislative instrument in Schedule 2 of the *Subordinate Legislation (Legislative Instruments) Regulations 2011* (Vic).⁸⁰

⁷⁹ T 736:43; T 746:34.

⁸⁰ [Legislation & Authorities, item 24].

103. Compliance with a Code of Practice is not required unless the Code of Practice is incorporated in, or adopted by, either a relevant law or a condition specified in an authority given under a relevant law: CFL Act, s 39.
104. The phrase “relevant law” is defined in s 3(1) of the CFL Act to relevantly include an Act specified in Schedule 1. The SFT Act is an Act specified in Schedule 1.
105. Division 1 of Part 6 of the SFT Act titled “Management of timber harvesting” deals with Codes of Practice. By that division VicForests must comply with any relevant Code of Practice relating to timber harvesting (s 46), and the Minister may ask an appropriately qualified person to audit compliance with such a Code (s 47).
106. But the provisions of the SFT Act dealing with the preparation and publication of a TRP (ss 37–44) are dealt with in a different part of the Act, being Part 5 titled “Management of timber resources by VicForests.” Thus, the structure of the SFT Act draws a distinction between conduct constituting the management of timber resources (Part 5) and conduct constituting the management of timber harvesting (Part 6). The Code concerns only the latter conduct, and its sphere of operation does not extend into preparatory works such as the preparation of a TRP.
107. Secondly, this construction is supported by the text of the Code itself. On its face, there are no provisions in the Code that refer to the TRP. The only reference to a TRP is in the definition of “coupe” on p 11, with a corresponding definition of TRP itself on p 19. Rather, the Code is concerned with timber harvesting operations, or, to use the language of the CH RFA, “the harvesting of Forest Products”⁸¹ together with activities ancillary to that harvesting.
108. The background set out on p 21 states that the Code has streamlined “the environmental framework for harvesting managers, harvesting entities and operations conducting and planning *timber harvesting operations*.”
109. Clause 1.2.2 of the Code explains that its purpose is to provide direction to timber harvesting managers, harvesting entities and operators to deliver sound environmental

⁸¹ See subparagraph (c) of the definition of **Forestry Operations** in the CH RFA p 5 [CB 6.12].

performance when planning for, and conducting, commercial timber harvesting operations. “Timber harvesting operation” is defined on p 18 of the Code:⁸²

‘timber harvesting operation’ means any of the following kinds of activities carried out by any person or body for the purposes of sale or processing and sale—

- (a) felling or cutting of trees or parts of trees;
- (b) taking or removing of **timber**;
- (c) delivering timber to a buyer or transporting timber to a place for collection by a buyer or sale to a buyer;
- (d) any works, including road works, **site preparation**, planting and **regeneration**, ancillary to any of the activities referred to in paragraphs (a) to (c) —but does not include—
- (e) the collection of production firewood for **domestic** use.

[Terms in bold are defined terms in the Code].

- 110. In this context, the reference to “planning” for timber harvesting operations in cl 1.2.2 of the Code should be understood as a reference to the operational planning clauses in the Code identified on p 29, none of which concern a TRP.
- 111. Further, the breach of the Code said to be occasioned by the preparation of the TRP is of cl 2.2.2.2 (the precautionary principle). Clause 2.2.2.2 is a mandatory action in support of the operational goal that timber harvesting operations in State forests address biodiversity conservation risks. Again, the focus of the operational goal is on timber harvesting operations themselves, and not the management of timber resources in Part 5 of the SFT Act.
- 112. For all of these reasons the Code has no application to the preparation, and publication of notice of, a TRP. There is thus no basis in the submission that, by reason of the listing of the Scheduled Coupes on the TRP, VicForests has breached the Code and in so doing has been engaged in a forestry operation otherwise than in accordance with an RFA, leading to loss of exemption from Part 3 of the EPBC Act.

⁸² A similar definition is contained in s 3 of the SFT Act.

113. This late, and unpleaded, mutation of the applicant’s case should be seen as no more than a device to attempt to surmount other conceptual difficulties which the applicant faces on its Scheduled Coupes case,⁸³ with its consequent difficulties for obtaining relief under the EPBC Act concerning the Logged Coupes.⁸⁴

B.4. What sort of breaches of the accredited regime will lead to a loss of exemption?

114. At the hearing of the separate question, the Commonwealth cited examples of the types of prescriptions contained within the CH RFA and the substituted regime that may, if forestry operations did not comply with those prescriptions, lead to loss of exemption from Part 3 of the EPBC Act. The State of Victoria did not concede that each and every example given by the Commonwealth would, in relation to a particular set of forestry operations, necessarily regulate the undertaking of those operations so that the s 38(1) exemption would not apply if there was non-compliance.⁸⁵ The Court went on to note:⁸⁶

The State’s caveat is understandable. The caveat recognises and accepts the examples as useful to illustrate the distinction in terms of constructional choice. However, any determination of how non-compliance with — for example — the Victorian Code of Practice for Timber Production — could or would render particular forestry operations in the Central Highlands RFA region outside the exemption in s 38(1) of the EPBC Act would need to await consideration and determination where such allegations were specifically made. That, with respect, must be so. It does not detract from the usefulness of the examples to which the Commonwealth referred the Court, and which I have set out later in my reasons.

115. In light of the allegations now pressed concerning the precautionary principle in this proceeding, the question of whether a failure to apply the precautionary principle (or, to put it another way, non-compliance with cl 2.2.2.2 of the Code) is capable of resulting in a loss of exemption from Part 3 of the EPBC Act falls for consideration and determination in this proceeding.

116. In answering that question, the observations set out in paragraphs 49–51 of the Separate Question reasons are apposite (with our emphases added):

⁸³ See sections B.4, C.2.1 and C.2.2 below.

⁸⁴ See section F.1 below.

⁸⁵ Separate Question reasons, [41].

⁸⁶ Separate Question reasons, [42].

[49] In making constructional choices, the nature of the provision is also important. Section 38(1) operates as an exemption not only from the controlled action approvals process in Pt 9 of Ch 4, but antecedent to this, as an exemption from the prohibitions in Pt 3 of Ch 2. In relation to each matter of national environmental significance set out in Pt 3 (World Heritage, National Heritage, wetlands of international importance, listed threatened species and communities, listed migratory species, protection of the environment from nuclear actions, marine environment and the remaining matters referred to), Pt 3 creates criminal offences and imposes civil penalties for contraventions of the prohibitions. The target of these offences and civil penalty provisions are those people or entities who take an “action”. A construction which promotes clarity and an understanding of what, practically, is required to comply with the law will generally be preferred over one which creates, or is likely to create, ambiguity or uncertainty for those whose conduct is being regulated.

[50] In the statutory context of civil penalty provisions of the *Fair Work Act 2009* (Cth), in *Australian Building and Construction Commissioner v Powell* (2017) 251 FCR 470, a Full Court of this Court (Allsop CJ, White and O’Callaghan JJ), said (at [15]):

[I]t is helpful to say something as to the approach to the provisions, in both the FW Act and the 2004 Victorian Act, and indeed in the other legislation to be mentioned. First, to the extent that a provision is a civil remedy or civil penalty provision a necessary clarity of meaning should be striven for, to the extent that is possible and conformable with the language employed and context legitimately available. Secondly, notwithstanding the closely regulated environment of industrial and employment legislation, provisions as to entry on to work sites and the regulation thereof should be construed conformably with the language used by Parliament practically and with an eye to commonsense so that they can be implemented in a clear way on a day-to-day basis at work sites. The legislation needs to work in a practical way at the work site, and if at all possible not be productive of fine distinctions concerning the characterisation of entry on to a site.

[51] I respectfully adopt those two observations, and consider them applicable to the circumstances of the scheme established by the EPBC Act.

117. As the Court observed in a different part of the Separate Question reasons, the focus of s 38(1) is on the compliance of the actor (i.e. the person carrying out the action) with what is required, and what is prohibited by an RFA, in the conduct of forestry operations.⁸⁷

⁸⁷ Separate Question reasons, [196].

118. The Court went on to state that:⁸⁸

the meaning which is given to “in accordance with” is one which requires the content of the document, or regulation, or rule to be ascertained, and then for the conduct to be measured against that content.

119. Thus, there are two aspects of the analysis. First, the content of the document, regulation or rule must be ascertained —is it one which, of its very nature, is capable of leading to loss of exemption from Part 3 of the EPBC Act if it is not complied with? Secondly, the actor’s conduct must be measured against the content of the applicable document, regulation or rule —is any inconsistency between what the document, regulation or rule requires for the conduct of forestry operations, and the manner in which a forestry operation is undertaken such that it will remove the benefit of the s 38(1) exemption? As the State submitted on the separate question, and the Court accepted, not every such irregularity or inconsistency would lead to the loss of exemption, and each situation will need to be considered on its own facts.⁸⁹

120. Although there are two aspects of the analysis, that is not to say that they are mutually exclusive. There may be cases where the second stage of the analysis informs the resolution of the first, and as we shall see, cl 2.2.2.2 is an example of that.

B.4.1. Management prescriptions

121. The CH RFA itself contains a number of clear (and thus practical, and easy to implement) management prescriptions regulating the taking of an “action” for the purposes of the EPBC Act. The relevant action in the context of this case, and the CH RFA, will be a forestry operation.

122. One example, which VicForests accepted at the hearing of the separate question, is the prohibition on harvesting rainforest in cl 66 of the CH RFA. Rainforest communities in Victoria must not be harvested under cl 2.2.2.7 and cl 3.2.2.2 of the Code. More detailed protection measures for rainforest in Victoria are contained in section 4.4.9 of the Management Standards and Procedures.⁹⁰ Those measures, when understood in light of the detailed information concerning rainforest canopy species (in section 4.4.7) and

⁸⁸ Separate Question reasons, [209].

⁸⁹ Separate Question reasons, [208].

⁹⁰ [CB 6.10], 40.

rainforest field recognition and delineation (in section 4.4.8), are sufficiently clear and practical in their operation to enable timber harvesting entities to know how they can conduct their timber harvesting operations insofar as rainforest is concerned without breaching the Code, and therefore in accordance with the substituted regime under the EPBC Act. Staying with the rainforest example, one can readily imagine minor infringements (such as an incorrectly applied width of buffer) as opposed to a material non-compliance (such as the harvesting of rainforest itself) which may, although not in strict compliance with the Code requirements, nonetheless be insufficient to result in loss of exemption.

123. Another example, is the way the CH RFA deals with the Baw Baw Frog, arising through cl 57 of the CH RFA. That clause provides:

Parties will continue to consult on the priorities for listing threatened species, ecological communities and threatening processes, and the preparation of Action Statements and Recovery Plans, recognising that priorities can change in the light of new information. Currently agreed priorities and commitments for the next five years are outlined in Attachment 2.

124. Attachment 2 begins with the following text:

Both Parties recognise the range of mechanisms in place to conserve the habitat of rare and threatened flora and fauna in the Central Highlands. These include protection within the CAR Reserve System, protection of key habitats such as rainforest and rare or threatened Ecological Vegetation Classes (EVCs), and the development of Action Statements for species listed under the *Flora and Fauna Guarantee Act 1988* and Recovery Plans for species listed under the *Endangered Species Protection Act 1992*. Parties note that the Recovery Plan for Leadbeater's Possum has been approved under the *Endangered Species Protection Act 1992*. The Parties further agree to the interim strategy for Baw Baw Frog outlined below.

125. As the Court noted,⁹¹ Attachment 2 contains a list of what are described as the “priority species” and ecological vegetation classes under the FFGA. It then sets out what are described as “priority potentially threatening processes” for preparation of action statements under that Act. Earlier in the Separate Question reasons, in the context of describing the milestones in cl 36 that refer to, insofar as cl 57 is concerned, the

⁹¹ Separate Question reasons, [164].

completion of relevant threatened species work as detailed in Attachment 2, the Court said (our emphasis added):⁹²

In my opinion the cross-reference to the matters in Attachment 2 indicates that what is meant by “threatened species work” in the “Milestones” table is the preparation of action plans and recovery plans, adapting and adjusting them as new information arises about identified species, and if necessary issuing new action statements and recovery plans for species that have been more recently included in one of the threatened species categories. I also consider it includes review, adjustment and modification of **prescriptions for forestry operations** so as to ensure protection of threatened species and their habitat from forestry operations. It is the content of the regulatory outcome of this “work” — the action statements, recovery plans **and management prescriptions, which will govern the conduct of forestry operations.**

126. Insofar as the Baw Baw Frog is concerned the Court said:⁹³

Specific and detailed arrangements and prescriptions are then set out for the protection of the Baw Baw Frog and its habitat in the Central Highlands RFA region, by what is described as an “interim strategy”. It is clear from the content of this interim strategy that what is in the RFA was intended to operate in much the same way as management prescriptions under the state’s Code of Practice for Timber Production might operate.

127. The Court went on to describe the example of the way the CH RFA deals with the Baw Baw Frog as “instructive”.⁹⁴ The matters set out in the dot points of the “interim strategy” for Baw Baw Frog:

are specific prescriptions applicable to the conduct of forestry operations. Insofar as those forestry operations occur within the Central Highlands RFA, by reason of cl 57 and Attachment 2, it is these kinds of management prescriptions which are intended by the RFA Act and the EPBC Act to be the substituted regulatory scheme, removing the need for any assessment and approval under the controlling provisions of Pt 9 of the EPBC Act.⁹⁵

⁹² Separate Question reasons, [154].

⁹³ Separate Question reasons, [166].

⁹⁴ Separate Question reasons, [168].

⁹⁵ Separate Question reasons, [173].

128. Clause 58 of the CH RFA was also cited by the parties and the Court as an example.⁹⁶

That clause provides:

Parties reaffirm their commitment that species in the Central Highlands for which Recovery Plans or Action Statements have already been prepared will have all recommended actions completed or significantly advanced in accordance with the timelines specified in the Recovery Plans or Action Statements.

129. Of this clause, the Court said (our emphasis added):⁹⁷

[A]s the Commonwealth submitted, insofar as any of those action plans or recovery statements themselves contain **prescriptions or limitations** on the manner in which forestry operations may be conducted in the Central Highlands RFA region, then in order to secure the benefit of s 38(1) forestry operations must be undertaken in compliance of conformity with those **prescriptions or limitations**.

130. The Code itself contains many examples of prescriptions to be applied, either consequent upon detections of threatened species or fauna (as to which, see mainly the tables in the Planning Standards), or buffers to be applied to certain values such as streams. In describing the cross-reference to the Code in Attachment 1 (dealing with rainforest protection) the Court said (our emphasis added):⁹⁸

The **specific and practical regulation of timber harvesting** is intended by the Central Highlands RFA parties not only to be found in the text of the Central Highlands RFA itself, but by these kinds of cross-references to the **prescriptions, limits and practices** set out in Victorian forest management instruments. It is that system of regulation which has been accredited by the Commonwealth as a sufficient system of protection to justify the grant of an exemption from any federal assessment and approvals process for each set of forestry operations that might otherwise be likely to have a significant impact on a matter of national environmental significance. However the underlying premise is that the State system of **protection and prescription** will be complied with.

B.4.2. Other types of clauses in the CH RFA or substituted regime

131. Non-compliance with clauses that constitute specific and practical regulation of timber harvesting by way of prescriptions that are capable of clear interpretation and implementation (whether in the CH RFA itself or the Code) may result in loss of the

⁹⁶ Separate Question reasons, [174].

⁹⁷ Separate Question reasons, [175].

⁹⁸ Separate Question reasons, [186].

exemption under s 38(1). Not all clauses in the CH RFA or the Code are in that category. For example, in considering clause 36 of the CH RFA (being the five-yearly review clause) the Court said:⁹⁹

It is not in the same category as the clauses of the RFA which set out, for example:

- geographical boundaries of areas in which no logging can occur;
- prohibitions on logging certain kinds of forest such as rainforest;
- the requirement for forestry operations to be regulated by management prescriptions outside CAR reserves, including by the terms of Victoria’s Code of Practice for Timber Production.

132. The Code itself is not intended to be the repository of detailed mandatory operational instructions; rather these are found in the Management Standards and Procedures that are incorporated into the Code.¹⁰⁰ That explains why most of the “mandatory actions” in the Code are, in isolation, not sufficiently detailed to constitute prescriptions capable of clear and practical implementation, and why operations that comply with detailed operational instructions in the Management Standards and Procedures are deemed to comply with the Code.¹⁰¹
133. For example, it is the Management Standards and Procedures that contain the detailed instructions (or prescriptions) on habitat retention (section 4.1), rare and threatened fauna (section 4.2) and flora (section 4.3), vegetation communities (section 4.4) and other values (section 5).
134. It is readily apparent how many of those prescriptions (such as stream-side buffers, the fauna-based zoning requirements in the Planning Standards or the requirement to protect giant tree in cl 5.4.1.1 by way of example) could, if breached to a sufficiently serious degree, lead to a loss of exemption under s 38(1) for the applicable forestry operations.
135. But other clauses, even within the Management Standards and Procedures themselves, involve matters of degree, and subjective judgment. They are not sufficiently clear and capable of practical implementation such that non-compliance will result in potential criminal liability. Examples include the requirement to manage timber harvesting

⁹⁹ Separate Question reasons, [243].

¹⁰⁰ See section 1.2.6 of the Code [CB 6.9].

¹⁰¹ Clause 1.3.1.1 of the Management Standards and Procedures [CB 6.10].

operations to ensure landscape alteration are only *subtly* apparent (cl 5.3.1.6(a)), or to seek *appropriate* cultural heritage advice (cl 5.1.1.4).

136. Examples in the Code itself are more prevalent, because as has been noted, the Code is not intended to be the repository of detailed operational instructions. For example, cl 2.2.2.3 of the Code states that the advice of relevant experts and relevant research in conservation biology and flora and fauna management must be considered when planning and conducting timber harvesting operations. It is difficult to see how such a requirement constitutes specific and practical regulation of timber harvesting, as opposed to a requirement, for example, to establish a 10m SPZ extending from the top of either bank of Yarran Creek in Gunbower Forest.¹⁰² In the latter example, it is clear what is required, and when that requirement will have been met: the same is not true of the former which involves questions of degree and perception.
137. Another example involving questions of degree, perception and subjective judgment is cl 2.2.2.2 of the Code which provides that:
- The precautionary principle must be applied to the conservation of biodiversity values. The application of the precautionary principle will be consistent with relevant monitoring and research that has improved the understanding of the effects of forest management on forest ecology and conservation values.
138. On its own terms, the clause does not direct any particular outcome on any particular scenario (and nor should it because, as is explained in section C below, the precautionary principle requires a degree of cautiousness, and generally does not dictate action or inaction, or one form of action over another). In other words, there may be many ways to apply the precautionary principle.
139. The precautionary principle is thus in a different category to those prescriptions capable of clear and objective practical application. It is not the sort of requirement that provides an actor, prior to taking an “action” in a given coupe with the clarity required so that the actor has sufficient certainty as to whether they are exposing themselves to potential criminal consequences under the EPBC Act.

¹⁰² See cl 3.1.2.1 of the Planning Standards (Appendix 5 to the Management Standards and Procedures) [CB 6.11].

140. Regarding the second aspect of the analysis, that is, considering whether the conduct amounts to *sufficient* non-compliance with the rule or requirement such that it leads to the loss of the exemption under s 38(1), one can readily encounter difficulties. Given that the precautionary principle does not dictate one course of action over another, where does one draw the line on the sufficient degree of cautiousness? Or, to use one of the particularised matters in paragraph 113A of the 3FASOC, when does protection afforded by any specified prescription become sufficient for the application of precautionary principle, or how far short of that sufficiency crosses the line into loss of exemption and thus potential criminal consequence? These difficulties demonstrate why any non-compliance with cl 2.2.2.2 ought not lead to a loss of exemption under s 38(1).
141. That is not to say that non-compliance with the precautionary principle in a given case (or other clauses in the Code or the Management Standards and Procedures that are not sufficiently prescriptive and capable of clear application) does not sound in any consequence. On the contrary, any breaches of the Code are subject to the Ministerial audit procedure in Part 6 of the SFT Act and also susceptible to injunctive relief in the Supreme Court of Victoria, as was the case in *Brown Mountain*, and on an interim interlocutory basis, in *My Environment*. But a breach of the Code does not result in any potential criminal consequence under the SFT Act, which is an important distinction to bear in mind when analysing, for the purposes of s 38(1) of the EPBC Act, which prescriptions of the substitute regime are susceptible to a loss of exemption.
142. The fact that, in VicForests' submission, non-compliance with cl 2.2.2.2 of the Code does not render particular forestry operations in the Central Highlands RFA region outside the exemption under s 38(1) of the EPBC Act, does not also mean that in circumstances where a timber harvesting operation will cause imminent damage to the environment there can never be *any* EPBC Act scrutiny. First, there are many detailed prescriptions in the accredited State regime that are capable, if not complied with, in leading to a loss of the exemption under s 38(1). Secondly, in circumstances such as this case, where Greater Glider is newly listed as threatened, but the executive has not changed or introduced any new prescriptions, it is always open to the regulator to issue a direction (and subsequent notice of suspension) under ss 70 and 71 of the SFT Act if the authorised officer has reasonably formed the opinion of the matters set out in s 71(b) of the SFT Act.

143. In other words, even if a timber harvesting operation complies with all relevant prescriptions (recognising there is no prescription for the Greater Glider in Central Highlands), it is still possible that an authorised officer may form the view that continuation of that timber harvesting operation would cause imminent damage to the environment such that a direction ought be issued in relation to the conduct of the timber harvesting operation, and in the event that direction is not complied with, a suspension notice ought follow. Conceivably, non-compliance with a suspension notice would expose the entity conducting the timber harvesting operation not only to criminal consequences at the State level (s 75 of the SFT Act) but also at the Federal level under the EPBC Act upon loss of exemption under s 38(1) and any breach under s 18.

C. THE PRECAUTIONARY PRINCIPLE

C.1. What is the correct test for the precautionary principle?

C.1.1. The source and content of the precautionary principle

144. The source of VicForests' obligation to comply with the precautionary principle is statutory. There is no rule of law known as the precautionary principle.¹⁰³

145. Clause 2.2.2.2 of the Code,¹⁰⁴ provides that:

The precautionary principle must be applied to the conservation of biodiversity values. The application of the precautionary principle will be consistent with relevant monitoring and research that has improved the understanding of the effects of forest management on forest ecology and conservation values.

146. Page 15 of the Code,¹⁰⁵ sets out the definition of the precautionary principle:

'Precautionary principle' means 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.

¹⁰³ *Wattleup Road Development Co Pty Ltd v State Administrative Tribunal (No 2)* [2016] WASC 279, at [68] (Chaney J).

¹⁰⁴ [CB 6.9; p 34].

¹⁰⁵ [CB 6.9; p 15].

147. The correct construction of the Code (and in particular cl 2.2.2.2 and the definition of the precautionary principle) will depend on text, context and purpose.
148. In *My Environment Appeal*,¹⁰⁶ the Victorian Court of Appeal acknowledged that the statutory scheme regulating timber harvesting in Victoria (under which the Code was made and is enforceable against VicForests) had multiple purposes and was directed to achieving a balance between the maintenance of native fauna and the ecologically sustainable long-term timber production capacity of forests.
149. The Court further stated that the complexity of the statutory scheme and the competing aims apparent in the regulatory context meant that the construction of particular statutory instruments was an occasion on which a compromise had been adopted and the purpose or object identified did not compel any particular construction. It was not tenable to conclude, even on the face of the instruments, that they were seeking to pursue a single purpose or objective. The fact that those statutory instruments were directed at the fulfilment of multiple purposes meant that the correct construction must depend on the words used, within the relevant context.¹⁰⁷
150. It is apparent that both the CFL Act (under which the Code is made) and the SFT Act (by which it is to apply to VicForests) seek to achieve multiple purposes. So too the Code itself.
151. The object of the CFL Act is expressed in s 4:

The object of this Act is to set up a legislative framework to enable the Minister—

- (a) to be an effective conservator of the State's lands, waters, flora and fauna; and
- (b) to make provision for the productive, educational and recreational use of the State's lands, waters, flora and fauna in ways which are environmentally sound, socially just and economically efficient.

152. As has been noted, power to make a Code of Practice is given by Part 5 of the CFL Act. The Code is a Code of Practice within the meaning of Part 5 of the CFL Act and is a

¹⁰⁶ [1], [17], [18], [147]–[155], [202]; [Legislation & Authorities; item 12].

¹⁰⁷ Ibid, [155] (Tate JA, with whom Warren CJ and Garde AJA agreed).

prescribed legislative instrument in Schedule 2 of the *Subordinate Legislation (Legislative Instruments) Regulations 2011* (Vic).¹⁰⁸

153. Compliance with a Code of Practice is not required unless the Code of Practice is incorporated in, or adopted by, either a relevant law or a condition specified in an authority given under a relevant law: CFL Act, s 39.
154. The need to manage the State's timber resources in a sustainable manner is reflected in the purposes of the SFT Act, which are set out in s 1:
- (a) to provide a framework for sustainable forest management and sustainable timber harvesting in State forests;
 - (ab) to provide for the granting of long-term access to timber resources in State forests;
 - (ac) to foster investment in, and returns from, timber resources in State forests;
 - (ad) to establish, and to provide for the enforcement of, timber harvesting safety zones so as to reduce risks to public safety and disruption of timber harvesting operations;
 - (ae) to deter activities that create risks to public safety in timber harvesting safety zones and that cause disruption of timber harvesting operations;
 - (b) to amend the **Forests Act 1958** and the **Conservation, Forests and Lands Act 1987**.
155. Part 2 of the SFT Act relates to sustainable forest management. Section 5 sets out the principles of ecologically sustainable development, which are intended to guide sustainable forest management.

5 Principle of ecologically sustainable development

- (1) In undertaking sustainable forest management in accordance with this Act, regard is to be had to the principles of ecologically sustainable development set out in this section.
- (2) Ecologically sustainable development is development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.
- (3) The objectives of ecologically sustainable development are—

¹⁰⁸ [Legislation & Authorities; item 24].

- (a) to enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations;
 - (b) to provide for equity within and between generations;
 - (c) to protect biological diversity and maintain essential ecological processes and life-support systems.
- (4) The following are to be considered as guiding principles of ecologically sustainable development—
- (a) that decision making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
 - (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
 - (c) the need to consider the global dimension of environmental impacts of actions and policies;
 - (d) the need to develop a strong, growing and diversified economy which can enhance the capacity for environment protection;
 - (e) the need to maintain and enhance international competitiveness in an environmentally sound manner;
 - (f) the need to adopt cost effective and flexible policy instruments such as improved valuation, pricing and incentive mechanisms;
 - (g) the need to facilitate community involvement in decisions and actions on issues that affect the community.

156. In *MyEnvironment Appeal*,¹⁰⁹ the Court noted that it is apparent from the guiding principle set out in s 5(4)(a) of the SFT Act that potentially conflicting economic, environmental, social and equity considerations all need to be weighed up in the context of a decision-making process aimed at ecologically sustainable development.

157. Section 5(4)(b) is a statutory expression of the precautionary principle.¹¹⁰

158. Management of timber harvesting is dealt with in Part 6 of the SFT Act.

¹⁰⁹ [40]; [Legislation & Authorities; item 12].

¹¹⁰ *Ibid*, [41].

159. Pursuant to s 46 of the SFT Act, VicForests (and any person who has entered into a harvesting agreement with VicForests) and any other person undertaking timber harvesting operations in a State forest must comply with any relevant Code of Practice relating to timber harvesting.

160. The Foreword to the Code, written by the Minister for Environment and Climate Change, makes it clear that the Code is aimed at striking a “balance ... between conserving biodiversity to sustain our natural assets and meeting the needs of industry”.¹¹¹ It notes that:

Native forests are some of the most beautiful natural assets that our State has to offer. They provide sustainable employment and natural timber products, they help to conserve biodiversity, they provide habitat for native plants and wildlife, and attract millions of visitors through our tourism industry each year.

The native forests and plantation timber industry employs over 25,000 people and generates more than \$400 million annually in log production.

...

The code plays a key role in ensuring timber harvesting operations are compatible with the conservation of forests and provides clear direction to deliver sound environmental performance when planning for and conducting harvesting operations.¹¹²

161. The purpose of the Code (section 1.2.2),¹¹³ is to provide direction to timber harvesting managers, harvesting entities and operators to deliver sound environmental performance when planning for and conducting commercial timber harvesting operations in a way that:

- (a) permits an economically viable, internationally competitive, sustainable timber industry;
- (b) is compatible with the conservation of the wide range of environmental, social and cultural values associated with forests;

¹¹¹ [CB 6.9], 5.

¹¹² [CB 6.9], 5.

¹¹³ [CB 6.9], 22.

- (c) provides for the ecologically sustainable management of native forests proposed for cyclical timber harvesting operations; and
 - (d) enhances public confidence in the management of timber production in Victoria's forests and plantations.
162. The Code builds on an earlier 2007 version by “streamlining the environmental regulatory framework for harvesting managers, harvesting entities and operators conducting and planning timber harvesting operations.”¹¹⁴
163. The Code differentiates between Code Principles, Operational Goals, and Mandatory Actions:¹¹⁵

A Code Principle is a broad outcome that expresses the intent of the Code for each aspect of sustainable forest management.

An Operational Goal states the desired outcome or goal for each of the specific areas of **timber harvesting operations**, to meet the Code Principles.

Mandatory Actions are actions to be conducted in order to achieve each operational goal. **Timber harvesting managers, harvesting entities and operators** must undertake all relevant mandatory actions to meet the objectives of the Code. Mandatory Actions are focussed on practices or activities. Failure to undertake a Mandatory Action would result in non-compliance with this Code.¹¹⁶

164. Clause 2.2.2.2 is a mandatory action.
165. In *MyEnvironment*, Osborn JA quoted with approval the following statement of Stein J in *Leatch v National Parks and Wildlife Service*:¹¹⁷

... the precautionary principle is a statement of common sense and has already been applied by decision-makers in appropriate circumstances prior to the principle being spelt out. It is directed towards the prevention of serious or irreversible harm to the environment in situations of scientific uncertainty. Its premise is that where uncertainty or ignorance exists concerning the nature or scope of environmental harm (whether this follows from policies, decisions or activities), decision-makers should be cautious.

¹¹⁴ Section 1.1 of the Code [CB 6.9], 21.

¹¹⁵ Section 1.2.8 of the Code [CB 6.9]. 25.

¹¹⁶ Ibid. Underlining and boldness in original text. Text in bold indicates a defined term in the Code.

¹¹⁷ *MyEnvironment*, [261] (citations omitted).

166. The notion of cautiousness was discussed by Wheeler J in *Bridgetown/Greenbushes Friends of the Forest Inc v Executive Director of Conservation and Land Management*,¹¹⁸ in a passage quoted in both *Brown Mountain*,¹¹⁹ and *MyEnvironment*:¹²⁰

Adopting for the moment a very broad characterisation of the precautionary approach, a requirement that a decision maker ‘be cautious’ says something about the way in which the decision must be made. There must be some research, or reference to available research, some consideration of risks, and a more pessimistic rather than optimistic view of the risks should be taken. **However, such a requirement does not in any particular case specify precisely how much research must be carried out, or when a risk should be considered to be so negligible that it may safely be disregarded. Still less, does such an approach dictate what courses of action must be taken after the possibilities have been cautiously weighed.**

No doubt there are extremes at either end of a spectrum, where one would be able to say that a decision maker had or had not been ‘cautious’. Where endangered species are concerned for example, one can see that where readily accessible and unambiguous research material pointed to a serious risk that numbers of the species would be dramatically reduced by a course of action, then the adopting of that course of action, in the absence of any evidence of consideration of alternatives, would seem to point inevitably to a finding that there had been no relevant ‘caution’. At the other extreme, an absence of any action, other than research and study, is clearly cautious but is not the only option available in most cases. Although there has been very little judicial consideration of the precautionary approach or ‘precautionary principle’ (a similar or perhaps identical concept which appears in a number of intergovernmental agreements) **the clear thread which emerges from what consideration has been given to the approach is that it does dictate caution, but it does not dictate inaction, and it will not generally dictate one specific course of action to the exclusion of others.**

[Emphasis added].

167. In *MyEnvironment*, Osborn JA said:

Thus, to take two extreme examples, if a patch of forest were found to contain the only living examples of a previously undiscovered species of flora (such as the Wollemi pine) it would, on its face, be contrary to the precautionary principle to destroy it in the course of timber harvesting, despite the absence of an Action Statement under the FFG Act or a prescription applicable to it under the FMP. Likewise, if a species of fauna thought to be extinct were rediscovered (as the LBP was in 1961), destruction of its essential

¹¹⁸ (1997) 18 WAR 102.

¹¹⁹ *Brown Mountain*, [186].

¹²⁰ *MyEnvironment*, [262].

habitat would, on its face, be contrary to the precautionary principle, despite the absence of an AS under the FFG Act or a prescription under the FMP. In each case, the threat of serious or irreversible damage to the environment would be accompanied by substantial uncertainty as to the survival of the species if harvesting continued.

Nevertheless, as these examples illustrate, it will be easier to identify a threatened breach of the precautionary principle when a specific action threatens direct serious or irreversible damage to an aspect of the environment of **extreme sensitivity and/or novel qualities**. **The more generalised the threat and the more indirect and less immediate the damage to a sensitive aspect of the environment, the more difficult it will be to be satisfied that the precautionary principle requires abstinence from a particular action.**

As I said in the *Brown Mountain* case, the requirements of the precautionary principle fall to be considered in the light of the whole of the evidence bearing on the relevant facts as it now is, and not as it was at the time VicForests completed planning for operations in the coupes in issue.¹²¹

[Emphasis added]

168. The precautionary principle should not be used to try to avoid all risks; some risks are plainly acceptable and others are plainly unacceptable.¹²² A reasonable balance must be struck between the stringency of the precautionary measures, which may have associated costs, such as financial, livelihood and opportunity costs, and the seriousness and irreversibility of the potential threat.¹²³
169. The precautionary principle embraces the concept of proportionality.¹²⁴
170. The precautionary principle falls to be applied within a considered and developed framework of regulation which has itself been derived from a strategic planning process which has taken into account principles of environmentally sustainable development and provided for significant conservation reserves.¹²⁵

C.1.2. Conditions precedent to engagement of the precautionary principle

171. In *Brown Mountain*, Osborn JA accepted VicForests' submission that there are preconditions before the precautionary principle is engaged.¹²⁶ Although in that case his

¹²¹ *MyEnvironment*, [268]–[269].

¹²² *Telstra*, [157]; see also *Brown Mountain*, [203].

¹²³ *Telstra*, [167].

¹²⁴ *Telstra*, [166]–[178].

¹²⁵ *Brown Mountain*, [181]; *MyEnvironment*, [271].

¹²⁶ *Brown Mountain*, [187].

Honour was considering the *Code of Practice for Timber Production 2007*, the part of that Code requiring application of the precautionary principle,¹²⁷ and the definition of the precautionary principle,¹²⁸ are almost identical to the provisions now in force.

172. In *Brown Mountain*, Osborn JA adopted the analysis of the precautionary principle by Preston CJ in *Telstra*:¹²⁹

The application of the precautionary principle and the concomitant need to take precautionary measures is triggered by the satisfaction of two conditions precedent or thresholds: a threat of serious or irreversible environmental damage and scientific uncertainty as to the environmental damage. These conditions or thresholds are cumulative. Once both of these conditions or thresholds are satisfied, a precautionary measure may be taken to avert the anticipated threat of environmental damage, but it should be proportionate.

173. In cases where the plaintiff alleges threats of serious or irreversible environmental damage by way of impact upon endangered species of fauna, it is a question of fact in each instance as to whether the proposed logging does constitute such a threat.¹³⁰ In *Telstra* Preston CJ observed that relevant factors may include:

- (a) the spatial scale of the threat (for example, local, regional, statewide, national, international);
- (b) the magnitude of possible impacts, on both natural and human systems;
- (c) the perceived value of the threatened environment;
- (d) the temporal scale of possible impacts, in terms of both the timing and the longevity (or persistence) of the impacts;
- (e) the complexity and connectivity of the possible impacts;

¹²⁷ Clause 2.2.2 as set out in *Brown Mountain*, [168].

¹²⁸ As set out in *Brown Mountain*, [176].

¹²⁹ *Telstra*, at [128]; *Brown Mountain*, [188].

¹³⁰ *Brown Mountain*, [189].

- (f) the manageability of possible impacts, having regard to the availability of means and the acceptability of means;
- (g) the level of public concern, and the rationality of and scientific or other evidentiary basis for the public concern; and
- (h) the reversibility of the possible impacts and, if reversible, the time frame for reversing the impacts, and the difficulty and expense of reversing the impacts.¹³¹

174. Osborn JA also relied on *Telstra* for the proposition that the threat hypothesised must have a scientific basis.¹³² In particular, the threat of environmental damage must be adequately sustained by scientific evidence:

not every claim or scientifically unfounded presumption of potential risk to human health or the environment can justify the adoption of national protective measures. Rather, the risk must be adequately substantiated by scientific evidence.¹³³

175. The second condition precedent is that there be ‘a lack of full scientific certainty.’ That too, is a question of fact.¹³⁴ In *Telstra*, Preston CJ suggested that assessment might involve:

- (a) the sufficiency of the evidence that there might be serious or irreversible environmental harm caused by the development plan, programme or project;
- (b) the level of uncertainty, including the kind of uncertainty (such as technical, methodological or epistemological uncertainty); and
- (c) the potential to reduce uncertainty having regard to what is possible in principle, economically and within a reasonable time frame.¹³⁵

¹³¹ *Telstra*, [131]; *MyEnvironment*, [190].

¹³² *Brown Mountain*, [192]; *Telstra*, [133] – [134].

¹³³ *Monsanto Agricoltura Italia v Presidenza del Consiglio dei Ministri*, European Court of Justice, Case C-236/01, 13 March 2003, unreported, as cited in *Telstra*, [134].

¹³⁴ *Brown Mountain*, [195].

¹³⁵ *Telstra*, [141].

176. Although there is a body of theoretical debate as to what is the requisite degree of uncertainty required to trigger the application of the precautionary principle,¹³⁶ in *Brown Mountain*, Osborn J analysed the evidence on the basis of a standard of ‘substantial uncertainty.’¹³⁷

C.1.3. *Brown Mountain* and *MyEnvironment* not distinguishable and not plainly wrong

177. The applicant now asserts that Osborn JA was in error when he found that there were preconditions to the engagement of the precautionary principle.¹³⁸ Such a submission is contrary to the applicant’s submissions at the hearing of the application for interlocutory relief.¹³⁹ In any event, it is apparent from the definition of “precautionary principle” in the Code,¹⁴⁰ that it is predicated on the existence of a threat of serious or irreversible damage. Further, Osborn J’s construction is consistent with s 5(4)(b) of the SFT Act, which has been described by Tate JA as “a statutory expression of the precautionary principle.”¹⁴¹

178. The applicant requires such a departure because those preconditions constitute serious and insurmountable hurdles to the establishment of a breach of the Code and, therefore, to any opening of the gateway provision contained in s 38(1).

179. In VicForests’ submissions, in order to accept the applicant’s contention that the application of the precautionary principle in this case does not require the establishment of either precondition at a threshold level, this Court would have to conclude that:

- (a) each of *Brown Mountain* and *MyEnvironment* is distinguishable; or
- (b) in each of *Brown Mountain* and *MyEnvironment* Osborn JA was “plainly wrong”.

180. The question of whether the application of the precautionary principle (as then expressed in the 2007 version of the Code) is triggered by the satisfaction of two conditions

¹³⁶ *Telstra*, [142] – [148].

¹³⁷ *Brown Mountain*, [197].

¹³⁸ Footnote 8 to the applicant’s outline of opening submission [CB 1.16].

¹³⁹ *Friends of Leadbeater’s Possum Inc v VicForests (No 3)* (2018) 231 LGERA 75 [17]–[18]; the applicant’s written submissions dated 1 May 2018, [31].

¹⁴⁰ [CB 6.9; p 15].

¹⁴¹ *MyEnvironment Appeal*, [41].

precedent was a contested matter in *Brown Mountain* in which both parties were represented by Senior Counsel. Having heard submissions from the parties, his Honour accepted VicForests' submissions as to the existence of the conditions precedent. Having been accepted in *Brown Mountain*, it has not been challenged in any case since, save for being raised for the first time in this case in the applicant's opening written submissions.

C.1.3.1. Not distinguishable

181. In both *Brown Mountain* and *MyEnvironment* the Court was construing the Code as then in force, which was the *Code of Practice for Timber Production 2007 (the 2007 Code)*. Clause 2.2.2 of the 2007 Code was set out in paragraph 168 of *Brown Mountain*. The relevant part of that clause read:

To facilitate the protection of biodiversity values, the following matters must be addressed when developing and reviewing plans and must be adhered to during operations:

- application of the precautionary principle to the conservation of biodiversity values, consistent with monitoring and research to improve understanding of the effects of forest management on forest ecology and conservation values.

182. The precautionary principle was defined in the 2007 code in the following terms:¹⁴²

Precautionary principle — when contemplating decisions that will affect the environment, the precautionary principle requires careful evaluation of management options 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.

183. It will be apparent that the definition in the 2007 Code is almost identical to that in the Code now in force.

184. At the time *Brown Mountain* was heard and determined, VicForests was required to comply with the “conditions and standards” in the 2007 Code by reason of a condition being included to that effect in the Allocation Order then in force,¹⁴³ and also the TRP

¹⁴² As set out in *Brown Mountain*, [176].

¹⁴³ See *Brown Mountain*, [120]–[130].

as then in force.¹⁴⁴ The position in *MyEnvironment* was not relevantly dissimilar.¹⁴⁵ But, like today, VicForests was also required to comply with any relevant Code of Practice relating to timber harvesting by reason of s 46 of the SFT Act.

185. Since the passage of the *Subordinate Legislation (Legislative Instruments) Regulations 2011* (Vic)¹⁴⁶—which pre-dated the *MyEnvironment* decision—Codes of Practice made under s 31(1) of the CFL Act have been prescribed to be legislative instruments.
186. The language of the definition of the precautionary principle in the 2007 Code and the Code now in force being almost identical, together with the fact that s 46 of the SFT Act has at all material times required VicForests to comply with a Code of Practice relating to timber harvesting, means there is no relevant basis on which to distinguish *Brown Mountain* and *MyEnvironment* from the present case, insofar as construction of the precautionary principle within the Code is concerned.
187. It follows that the applicant must establish that Osborn JA was plainly wrong in order to avoid the need for it to satisfy the conditions precedent to the engagement of the precautionary principle in accordance with his Honour's reasons in both *Brown Mountain* and *MyEnvironment*.

C.1.3.2. Osborn JA was not plainly wrong

188. In *BHP Billiton Iron Ore v The National Competition Council*¹⁴⁷ Greenwood J explained:

[83] The circumstances in which a judge in the exercise of the Court's original jurisdiction might find a decision of a single judge of the Court to be 'plainly wrong' should be approached with real and deliberative caution and would generally involve that class of case where for one reason or another there is transparent error such as the consideration of an incorrect statutory instrument in the resolution of the controversy; consideration of a provision of a statute in a form not enacted at the relevant date of the events or a failure to consider a provision of an Act relevant to the disposition of the cause, thus causing the analysis to fall into error; a failure to

¹⁴⁴ *Brown Mountain*, [144].

¹⁴⁵ *MyEnvironment*, [77]–[78].

¹⁴⁶ [Legislation & Authorities; item 24].

¹⁴⁷ (2007) 126 FCR 234 (per Greenwood J with Sundberg J generally agreeing) (an appeal was dismissed by the High Court of Australia in *BHP Billiton Iron Ore Pty Ltd v National Competition Council*; *BHP Billiton Iron Ore Pty Ltd v National Competition Council* (2008) 236 CLR 145).

apply having regard to the issues raised by the controversy, a binding decision of a Full Court of this Court or the High Court; a failure to apply a decision of a Full Court of this Court, an intermediate Court of Appeal of another jurisdiction or an authority of the High Court expressing a clear persuasive emphasis of opinion in favour of a particular conclusion (particularly concerning legislation of the Commonwealth Parliament); or some other circumstance that has caused a dispositive adjudication of the controversy to miscarry.

[84] That minds might differ on a question is not a foundation for a conclusion that a decision supported by exposed reasons for judgment after full argument, is plainly wrong.

[85] The difficulty however lies in preserving that degree of important flexibility necessary to enable a judge to do justice between the parties to a controversy inherent in a dispositive adjudication of that controversy when a judge is persuaded that an earlier authority is wrong (apart from illustrations of the kind above) balanced with the importance of consistency and certainty in the administration of the law. The question is always a matter of careful judgment.

[86] The circumstances which might properly lead to a departure from an earlier authority will necessarily vary according to the content of the case and the issues and therefore no prescriptive rules ought to be formulated. However, the point of equilibrium in that balance might be reached by recognising the required emphasis necessary in concluding that an earlier authority is ‘*plainly wrong*’ or ‘*clearly wrong*’. In cases where a party advised and represented by experienced senior counsel properly discharging the duty owed to the Court urges upon the Court the merits of the reasoning of the authority in the resolution of the immediate case, it would be difficult to conclude that the authority is ‘*plainly wrong*’ notwithstanding that a judge might reach an entirely different view of the proper construction of the provision against the background of the facts found and thus conclude that the early authority is **wrongly decided**. There is a distinction between concluding a decision is wrongly decided and a conclusion that an earlier authority is ‘*plainly wrong*’ and thus ought not to be applied and followed (emphasis added).

189. The applicant cannot demonstrate that Osborn JA in either case was “*plainly wrong*”.
190. During oral submissions it was submitted by the applicant that Osborn J erred in following Preston CJ’s analysis because the precautionary principle arose in a different context in the *Telstra* case.¹⁴⁸ In *Telstra*, the precautionary principle was contained in s 6(2)(a) of the *Protection of the Environment Administration Act, 1991* (NSW)¹⁴⁹ which provided:

¹⁴⁸ T 776:14 (Delany address).

¹⁴⁹ [Legislation & Authorities; item 13].

- (2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of social, economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:
 - (a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

191. Senior counsel for the applicant submitted that “it’s a very different context, a very different provision”.¹⁵⁰ Although in *Telstra* the Court was undoubtedly considering a different statute, as both the decisions of *Telstra* and *Brown Mountain* show (and as was subsequently confirmed by *MyEnvironment*), the analysis of the precautionary principle proceeded on a detailed study of its received meaning in various sources, including judicial decisions in various jurisdictions and academic literature.¹⁵¹

192. In *Brown Mountain*, Osborn J referred to the definition of the precautionary principle as adopted in cl 3.5.1 of the Australian Government *Intergovernmental Agreement on the Environment*, and the fact that it was embodied in similar terms in principle 15 of the *Rio Declaration on Environment and Development*.¹⁵² The opening text of cl 3.5.1 as quoted in the judgment explained that “[w]here there are threats of a serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”

193. Preston CJ considered a wide range of literature in support of his conclusion, accepted by Osborn J in both *Brown Mountain* and *MyEnvironment*, that:¹⁵³

The application of the precautionary principle and the concomitant need to take precautionary measures is triggered by the satisfaction of two conditions precedent or thresholds: a threat of serious or irreversible environmental damage and scientific uncertainty as to the environmental damage. These conditions or thresholds are cumulative. Once both of these conditions or thresholds are satisfied,

¹⁵⁰ T 777:12 (Delany address).

¹⁵¹ *Telstra*, [127].

¹⁵² *Brown Mountain*, [177].

¹⁵³ *Telstra*, [128]. See generally Preston CJ’s analysis from [128]–[183].

a precautionary measure may be taken to avert the anticipated threat of environmental damage, but it should be proportionate.

194. The Full Federal Court of Australia has on several occasions considered the meaning of the precautionary principle in the context of s 391 of the EPBC Act. That section relevantly provides:

391 Minister must consider precautionary principle in making decisions

Taking account of precautionary principle

- (1) The Minister must take account of the precautionary principle in making a decision listed in the table in subsection (3), to the extent he or she can do so consistently with the other provisions of this Act.

Precautionary principle

- (2) The *precautionary principle* is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of irreversible environmental damage.

195. Like the definition in the Code, it does not expressly state conditions precedent.
196. In *Australian Conservation Foundation Incorporated v Minister for the Environment*¹⁵⁴ the Federal Court considered an application for judicial review of the decision of the Minister for Environment to approve Adani Mining Pty Ltd to take an “action” under Part 9 of the EPBC Act.
197. The “action” in that case was the proposed construction of a new open-cut and underground coal mine in Central Queensland.
198. The EPBC Act contains principles of “ecologically sustainable development” in s 3A:

3A Principles of ecologically sustainable development

The following principles are *principles of ecologically sustainable development*:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;

¹⁵⁴ (2016) 251 FCR 308 (Griffiths J).

- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

199. At paragraph 12 of the judgment, Griffiths J said:

It may be noted that the principles of ecologically sustainable development include in paragraph (b) what is commonly referred to as “the precautionary principle”. That particular principle is defined in s 391(2) (which is located in Pt 16) in substantially similar terms to those in s 3(1)(b) (the terms of s 391(2) are set out in [34] below). One of the ACF’s complaints is that the Minister failed to take account of the precautionary principle in deciding to approve the project, contrary to s 391(1).

200. The text of s 3A(b) makes express, by reason of the use of the conditional word “if” at its commencement, that that particular principle of ecologically sustainable development is conditioned on the presence of “threats of serious or irreversible environmental damage”. This makes express what is otherwise implicit in the definition of the precautionary principle in s 391(2) of the EPBC Act by use of the phrase “where there are threats of irreversible environmental damage.”

201. Although the Court in that case was considering the precautionary principle within the meaning of s 391(2) of the EPBC Act, Griffiths J nonetheless cited with approval the decision of Preston CJ in *Telstra*, where his Honour noted Preston CJ “comprehensively analysed and explained” the precautionary principle.¹⁵⁵ In so doing, Griffiths J observed that:

¹⁵⁵ *Australian Conservation Foundation Incorporated v Minister for the Environment* (2016) 251 FCR 308, [177].

This Court has held in several cases that, for the purposes of s 391 of the EPBC Act, the precautionary principle is only enlivened in circumstances where there are threats of serious or irreversible environment damage (see *Queensland Proserpine case* at 521; *Lawyers for Forests Inc v Minister for the Environment, Heritage and the Arts* [2009] FCA 330; 165 LGERA 203 at [41] per Tracey J (whose decision was upheld on appeal: see *Lawyers for Forest Inc v Minister for the Environment, Heritage and the Arts* [2009] FCAFC 114; 178 FCR 385) and *Buzzacott* at [192]).

202. The foregoing cases reveal that, although the precautionary principle is defined using slightly different language in a number of different instruments, the source of the principle derives from a widespread international usage and meaning (most comprehensively canvassed in *Telstra*) such that unless a defined statutory context is expressly inconsistent with that usage, it should be given its received meaning.
203. On this basis, Osborn JA's decisions in *Brown Mountain* and *MyEnvironment* are not plainly wrong.

C.1.4. Textual analysis supports conditions precedent

204. In any event, the text of the definition of the precautionary principle in the Code, and its broader statutory context, supports the construction adopted in *Brown Mountain* and *MyEnvironment*.
205. First, in terms of statutory context, it will be recalled that Tate JA described s 5(4)(b) of the SFT Act as a statutory expression of the precautionary principle.¹⁵⁶ The expression of the precautionary principle in that sub-section is identical to that in s 3A(b) of the EPBC Act. As has already been discussed, that expression of the precautionary principle makes express that it is conditional upon the presence of threats of serious or irreversible environmental damage.
206. It is through s 46 of the SFT Act that VicForests must comply with the Code.
207. The text of the definition in the Code itself refers to the contemplation of decisions that will affect the environment, i.e., it does not apply to decisions at large. Further, the definition speaks of a careful evaluation of management options to be undertaken to “wherever practical avoid serious or irreversible damage to the environment.” The

¹⁵⁶ *MyEnvironment Appeal*, [41].

requirement is directed towards the avoidance of serious or irreversible damage to the environment, wherever practical. In other words, the requirement has no work to do where there is no threat of serious or irreversible damage.

208. The second sentence of the definition in the Code confirms this construction of the first sentence; it is expressly predicated on the presence of “threats of serious or irreversible environmental damage”, and when such a condition is present, it introduces the second condition precedent identified in *Telstra*, namely “lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”
209. It follows that the text of the definition of the precautionary principle in the Code itself can be read in a manner consistent with the construction adopted in *Brown Mountain* and *MyEnvironment*. That construction is also harmonious with the statutory expression of the precautionary principle in the “principles of ecologically sustainable development” in the SFT Act, and the EPBC Act. One of the purposes of the Code is to permit an economically viable, internationally competitive, sustainable timber industry.¹⁵⁷ The precautionary principle in the Code should be construed harmoniously with the expression of sustainable development in the SFT Act, not in a manner inconsistent with that expression.
210. In contrast, the construction urged by the applicant would be inconsistent with both the SFT Act, and the EPBC Act, and the received meaning of the precautionary principle in the sources identified by Preston CJ in *Telstra*. For each of those reasons, the text, context and purpose of cl 2.2.2.2 support the construction adopted by Osborn JA in *Brown Mountain* and *MyEnvironment*.

C.1.5. Precautionary principle not to be construed to effect legislative or political outcomes

211. Although, as has been noted, the precautionary principle is given statutory expression and is binding upon VicForests, it falls to be applied within a considered and developed framework of regulation which has itself been derived from a strategic planning process which has taken account of principles of environmentally sustainable development and provided for significant conservation reserves.¹⁵⁸

¹⁵⁷ [CB 6.9], 22.

¹⁵⁸ *MyEnvironment*, [272].

212. The source of the obligation —cl 2.2.2.2 of the Code— is within a subordinate instrument that itself expresses multiple purposes,¹⁵⁹ namely to deliver sound environmental performance when planning for and conducting commercial timber harvesting operations in a way that:

- (a) permits an economically viable, internationally competitive, sustainable timber industry;
- (b) is compatible with the conservation of the wide range of environmental, social and cultural values associated with forests;
- (c) provides for the ecologically sustainable management of native forests proposed for cyclical timber harvesting operations; and
- (d) enhances public confidence in the management of timber production in Victoria's forests and plantations.

213. The Code is made under Part 5 of the CFL Act. Section 4 provides that the object of the CFL Act is to set up a legislative framework to enable the Minister:

- (a) to be an effective conserver of the State's lands, waters, flora and fauna; and
- (b) to make provision for the productive, educational and recreational use of the State's lands, waters, flora and fauna in ways which are environmentally sound, socially just and economically efficient.

214. Tate JA observed in *MyEnvironment Appeal*:¹⁶⁰

s 5 of the SFP [sic] Act, in its statement of the principles of ecologically sustainable development designed to guide sustainable forestry management, makes plain that decision making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations, as recognised by his Honour.¹⁶¹

¹⁵⁹ See section 1.2.2 of the Code [CB 6.9; p 22].

¹⁶⁰ [142].

¹⁶¹ *MyEnvironment*, [62].

215. Tate JA further stated,¹⁶² that when construing legislation that has a multiplicity of purposes, or seeks to strike a balance between competing interests, it is necessary to keep in mind the observation of Gleeson CJ in *Carr v Western Australia* where his Honour said:¹⁶³

In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act is to be preferred to a construction that would not promote that purpose or object. ... *That general rule of interpretation, however, may be of little assistance where a statutory provision strikes a balance between competing interests*, and the problem of interpretation is that there is uncertainty as to how far the provision goes in seeking to achieve the underlying purpose or object of the Act. Legislation rarely pursues a single purpose at all costs. Where the problem is one of doubt about the extent to which the legislation pursues a purpose, stating the purpose is unlikely to solve the problem. *For a court to construe the legislation as though it pursued the purpose to the fullest possible extent may be contrary to the manifest intention of the legislation and a purported exercise of judicial power for a legislative purpose.*

216. Her Honour went on to quote with approval another passage of Gleeson CJ in the same case:¹⁶⁴

As explained in *Kelly and Nicholls*, the general purpose of legislation of the kind here in issue is reasonably clear; but it reflects a political compromise. The competing interests and forces at work in achieving that compromise are well known. The question then is not: *what was the purpose or object underlying the legislation? The question is: how far does the legislation go in pursuit of that purpose or object?*¹⁶⁵

217. In the context of evidence before the Court in *MyEnvironment* to the effect that the Department was undertaking a review of the existing management prescription for Lead-beater's Possum, Osborn JA observed that:

Such review will necessarily involve an evaluation of factors bearing on the sustainable ecological use of the whole of the forest affected by the FMP. Such a review involves policy considerations not readily justiciable before this Court.¹⁶⁶

¹⁶² [148].

¹⁶³ *Carr v Western Australia* (2007) 232 CLR 138, [5] (emphasis as added by Tate JA).

¹⁶⁴ *MyEnvironment Appeal*, [150].

¹⁶⁵ *Carr v Western Australia* (2007) 232 CLR 138, [7]; (emphasis as added by Tate JA).

¹⁶⁶ *MyEnvironment*, [303].

218. Commenting on Professor Lindenmayer’s evidence in *MyEnvironment* that all areas of 1939 regrowth that support some large living trees should be exempted from logging, Osborn JA observed:

[F]undamentally the resolution of the major forest planning issues raised by Prof. Lindenmayer’s letter cannot be achieved in this proceeding. First, the evidence does not permit a conclusion to be reached as to the appropriateness of the proposal over the whole of the forest area in question. Secondly, the issue ultimately involves questions of policy judgment which are not the province of the Court. The necessary decision raises questions of sustainable ecological development and net community benefit which involve discretionary judgements as to the weight to be given to particular factors and the resolution of their balance. The discretion to make this judgement is not vested in this Court.¹⁶⁷

219. For like reasons, it is not to the point that the applicant considers that:

An outcome consistent with the precautionary principle can be achieved through precisely the mechanisms envisaged in the NFPS for complementary management outside reserves — namely continuing to both set aside some areas that have important biological value for Greater Glider to be protected from harvesting operations, and the careful management of other such areas during operations so as to safeguard important Greater Glider values.¹⁶⁸

220. The management of State forests in the Central Highlands FMA generally, and particularly in respect of particular species of flora or fauna, is a matter of policy for the executive branch of the State of Victoria. Moreover, it is a matter of policy to be put into effect, as best considered by the executive, in the context of a framework operating at an intergovernmental level, and in the context of managing a dynamic forest resource with competing demands upon it.

221. As Osborn JA has observed, “the issue ultimately involves questions of policy judgment which are not the province of the Court”.¹⁶⁹

222. The CH RFA expressly provides in cl 40 that “the Parties agree that Victorian processes and systems provide for ecologically sustainable management of forests in the Central

¹⁶⁷ *MyEnvironment*, [310].

¹⁶⁸ Paragraph 28 of the applicant’s outline of opening submission [CB 1.16].

¹⁶⁹ *MyEnvironment*, [310].

Highlands and that these processes and systems are accredited in cl 47 of this Agreement”.

223. While the applicant is at pains to note that there is nothing in the CH RFA that addresses the Greater Glider and that the CH RFA predates the listing of the Greater Glider as vulnerable, it must also be noted that on 26 March 2018, the Commonwealth and Victorian governments extended the timeframe of the CH RFA to 31 March 2020.¹⁷⁰ This occurred after the change in listing status of the Greater Glider. It should also be noted that the Department has given no directions to VicForests as to the conduct of its timber harvesting operations in the Central Highlands FMA regarding detections of Greater Glider pursuant to s 70 of the SFT Act. The applicant is therefore asking the Court (and timber harvesting entities) to second guess the actions of both the executive and the regulator.
224. It is no task of the court to fill gaps disclosed in legislation.¹⁷¹ Where a gap exists, the remedy lies in an amending Act and not in a “usurpation of the legislative function under the thin guise of interpretation”.¹⁷² In *Baker v Campbell*,¹⁷³ Brennan J stated:

The reciprocal functions of legislation by Parliament and interpretation by the courts could hardly be separated if the courts were to modify the natural meaning of what Parliament has said in order to give effect to what the courts thought to be desirable policy
...

225. In *Australian Education Union v Department of Education and Children's Services*,¹⁷⁴ the High Court considered the proper construction of s 9(4) of the *Education Act 1972* (SA), which empowered the Minister to appoint such officers and employees (in addition to the employees and officers of the Department and the teaching services) as he considered necessary for the proper administration of that Act or for the welfare of the students of any school. The Minister purported to appoint persons as temporary “contract teachers” under power conferred by s 9(4). A dispute arose as to the

¹⁷⁰ [CB 5.1.2.19].

¹⁷¹ *Marshall v Watson* (1972) 124 CLR 640, at p 649 (Stephen J).

¹⁷² *Magor and St Mellons RDC v Newport Corporation* [1952] A.C. 189, 191 (Lord Simonds).

¹⁷³ (1983) 153 CLR 52.

¹⁷⁴ (2012) 248 CLR 1.

entitlements of officers and employees appointed under s 9(4). The union contended that s 9(4) did not authorise the appointment of a person as a teacher.

226. The Full Court of the Industrial Relations Court of South Australia (**the IRC**) concluded that s 9(4) provided authority for the Minister to appoint officers to be engaged as teachers, as an independent provision of the statute. An appeal to the Full Court of the Supreme Court of South Australia was dismissed.

227. In the High Court, the majority observed that the reasoning of the IRC was informed by the view that it was desirable that the Minister have flexibility in the appointment of teachers and that other provisions of the relevant legislation might be unnecessary prescriptive in its application to the ad hoc appointments of relief teachers.¹⁷⁵ The majority said of this approach:¹⁷⁶

[28] ... This approach, with respect, emphasised a judicially constructed policy at the expense of the requisite consideration of the statutory text and its relatively clear purpose. In construing a statute it is not for a court to construct its own idea of a desirable policy, impute it to the legislature, and then characterise it as a statutory purpose. The statutory purpose in this case was to be derived from a consideration of the scheme of the Act as a whole, the respective functions of Pts II and III of the Act, and the regulatory requirements of Pt IV of the Act (citations omitted).

228. Likewise, the majority said that the approach of the Full Court of the Supreme Court, which emphasised what was described as the benefits flowing from the Minister's preferred construction, elevated flexibility to a statutory purpose that "lacked a foundation in the text of the Act".¹⁷⁷

229. As noted elsewhere, the precautionary principle falls to be applied within a considered and developed framework which has been derived from a strategic planning process that has taken account of principles of environmentally sustainable development and provided for significant conservation reserves.¹⁷⁸ The Code itself expresses multiple purposes.¹⁷⁹ The Code is made under Part 5 of the CFL Act. Section 4 of the CFL Act

¹⁷⁵ (2012) 248 CLR 1, [28] (French CJ, Hayne, Kiefel and Bell JJ).

¹⁷⁶ (2012) 248 CLR 1, [28] (French CJ, Hayne, Kiefel and Bell JJ).

¹⁷⁷ (2012) 248 CLR 1, [29] (French CJ, Hayne, Kiefel and Bell JJ).

¹⁷⁸ *My Environment*, [272].

¹⁷⁹ See section 1.2.2 of the Code [CB 6.9; p 22].

provides that the object of that Act is to establish a legislative framework to enable the Minister:

- (a) to be an effective conservator of the State's lands, waters, flora and fauna; and
- (b) to make provision for the productive, educational and recreational use of the State's lands, waters, flora and fauna in ways which are environmentally sound, socially just and economically efficient.

230. The legislature and the executive have struck a balance between conservation measures and those that relate to the commercial use and exploitation of forest resources in State forests. In setting a balance between what might be described as competing rights in a particular situation, had the legislature or the executive intended one value to be given primacy or paramountcy, the instruments or statutes that establish the content of those competing interests might have provided for a hierarchy or statement of priority.¹⁸⁰ In the absence of such a statement of priority, a decision maker is left to make an intuitive value judgment between those values.¹⁸¹ That value judgement is in the province of the legislature or the executive rather than the judiciary.¹⁸² Indeed, the ability to set aside the balance struck by the legislature and the executive is limited by the nature of the judicial process itself (in the sense that the issues are framed by the parties to that dispute), and does not extend to the substitution of the court's view of a more reasonable balance for that which was struck by the legislature or the executive.¹⁸³

231. Accordingly the Court should resist the applicant's invitation to construe the precautionary principle in a way that provides it with a de facto legislative or political content by construing it in a manner that creates substantive obligations of the kind particularised in subparagraph (f) under paragraph 113A of the 3FASOC or the particulars under paragraph 2.6.1 of the reply.

¹⁸⁰ *Aurukun Shire Council & Anor v CEO Office of Liquor Gaming and Racing in the Department of Treasury* [2012] 1 Qd R 1, [162] (Keane JA).

¹⁸¹ *Aurukun Shire Council & Anor v CEO Office of Liquor Gaming and Racing in the Department of Treasury* [2012] 1 Qd R 1, [162] (Keane JA).

¹⁸² *Aurukun Shire Council & Anor v CEO Office of Liquor Gaming and Racing in the Department of Treasury* [2012] 1 Qd R 1, [162] (Keane JA).

¹⁸³ *Aurukun Shire Council & Anor v CEO Office of Liquor Gaming and Racing in the Department of Treasury* [2012] 1 Qd R 1, [163] (Keane JA).

C.2. Has there been, or will there be, a failure to apply the precautionary principle in the Scheduled Coupes?

C.2.1. No sufficiently advanced plans to analyse the threat

232. Unlike *Brown Mountain* and the Gun Barrel coupe in *My Environment*, the allegation that any forestry operations in the Scheduled Coupes will fail to comply with the precautionary principle is made in the absence of knowing how those forestry operations will be undertaken.

233. Although it is disputed on the pleadings, since 29 October 2018, it has been expressly pleaded by VicForests that, contrary to the applicant’s allegation in subparagraph 6.3(c) of the 3FASOC, the TRP does not designate the silvicultural system that *will* be used in each of the coupes listed, but only identifies the most intensive silvicultural system that *may* be used, and that a less intensive silvicultural system may be used (in all or part of a particular coupe).¹⁸⁴ It is also contrary to the evidence —summarised in Table A— that demonstrates the Logged Coupes were in fact harvested using a less intensive method than designated on the TRP. To hold otherwise, as the applicant invites the Court to do,¹⁸⁵ would necessarily involve an adverse credit finding against Mr Paul when there is no basis to question Mr Paul’s honesty, and the contemporaneous documentary record is consistent with Mr Paul’s evidence.¹⁸⁶

234. In *MyEnvironment*, Osborn JA found that there was no sufficiently advanced proposal to harvest either Freddo or South Col coupes —neither of which, in that case, were the subject of coupe plans— to enable such a threat to be properly identified with respect to them. It was “as yet uncertain to what extent VicForests will seek to log these coupes, by what means (variable retention harvesting or clear felling) and in what configuration”.¹⁸⁷ In the absence of such coupe plans, his Honour was unable to conclude that VicForests intended to log Zone 1A habitat (relevant to Leadbeater’s Possum) in those coupes, even though VicForests freely conceded that those coupes may

¹⁸⁴ Paragraph 6.3(c) of the defence; Second Paul Affidavit [CB 3.4; paragraphs [179]–[181]]; T. 199:37 (B. Paul XXN).

¹⁸⁵ Paragraphs 103 and 150 of the applicant’s outline of opening submission [CB 1.16].

¹⁸⁶ See [CB 11.26], third and fourth columns; Table A.

¹⁸⁷ *MyEnvironment*, [276].

contain Zone 1A habitat.¹⁸⁸ An appeal in respect of his Honour's findings concerning Freddo and South Col coupes was abandoned.¹⁸⁹

235. The Scheduled Coupes are no different. Any coupe plans that had in fact been prepared in respect of those coupes are now stale and out-of-date.¹⁹⁰ Mr Paul's evidence was that:
- (a) as at October 2018 (the date he made his second affidavit), coupe plans (in various stages of completion) only existed for 11 of the 40 the Scheduled Coupes;¹⁹¹
 - (b) multiple coupe plans could be produced over the course of the planning process and in the lead up to the commencement of timber harvesting operations.¹⁹²
236. For example, Gun Barrel coupe (Scheduled Coupe 10.5), which was the subject of the proceedings commenced in 2011 in the Supreme Court of Victoria in *MyEnvironment*,¹⁹³ was partly harvested prior to the commencement of those proceedings. Harvesting has not recommenced in that coupe despite being on the TRP since that time.¹⁹⁴ The coupe plan dates from around September 2011.¹⁹⁵ Plainly, any future harvesting would have to take into account the undertaking that VicForests gave in that proceeding¹⁹⁶ not to harvest that coupe otherwise than in accordance with the Gun Barrell Variable Retention Plan, using a variable retention harvesting system with islands of retained habitat, SPZ and pre-1900 trees protected from timber harvesting.¹⁹⁷ That planning, to the extent any occurred, is stale and would need to be re-performed.¹⁹⁸ Likewise, South Col (Scheduled Coupe 10.11) —which was also the subject of the *MyEnvironment* proceeding— did not

¹⁸⁸ *MyEnvironment*, [258].

¹⁸⁹ *MyEnvironment Appeal*, [132]-[133].

¹⁹⁰ Second Paul Affidavit [CB 3.4; paragraphs [207]-[210], [444]].

¹⁹¹ Infant, Gun Barrel, Chest, White House, Farm Spur Gum, Smyth Creek, Hairy Hyde, Epiphanie, Backdoor, Vice Captain and Dry Creek Hill RDC: Second Paul Affidavit [CB 3.4; paragraph [207]; [CB 8.27 to 8.32A]. His evidence was that because harvesting had actually commenced in Chest, Hairy Hyde and Vice Captain, and was imminent in Farm Spur Gum, finalised coupe plans existed for those coupes: Second Paul Affidavit [CB 3.4; paragraph [209]]. His evidence was that in respect of White House, the signed coupe plan was misplaced and an otherwise complete and finalised version (without signatures) was produced: Second Paul Affidavit [CB 3.4; paragraph [210]].

¹⁹² Second Paul Affidavit [CB 3.4; paragraph [202]].

¹⁹³ Second Paul Affidavit [CB 3.4; paragraph [208]].

¹⁹⁴ Second Paul Affidavit [CB 3.4; paragraph [208]].

¹⁹⁵ Gun Barrell coupe plan [CB 8.36; p 14].

¹⁹⁶ *MyEnvironment*, [32]-[37].

¹⁹⁷ *MyEnvironment*, [32]-[37].

¹⁹⁸ Second Paul Affidavit [CB 3.4; paragraphs [207]-[210], [444]]; T. 212:29-32 (B. Paul XXN).

have a coupe plan in 2011 and that remains the case in 2019 notwithstanding it has remained on the TRP during that time.¹⁹⁹ The mere fact that a coupe is listed on a TRP does not, therefore, necessarily mean that it will be harvested during the approximate timing included on the TRP, as Gun Barrell and South Col demonstrate.

237. In respect of the Scheduled Coupes, the evidence of Mr Paul was that:

- (a) the status of planning in each of those coupes was variable; and
- (b) given the passing of time since the commencement of this proceeding, VicForests would need to undertake further planning of all of those coupes,²⁰⁰ including in light of FSC developments and VicForests' new adaptive silvicultural regimes (which remain under development and are therefore changeable).²⁰¹

238. Mr Paul's evidence, in cross-examination, was that he could not say how any silvicultural system would be used in the Scheduled Coupes because VicForests would "need to fully replan them according to our new FSC principles".²⁰²

239. In cross-examination, Mr Paul said that all planning of the Scheduled Coupes had been halted to permit this proceeding to run its course.²⁰³ In response to questioning from Senior Counsel for the applicant that such uncertainty "suited [VicForests'] case", Mr Paul responded:²⁰⁴

Or was it decided that you thought uncertainty was better suited to your case?---No, we just decided it was inappropriate to continue with the planning of the coupes while the court ran and rescheduled other coupes instead.

¹⁹⁹ Second Paul Affidavit [CB 3.4; paragraph [207]].

²⁰⁰ Second Paul Affidavit [CB 3.4; paragraph [443]-[444]].

²⁰¹ Fourth Paul Affidavit [CB 3.6; paragraph [118]]; T. 212:29-32 (B. Paul XXN).

²⁰² T. 326.3-5 (B. Paul XXN).

²⁰³ T. 212:25-42 (B. Paul XXN).

²⁰⁴ T. 212:44-46; T. 213:6-7 (B. Paul XXN).

240. Mr Paul was cross-examined about VicForests' intentions as to the four Scheduled Coupes²⁰⁵ that were the subject of the interlocutory injunction.²⁰⁶ It was put to Mr Paul that the listing of the Scheduled Coupes on the 2019 TRP meant those coupes were scheduled for harvesting between 2019-2022.²⁰⁷ Mr Paul rejected that proposition.²⁰⁸ The thrust of the cross-examination was that but for this proceeding, the Scheduled Coupes would be imminently exposed to timber harvesting operations.²⁰⁹
241. The evidence, when considered as a whole, does not permit any finding that but for this proceeding, the Scheduled Coupes were imminently exposed to harvesting.
242. First, the evidence demonstrates that some of the Scheduled Coupes have been listed on a TRP for many years. Diving Spur coupe (Scheduled Coupe 10.34) was first listed on a TRP on 12 August 2004;²¹⁰ it has been on a TRP for almost as long as VicForests has been in existence.²¹¹ No coupe plan exists for Diving Spur coupe. Smyth Creek coupe (Scheduled Coupe 10.24) —another coupe for which no coupe plan exists— was first listed on a TRP in 2006.²¹² Gun Barrel and South Col coupes were first listed on a TRP in 2009; Johnny coupe (Scheduled Coupe 10.30) was first listed on a TRP in 2010. Nine of the Scheduled Coupes were first listed in a TRP in 2011,²¹³ with the remainder first listed at various dates between 2012 and 2017.²¹⁴ The mere fact that coupes are listed on a TRP does not necessarily lead to a conclusion that those coupes will be harvested in the years which a TRP covers.
243. Secondly, cl 2.3.1.2 of the Code requires that a coupe plan must be prepared prior to the commencement of a timber harvesting operation, including road construction and upgrades.²¹⁵ The evidence demonstrates that only 11 of the 40 Scheduled Coupes have

²⁰⁵ The order of the Honourable Justice Steward made 24 April 2018, which concerned Backdoor, Camberwell Junction, Dry Cleaner, Dry Spell and Farm Spur Gum, was altered by the order dated 2 May 2018, which removed reference to Camberwell Junction coupe as timber harvesting activities in that coupe had concluded.

²⁰⁶ T. 212:28-46 (B. Paul XXN).

²⁰⁷ T. 213: 5 (B. Paul XXN).

²⁰⁸ T. 213: 5 (B. Paul XXN).

²⁰⁹ T. 212:22 – T. 213:7 (B. Paul XXN).

²¹⁰ [CB 3.4.21; column Date 1st TRP approval].

²¹¹ Order in Council [CB 6.1].

²¹² [CB 3.4.21; column Date 1st TRP approval].

²¹³ [CB 3.4.21; column Date 1st TRP approval].

²¹⁴ [CB 3.4.21; column Date 1st TRP approval].

²¹⁵ [CB 6.9].

coupe plans in existence,²¹⁶ and at least one is eight years old.²¹⁷ Mr Paul’s evidence that extant planning in the Scheduled Coupes is stale and will be undertaken afresh in accordance with VicForests’ new silvicultural policies if timber harvesting activities are ever able to recommence in those coupes²¹⁸ ought to be accepted. Senior Counsel for the applicant’s suggestion that there had been a mere “pause in activity” to permit the proceeding to run its course,²¹⁹ was a selective reading of Mr Paul’s evidence that any future timber harvesting in the Scheduled Coupes was subject to VicForests’ re-running its planning processes, in light of VicForests’ FSC certification processes, but that current planning was paused pending resolution of this proceeding.²²⁰

244. Thirdly, aligned to the above, on 20 April 2018 —i.e. on the same date this Court delivered its Separate Question reasons— the solicitors for the applicant wrote to the solicitors for VicForests seeking an undertaking that VicForests not conduct or authorise further timber harvesting activities within coupes Farm Spur Gum (Scheduled Coupe 10.20A), Vice Captain (Scheduled Coupe 10.38) and Backdoor (Scheduled Coupe 10.35).²²¹ The applicant’s solicitors also requested notification of “any other coupes listed at paragraph 10 of the Amended Statement of Claim in which your client has commenced timber harvesting operations, or in which it intends to commence such operations on or before 11 May 2018.”²²²
245. By letter dated 23 April 2018,²²³ the solicitors for VicForests responded, advising that VicForests was currently carrying out, or intended to commence timber harvesting operations prior to 11 May 2018 in Dry Spell, Backdoor, Dry Creek Hill RDC (inadvertently referred to as “Dry Cleaner”), Camberwell Junction, Vice Captain and Farm Spur Gum. By further letter on 27 April 2018, the solicitors for VicForests advised that timber harvesting operations in Camberwell Junction (coupe 10.37) were complete, save for regeneration.²²⁴ The solicitors for the applicant ultimately did not press any application for injunctive relief in respect of Camberwell Junction coupe.²²⁵ Therefore,

²¹⁶ Second Paul Affidavit [CB 3.4; paragraph [207]].

²¹⁷ Gun Barrel coupe plan [CB 8.36].

²¹⁸ Second Paul Affidavit [CB 3.4; paragraph [443]-[444]]; Fourth Paul Affidavit [CB 3.4; paragraph [118]]; Fifth Paul Affidavit [CB 3.8; paragraph [10]]; T. 212:22 – T. 213:7 (B. Paul XXN).

²¹⁹ T. 700: 25 (Delany address)

²²⁰ T.212:25 – T.213:7 (B. Paul XXN).

²²¹ Letter from EJA to Baker McKenzie dated 20 April 2018 [CB 10.1].

²²² Letter from EJA to Baker McKenzie dated 20 April 2018 [CB 10.1].

²²³ Letter from Baker McKenzie to EJA dated 23 April 2018 [CB 10.3].

²²⁴ Letter from Baker McKenzie to EJA dated 27 April 2018 [CB 10.4].

²²⁵ Letter from EJA to Baker McKenzie dated 1 May 2018 [CB 10.7].

the evidence demonstrates that by the end of April 2018, timber harvesting operations were imminent (or had actually commenced) in just five of the 40 Scheduled Coupes.

246. Fourthly, VicForests' decision to cease planning in the Scheduled Coupes not the subject of the interlocutory injunction, arose not by reason of some perceived forensic advantage (as was suggested by Senior Counsel for the applicant),²²⁶ but in response to a written request,²²⁷ by the solicitors for the applicant that until the hearing and determination of the proceeding, VicForests undertake not to conduct forestry operations (within the meaning of s 40(2) of the EPBC Act) within any coupe listed in paragraph 10 of the amended statement of claim.
247. VicForests did not give an undertaking in the form sought, but by its solicitor, gave an undertaking that, until the hearing and determination of the proceeding, it would give 14 days' written notice prior to it commencing any forestry operation within the meaning of s 40(2) of the EPBC Act in any coupe listed in paragraph 10 of the amended statement of claim, save for those coupes the subject of the orders made on 10 May 2018.²²⁸
248. The planning hiatus in the Scheduled Coupes must be seen in the context of an undertaking that expressly covered the management of trees before they are harvested as encompassed by the reference to s 40(2) of the EPBC Act.
249. Fifthly, Mr Paul's evidence is that the Scheduled Coupes are no longer on VicForests' "schedule for harvesting" and there is a possibility that they will not be returned to that schedule in the future.²²⁹

C.2.1.1. Applicant's use of "tendency" evidence

250. In an attempt to fill the gap caused by the lack of any evidence of sufficiently advanced plans to harvest any of the Scheduled Coupes such that a threat of serious or irreversible environmental damage could be identified, the applicant was driven to rely on VicForests' harvesting practices in a range of coupes not the subject of this proceeding, so as to invite this Court to draw inferences as to the manner and method by which the

²²⁶ T. 212:44-46; T. 213:6-7 (B. Paul XXN).

²²⁷ Letter from EJA to Baker McKenzie dated 11 May 2018 [CB 10.8].

²²⁸ Letter from Baker McKenzie to EJA dated 23 May 2018 [CB 10.9]; T. 341:36 – T.342:14 (B. Paul RXN).

²²⁹ T.205:33-40; T.214.15-17 (B. Paul XXN).

Scheduled Coupes are likely to be harvested, by reference to what has happened in the past. The manner and method by which the Scheduled Coupes will be, or are likely to be, harvested is a fact in issue in the proceeding which goes to the question of the threat of serious or irreversible environmental damage caused by VicForests' timber harvesting activities in the Scheduled Coupes, and thus the question of whether the precautionary principle is engaged.

251. The type of evidence that the applicant relies on is circumstantial evidence, namely evidence of a related fact or facts, from which it asks this Court to infer the existence of the fact in issue.²³⁰ Obviously, facts may be established directly or by inferring them from other facts which have themselves been proved.²³¹ Where prediction about the future is involved, the process of predicting future facts involves inference from otherwise demonstrated circumstances.²³² Inferential reasoning, in a legal context, must take place by reference to the standard of proof which is involved.²³³
252. Inference does not mean conjecture.²³⁴ In civil proceedings, the inferential process “may fall short of certainty, [but] must be more than an inference of equal degree of probability with other inferences, so as to avoid guess or conjecture”.²³⁵ A distinction should therefore be made between a “theoretical possibility” and a “future probability”.²³⁶ Distinguishing between a permissible inference and conjecture may be difficult, but there is a distinction. A conjecture may be plausible; it is of no legal value though because it is a mere guess.²³⁷ On the other hand, an inference “in the legal sense ... is a deduction

²³⁰ *Shepherd v R* (1990) 170 CLR 573, 579 (Dawson J).

²³¹ *Australian Competition and Consumer Commission v Metcash Trading Limited* (2011) 198 FCR 297, [30] (Buchanan J).

²³² *Australian Competition and Consumer Commission v Metcash Trading Limited* (2011) 198 FCR 297, [30] (Buchanan J).

²³³ *Australian Competition and Consumer Commission v Metcash Trading Limited* (2011) 198 FCR 297, [30] (Buchanan J).

²³⁴ *Australian Competition and Consumer Commission v Metcash Trading Limited* (2011) 198 FCR 297, [31] (Buchanan J), cited with approval by the Full Court of the Federal Court in *Ashby v Slipper* (2014) 219 FCR 322, [73] (Mansfield and Gilmour JJ).

²³⁵ *Lithgow City Council v Jackson* (2011) 244 CLR 352, [94] (Crennan J).

²³⁶ *Seltsam Pty Limited v McGuinness; James Hardie & Coy Pty Limited v McGuinness* (2000) 49 NSWLR 262, [82] (Spigelman CJ) (cited with approval by Crennan J in *Lithgow City Council v Jackson* (2011) 244 CLR 352, [94]).

²³⁷ *Seltsam Pty Limited v McGuinness; James Hardie & Coy Pty Limited v McGuinness* (2000) 49 NSWLR 262, [85] (Spigelman CJ), citing Lord Macmillan in *Jones v Great Western Railway Co* (1930) 144 LT 194.

from the evidence, and if it is a reasonable deduction it may have the validity of legal proof”.²³⁸

253. In *Luxton v Vines*,²³⁹ Dixon, Fullagar and Kitto JJ said, in relation to drawing inferences in civil proceedings, quoting the High Court’s judgment in *Bradshaw v McEwans Pty Ltd*:²⁴⁰

The test to be applied in determining in cases like this whether circumstantial evidence suffices to support a finding that negligence for which the defendant is responsible vicariously or otherwise occasioned the injury complained of was restated recently by this Court in *Bradshaw v. McEwans Pty. Ltd.*, and for the purposes of this case it is enough to set out the following passage from the judgment:

“Of course as far as logical consistency goes many hypotheses may be put which the evidence does not exclude positively. But this is a civil and not a criminal case. We are concerned with probabilities, not with possibilities. The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference; **they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture**; see per Lord Robson, *Richard Evans & Co. Ltd. v. Astley*. But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise: cf. per Lord Loreburn.”

[Citations omitted, emphasis added].

254. To the extent that this Court uses evidence as to the method and manner of timber harvesting in the Logged Coupes, and 19 coupes harvested since 31 August 2018 which are not the subject of this proceeding,²⁴¹ to draw inferences as to the method and manner

²³⁸ *Seltsam Pty Limited v McGuinness; James Hardie & Coy Pty Limited v McGuinness* (2000) 49 NSWLR 262, [85] (Spigelman CJ), citing Lord Macmillan in *Jones v Great Western Railway Co* (1930) 144 LT 194.

²³⁹ (1952) 85 CLR 352, 358.

²⁴⁰ (1951) 217 ALR 1.

²⁴¹ Applicant’s tendency notice [CB 1.17]; T. 322:44-T. 323:25 (B. Paul XXN) (Pamir coupe); T. 323:27 - &. 324:22 (B. Paul XXN) (Floater’s coupe); T. 324:24 – 36 (B. Paul XXN) (Bayern Munich);

by which the Scheduled Coupes would be planned, surveyed and harvested using the “existing systems”,²⁴² that would impermissibly involve speculation in circumstances where the applicant cannot establish that is the more probable inference to be drawn.²⁴³

255. As Mr Paul made clear in cross-examination, at the time each of Pamir and Floater coupes were harvested (being coupes not the subject of the proceeding), VicForests’ new adaptive suite of silvicultural systems remained under development and, in any event, where sightings of Leadbeater’s Possum occurred, areas were protected and excluded from harvesting, a process he described as “adaptive”.²⁴⁴ It is not enough that the applicant simply prove that the inference it seeks to make which supports its case is equally likely compared with other competing possibilities: to do so would invite this Court into error by making an uninformed choice between competing guesses and in the absence of any proper evidentiary foundation.²⁴⁵
256. In any event, evidence and cross-examination about VicForests’ harvesting operations in coupes not the subject of this proceeding did not assist the applicant in the inference it seeks to draw because the evidence in fact demonstrates:²⁴⁶
257. *Pieces of Eight*: 14.03 ha was harvested (from a gross harvest area of 33.71 ha), using a method that closely conforms to regrowth retention harvesting.²⁴⁷ Significant areas of the coupe, which Mr Paul was taken to in re-examination,²⁴⁸ are protected from timber harvesting operations by reason of a 200 m radius THEZ and hydrological buffers.²⁴⁹

applicant’s document entitled “coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent” (see Table C).

²⁴² Clearfell, Seed Tree Retention and Regrowth Retention Harvesting.

²⁴³ *Luxton v Vines* (1952) 85 CLR 352, at p 358 (Dixon, Fullagar and Kitto JJ); *Masters Home Improvement Pty Ltd v North Eastern Solution Pty Ltd* [2017] VSCA 88, at [101] (Santamaria, Ferguson and Kaye JJA).

²⁴⁴ T. 323: 22-25 (B. Paul XXN); applicant’s document entitled “coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent”.

²⁴⁵ *Luxton v Vines* (1952) 85 CLR 352, 358 (Dixon, Fullagar and Kitto JJ). See also *Australian Competition and Consumer Commission v Metcash Trading Limited* (2011) 198 FCR 297, 306 [31] (Buchanan J), cited with approval by the Full Court of the Federal Court in *Ashby v Slipper* (2014) 219 FCR 322, [73] (Mansfield and Gilmour JJ).

²⁴⁶ T. 321: 43 – T. 325:3 (B. Paul XXN).

²⁴⁷ T. 342: 19-37 (B. Paul RXN).

²⁴⁸ T. 342: 19-37 (B. Paul RXN).

²⁴⁹ [CB 12.35].

258. *Conrad*: A 200 m THEZ is in place.²⁵⁰ The sighting of the Leadbeater’s Possum is located within 500 m of the coupe boundary.²⁵¹
259. *Pamir*: The Leadbeater’s Possum detection is historic and dates from December 1995.²⁵² An area of 5.3 ha has been harvested, and the estimated net area of the coupe is 18.6 ha.²⁵³ The silvicultural method is in the nature of regrowth retention harvesting.²⁵⁴ Large areas of the coupe are not planned for harvesting.²⁵⁵
260. *Twisting*: 14.6 ha was harvested (from a gross harvest area of 24.4 ha).²⁵⁶
261. *Fire Scan*: As at November 2017, 11 ha has been harvested (from a gross harvest area of 26.7 ha).²⁵⁷
262. *Puerile*: 37 ha was harvested (from a gross harvest area of 47.2 ha).²⁵⁸ The post-harvest map depicts that areas within and around the coupe were expressly excluded for Greater Glider and hydrological buffers.²⁵⁹
263. *Teamwork*: 5.6 ha has been harvested (from a gross harvest area of 38.5 ha).²⁶⁰ The overwhelming majority of the coupe is protected from timber harvesting by reason of multiple 200 m radius THEZs and a hydrological buffer.²⁶¹
264. *Tropical*: 11.9 ha was harvested in 2019 (from a gross harvest area of 41.7 ha), and 9.2 ha was harvested in 2015 to 2016.²⁶² The Greater Glider record is historic, dating from

²⁵⁰ [CB 11.41; p 23].

²⁵¹ Applicant’s document entitled “coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent”.

²⁵² [CB 11.41; p 22]

²⁵³ [CB 12.33].

²⁵⁴ T. 344:43 – T. 345:15 (B. Paul RXN).

²⁵⁵ [CB 12.33].

²⁵⁶ [CB 12.49].

²⁵⁷ Applicant’s document entitled “coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent”; [CB 12.20]

²⁵⁸ Applicant’s document entitled “coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent”; [CB 12.38]

²⁵⁹ [CB 12.38].

²⁶⁰ Applicant’s document entitled “coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent”; [CB 12.44].

²⁶¹ [CB 12.44].

²⁶² Applicant’s document entitled “coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent”; [CB 11.49; p 24]; [CB 12.48; p 2].

1996.²⁶³ Areas adjacent to and within the coupe are protected by multiple 200 m radius THEZs and stream buffers.²⁶⁴

265. *Below Learmouth*: The estimated net area of the coupe is 12.4 ha (from a gross harvest area of 33.8).²⁶⁵ The overwhelming majority of the coupe is protected from timber harvesting by reason of a 200 m radius THEZs, a hydrological buffer, and Zone 1A habitat.²⁶⁶
266. *Jumping Jack Flash*: The estimated net area of the coupe is 24 ha (from a gross harvest area of 49.7).²⁶⁷
267. *Floater*: As noted above, Mr Paul made clear in cross-examination, at the time the coupe was harvested, VicForests' new adaptive suite of silvicultural systems remained under development and, in any event, where sightings of Leadbeater's Possum occurred, areas were protected and excluded from harvesting, a process he described as "adaptive".²⁶⁸ The estimated net area of the coupe is 29.5 ha (from a gross harvest area of 51.2).²⁶⁹
268. *Flow Zone*: 12.8 ha has been harvested (from a gross harvest area of 51.8).²⁷⁰ Significant areas within and around the coupe are protected by reason of habitat tree reservation and two 200 m THEZs.²⁷¹
269. *Impala*: 9.44 ha has been harvested (from a gross harvest area of 43.13 ha).²⁷² Significant areas of the coupe are protected from harvesting by a 13 ha Zone 1A habitat reserve,

²⁶³ [CB 11.49; p 22].

²⁶⁴ [CB 11.49; p 23].

²⁶⁵ Applicant's document entitled "coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent"; [CB 12.13].

²⁶⁶ [CB 12.13].

²⁶⁷ Applicant's document entitled "coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent"; [CB 6.6; p 16].

²⁶⁸ T. 323:22-25 (B. Paul XXN); applicant's document entitled "coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent".

²⁶⁹ Applicant's document entitled "coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent"; [CB 6.6; p 10].

²⁷⁰ Applicant's document entitled "coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent"; [CB 12.24].

²⁷¹ [CB 12.24].

²⁷² [CB 11.58; p 3].

two hydrological buffers, a 1.4 ha general habitat reserve, multiple 200 m THEZs, a further 10 ha Zone 1A habitat reserve, and a significant area of SPZ.²⁷³

270. *Ivanhoe*: 5.99 ha has been harvested (from a gross harvest area of 39.8 ha).²⁷⁴ The overwhelming majority of the coupe is protected from harvesting by Zone 1A habitat reserves, hydrological buffers, a 200 m radius THEZ and other SPZ.²⁷⁵
271. *Bayern Munich*: The actual area of harvest is 5.87 ha (from a gross harvest area of 29.46 ha).²⁷⁶ A Leadbeater's Possum was located within 500 m of the boundary of the coupe.²⁷⁷ The centre of the coupe is protected from harvesting by a 200 m THEZ.²⁷⁸
272. *Dejavu*: The actual area for harvest is 16.04 ha (from a gross harvest area of 31.48 ha).²⁷⁹ Part of a 200 m THEZ overlaps with the coupe boundary, protecting an area in the southern portion of the coupe from timber harvesting.²⁸⁰
273. *Lure*: 12.2 ha has been harvested (from a gross harvest area of 35.44 ha).²⁸¹ Areas within and around the coupe are protected from harvesting by habitat reserve, and other exclusion zones.²⁸²
274. *Simpsons Road*: 20.1 ha has been harvested across this coupe and Squeeze coupe (from a combined gross area of 36.95 ha).²⁸³ The coupe is surrounded by substantial SPZ to the west, south and east. Areas of the coupe have been excluded.²⁸⁴
275. *Squeeze*: 20.1 ha has been harvested across this coupe and Simpsons Road coupe (from a combined gross area of 36.95 ha).²⁸⁵ Areas of the coupe have been excluded from

²⁷³ [CB 12.26].

²⁷⁴ [CB 12.27].

²⁷⁵ [CB 12.27].

²⁷⁶ [CB 11.65; p 2].

²⁷⁷ T. 324: 24-33 (B. Paul XXN).

²⁷⁸ [CB 11.65; 14].

²⁷⁹ [CB 11.66; p 3].

²⁸⁰ [CB 11.66; p 26].

²⁸¹ Applicant's document entitled "coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent"; [CB 12.32].

²⁸² [CB 12.32].

²⁸³ Applicant's document entitled "coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent"; [CB 12.40].

²⁸⁴ [CB 12.40].

²⁸⁵ Applicant's document entitled "coupes logged since 31 August 2018 not the subject of the proceeding in which LbP or GG was detected or reported to the Respondent"; [CB 12.42].

harvesting, including the area of Modelled LBP habitat.²⁸⁶ Other areas of the coupe have been excluded for hydrological buffer.²⁸⁷ The coupe has substantial areas of SPZ along the western, southern and eastern boundaries.²⁸⁸

276. If proper inferences are to be drawn from admissible evidence as to the method and manner by which the Scheduled Coupes are to be planned and harvested—and thus whether an analysis can proceed as to whether those timber harvesting operation pose a serious or irreversible threat— then that evidence demonstrates the following.
277. First, VicForests’ planning and harvesting methods are in the process of changing from the traditional or “existing systems”, towards a more adaptive suite of silvicultural practices.²⁸⁹ That change is occurring within the broader context of VicForests’ attempt to obtain FSC certification.²⁹⁰ Those silvicultural systems,²⁹¹ are under development and are therefore changeable.²⁹² As a result of an undertaking that was given by VicForests at the request of the applicant, planning in the Scheduled Coupes is paused pending resolution of this proceeding,²⁹³ and in any event, planning in the Scheduled Coupes is not complete.²⁹⁴
278. Assuming some level of harvesting ever occurs within the Scheduled Coupes, those coupes will be replanned in accordance with the new adaptive silvicultural systems policies that VicForests expects to finalise shortly.²⁹⁵ The Court, therefore, cannot draw any inference, or make any finding, with the requisite evidentiary foundation, as to which silvicultural system would be used, or would be likely to be used, in any of the Scheduled Coupes, or as to whether or not only a small portion of those coupes will be harvested due to retained habitat and other exclusions.²⁹⁶
279. Secondly, aligned to the above, as part of the move towards a more adaptive suite of silvicultural practices and the FSC certification process, VicForests’ own high

²⁸⁶ [CB 12.42]; [CB 11.62; p 24].

²⁸⁷ [CB 12.42].

²⁸⁸ [CB 12.42].

²⁸⁹ Fourth Paul Affidavit [CB 3.4; Section M]; Fifth Paul Affidavit [CB 3.8; paragraphs [6] to [19]].

²⁹⁰ Fourth Paul Affidavit [CB 3.4; Section M]; T. 321: 26-28 (B. Paul XXN).

²⁹¹ [CB 12.1] and [CB 12.2]; Fifth Paul Affidavit [CB 3.8; paragraphs [6] to [19]].

²⁹² Fourth Paul Affidavit [CB 3.6; paragraph [118]]; T. 212:29-32; T. 213:21-30 (B. Paul XXN).

²⁹³ See paragraph XX above.

²⁹⁴ T. 212:17 (B. Paul XXN).

²⁹⁵ Fifth Paul Affidavit [CB 3.8; paragraphs [18]-[19]]; T. 212:29-32 (B. Paul XXN).

²⁹⁶ T. 326.3–5 (B. Paul XXN).

conservation values identification and management processes are undergoing change.²⁹⁷ For the purpose of the FSC Controlled Wood Standard,²⁹⁸ there are six categories of High Conservation Values (HCVs). Under a previous HCV assessment conducted by VicForests in 2014, VicForests identified a range of HCVs in eastern FMUs (which include the CH RFA Area), including, in respect of category HCV 1,²⁹⁹ recovery plans and HCV management plans for Leadbeater's Possum and Greater Glider, and recognition of listings provided in the FFGA and the EPBC Act for an extensive range of fauna, and communities of flora and fauna.³⁰⁰ In respect of the 2019 HCV Document,³⁰¹ VicForests is currently updating its HCV assessment in eastern FMUs (which include the CH RFA Area).³⁰² Mr Paul's evidence was that, based on his knowledge and experience, the likely result of that process is that the number and scope of identified high conservation values and their elements will increase.³⁰³ That review process remains ongoing,³⁰⁴ and the adaptive silvicultural systems policies remain in development. Any harvesting in the Scheduled Coupes will occur in accordance with the new adaptive silvicultural systems policies in place (in whatever form they may ultimately take),³⁰⁵ which will likely involve identification of and greater protection of HCVs, including Greater Glider and Leadbeater's Possum.

280. Each of these factors means that the so-called tendency evidence in fact is not probative at all as to how any future harvesting operations may be carried out, because as the post harvesting maps reveal, in many of those coupes only a small portion of the coupes was harvested. VicForests submits that the "tendency" evidence is not capable of rationally affecting the fact in issue as to how VicForests will harvest the Scheduled Coupes.

C.2.1.2. Pre-harvest surveys

281. Thirdly, the applicant alleges that timber harvesting operations in the Scheduled Coupes will fail to comply with the precautionary principle because, *inter alia*, VicForests has not conducted detection activities or surveys or adequate detection activities or surveys

²⁹⁷ [CB 12.1]; Fifth Paul Affidavit [CB 3.8; paragraph [11] to [15]].

²⁹⁸ Fourth Paul Affidavit [CB 3.6; paragraphs [52] to [60]; [71] [CB 3.6.119].

²⁹⁹ Forest areas containing globally, nationally and regionally significant concentrations of biodiversity e.g. endemism, endangered species, refugia.

³⁰⁰ [CB 12.1; p 18].

³⁰¹ [CB 12.1].

³⁰² [CB 12.1; p 19]; Fifth Paul Affidavit [CB 3.8; paragraph 13]].

³⁰³ Fifth Paul Affidavit [CB 3.8; paragraph [13]].

³⁰⁴ Fifth Paul Affidavit [CB 3.8; paragraph [14]].

³⁰⁵ T. 212:29-32; T. 213:21-30 (B. Paul XXN).

for the Greater Glider in all or any of the Scheduled Coupes.³⁰⁶ In *Brown Mountain*, Osborn J stated that generalised evidence as to the desirability of pre-logging surveys was not sufficient to demonstrate the requisite threat and the possibility of a proportionate response which justifies delaying timber harvesting activities.³⁰⁷ Notwithstanding, the weight of the evidence does enable a positive inference to be drawn that the Scheduled Coupes will in fact be surveyed for Greater Glider (and other species).

282. The DELWP Forest Protection Survey Program (**Department Survey Program**), was announced in October 2018.³⁰⁸ The focus of the Department Survey Program is on species with timber harvesting prescriptions under the Code (including the Leadbeater's Possum and the Greater Glider) where detection of those species would result in changes in the management of the area in which the species is detected.³⁰⁹ The Central Highlands is one of the forest management areas in which the Department Survey Program is being conducted.³¹⁰ Whilst species with prescriptions are the focus of the Department Survey Program, other threatened species impacted by timber harvesting, but without prescription (such as the Greater Glider in Central Highlands) are being considered for inclusion.³¹¹ The basis for inclusion in the program is their threatened status, impact of timber harvesting, the overlap with areas planned for harvesting, their detection likelihood and "community profile".³¹²
283. As part of the Department Survey Program, 100% of coupes planned for harvest receive a desktop survey to determine the priority for surveying for each coupe and for each target species.³¹³ This is consistent with VicForests' extant pre-harvest survey procedures, which include a desktop assessment and coupe transect field assessment,³¹⁴ targeted species surveys,³¹⁵ and surveys for Leadbeater's Possum colonies and habitat.³¹⁶ Following the process of prioritisation to identify the highest priority coupes and species

³⁰⁶ 3FASOC, paragraph [113H].

³⁰⁷ At [217].

³⁰⁸ [CB 12.3].

³⁰⁹ [CB 12.3; p 3].

³¹⁰ [CB 12.3; p 3].

³¹¹ [CB 12.3; p 3].

³¹² [CB 12.3; p 3].

³¹³ [CB 12.3], p3.

³¹⁴ Second Paul Affidavit [CB 3.4; paragraphs [211] to [218]]; [CB 3.4.45]; T. 205:29-31 (B. Paul XXN).

³¹⁵ Second Paul Affidavit [CB 3.4; paragraphs [219] to [222]].

³¹⁶ Second Paul Affidavit [CB 3.4; paragraphs [223] to [232]; [CB 3.4.46].

for a Departmental survey, the target for the Department Survey Program is to survey 80% of all coupes planned for harvest.³¹⁷

284. Coupes are selected for a pre-harvest survey as follows:³¹⁸

All coupes on VicForests' Rolling Operations Plan (ROP) that are planned to be harvested, undergo an initial desktop assessment to determine the priority for surveying for each coupe and for each target species. A detailed coupe survey schedule is then developed to guide the survey work for those species requiring field assessments. Site selection is targeted to ensure survey effort is commensurate with scientifically validated methods and able to be implemented within budget. All survey work is undertaken within either the general management zone or occasionally within special management zones if a prescription would impact on an adjacent coupe.

285. When the Department conducts a survey, the results are made available on its website.³¹⁹

286. Page 27 of the Department Survey Program is titled "Priorities for inclusion of species in forest protection surveys and for revising or developing new survey guidelines". The entry in the table for the Greater Glider is:

Species	Priority for PHS ³²⁰	Rationale for inclusion in PHSs	Suggested survey techniques and approach
Greater Glider	High	High profile and highly impacted by timber harvesting	Spotlighting using mark-recapture distance-sampling method where appropriate or standard spotlight transects. Sample throughout range rather than just in East Gippsland where prescription applies, as VF may modify harvesting approach with knowledge of the species on the coupe.

[Emphasis added].

³¹⁷ [CB 12.3; p 3]. Mr Paul was cross-examined about this target. His evidence was that the Department was "working towards that 80 per cent figure, and [the Department is] doing a lot of surveys at the moment": T. 269:32-45 (B. Paul XXN).

³¹⁸ [CB 12.3; p 3].

³¹⁹ T. 279.37-39 (B. Paul XXN); extract from DELWP website [CB 11.32].

³²⁰ Pre-harvest survey.

287. The Department has not surveyed any coupes the subject of this proceeding, as those coupes are no longer on the harvesting schedule within the next 18 months.³²¹ However, Mr Paul's evidence is that if the Scheduled Coupes ever go back on that schedule, those coupes "would be lined up for the department's survey program".³²² The evidence that the Scheduled Coupes would be the subject of the Department's Survey Program (over and above any other surveys conducted by VicForests) should be accepted. In any event, many of the Scheduled Coupes have been surveyed by third parties.³²³
288. Further, Mr Paul's evidence, which should be accepted, is that under the new regime, coupes will be surveyed differently and in more detail.³²⁴
289. The evidence therefore demonstrates that there is no sufficiently advanced proposal to harvest any of the Scheduled Coupes to enable the proper identification and assessment of a threat of serious or irreversible environmental damage with respect to them.

C.2.1.3. Other uncertainties

290. Self-evidently, and as set out in subparagraph 6.3(c)(v) of the defence, to the extent that any timber harvesting operations are conducted in the Scheduled Coupes, the manner in which those timber harvesting operations occur will be subject to (among other things):
- (a) the Systems Document and the 2017 HCV Document (as defined in the fourth Paul affidavit) whether in their current forms, subsequent drafts or, following a period of public consultation, the documents as finalised;
 - (b) the:
 - (i) TRP;
 - (ii) Code, the Management Standards and Procedures and the Planning Standards; and

³²¹ T. 205:37-40; T. 214:15-17 (B. Paul XXN); see also [CB 11.96], 24.

³²² T. 205:37-40 (B. Paul XXN).

³²³ See [CB 11C].

³²⁴ T. 213:19-30 (B. Paul XXN).

(iii) SFT Act or other relevant legislation or direction made under that legislation,

as in force at the time the timber harvesting operations are to occur;

(c) the results of any:

(i) pre-harvest surveys; and/or

(ii) opportunistic sightings of threatened flora or fauna,

that may require a management response under the prevailing Code, Management Standards and Procedures and Planning Standards; and

(d) any other exclusions that may be required under the prevailing Code, Management Standards and Procedures and Planning Standards, or as required by any direction made under s 70 of the SFT Act.

291. Further, the State and Commonwealth Governments are in the process of reviewing and updating the Victorian RFA framework, which process is to be finalised and agreed by the respective Governments by 31 March 2020.³²⁵ This “RFA modernisation” process has the potential to further affect the manner in which any forestry operations can be carried out.³²⁶ The outcome of that process as at the time of these submissions is unknown.

292. The applicant submits that “[t]he TRP should be treated as VicForests’ formal proposed conduct in relation to the scheduled coupes”.³²⁷ The TRP does not designate the silvicultural system that will be used in each of the coupes listed, but only identifies the most intensive silvicultural system that may be used. A less intensive silvicultural system may be used (in all or part of a particular coupe).³²⁸ The TRP does not, and does not purport to, give any detail as to how operations might actually occur: it is the coupe plan that contains that information. In this case, coupe plans (in various stages of completion)

³²⁵ See the Memorandum of Understanding dated 5 May 2018 [CB 5.1.2.19].

³²⁶ First Davey Report [CB 5.1.1; at [77]–[78]].

³²⁷ Paragraph 151 of the applicant’s outline of opening submission.

³²⁸ See paragraph 6.3(c) of the defence and paragraphs 79(f); Second Paul Affidavit [CB 3.4; at paragraphs [179]–[181]; T. 199:37 (B. Paul XXN).

only exist for 11 of the 40 the Scheduled Coupes, and they are now out-of-date (one by 8 years).³²⁹ Sufficiently advanced plans are necessary to enable the identification of any threat; in the absence of such plans, there simply is no basis to analyse whether timber harvesting operations will pose any relevant threat.

293. It is not the case, as the applicant submits, that VicForests' approach "has the consequence of shielding VicForests' conduct from the Court's scrutiny in perpetuity, until completed".³³⁰ Clearly, both in *Brown Mountain* and *MyEnvironment* (in respect of Gun Barrel coupe) VicForests' proposed conduct was subject to the Court's scrutiny. But that scrutiny was possible only because the planning for timber harvesting operations was sufficiently advanced to enable the Court to proceed on a proper evidentiary foundation and without impermissibly wandering into a dark cavern of speculation. The consequence of VicForests' approach is that wholesale areas of public forest that would otherwise be available for timber harvesting cannot be tied up opportunistically by litigants in the absence of sufficiently advanced plans demonstrating that VicForests' intended timber harvesting operations in those areas constitute an actual threat of serious or irreversible environmental damage.

C.2.2. Operations that comply with the Management Standards and Procedures are deemed to comply with the precautionary principle

294. Even if the precautionary principle is engaged (which is denied), VicForests' operations are deemed to comply with the Code and therefore with the precautionary principle.

C.2.2.1. The Management Standards and Procedures

295. Section 1.1.1.1 of the Management Standards and Procedures,³³¹ states that they apply to all commercial timber harvesting operations conducted in Victoria's State forests where the Code applies. The role of the Management Standards and Procedures is to provide standards and procedures to instruct managing authorities, harvesting entities and operators in interpreting the requirements of the Code: s 1.2.1.1.³³² VicForests is

³²⁹ See paragraph 236 above.

³³⁰ Paragraph 155 of the applicant's outline of opening submission.

³³¹ [CB 6.10; p 21].

³³² [CB 6.10; p 21].

defined to be the ‘Managing Authority’ in the Code for timber harvesting operations conducted under an Allocation Order.

296. The Planning Standards are Appendix 5 to the Management Standards and Procedures.
297. The Management Standards and Procedures can be reviewed, for the purpose of amendment, pursuant to s 1.5.³³³ Pursuant to s 1.5.1.4³³⁴ the Management Standards and Procedures are valid until the completion of a review or until otherwise notified by the Minister for Environment and Climate Change.

C.2.2.2. The deeming provision

298. The Code is a piece of subordinate legislation directed to practical considerations: the conduct of timber harvesting operations. Subordinate legislation of that nature should be construed in light of those practical considerations, not meticulous comparison of language, and if capable of more than one construction, the Court “ought to discard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practicable result.”³³⁵ In a similar vein, in the reasons for judgment on the separate question the Court said that:³³⁶

A construction which promotes clarity and an understanding of what, practically, is required to comply with the law will generally be preferred over one which creates, or is likely to create, ambiguity or uncertainty for those whose conduct is being regulated.

299. Bearing that principle in mind, cl 1.3.1.1 of the Management Standards and Procedures,³³⁷ **(the deeming provision)** provides that operations that comply with the Management Standards and Procedures are deemed to comply with the Code, and thus cl 2.2.2.2³³⁸ itself.

³³³ [CB 6.10; p 22].

³³⁴ [CB 6.10; p 22].

³³⁵ *Gill v Donald Humberstone & Co Ltd* [1963] 1 WLR 929, 933–34 (Lord Reid), quoted with approval in, amongst other cases, *Australian Tea Tree Oil Research Institute v Industry Research & Development Board* (2002) 124 FCR 316, [37]–[38]; see generally Herzfeld et al, *Interpretation and Use of Legal Sources*, Thomson Reuters (2013), [25.1.3790].

³³⁶ Separate Question reasons, [49].

³³⁷ [CB 6.10; p 21].

³³⁸ [CB 6.9; p 34].

300. As has already been noted, the Code and the Management Standards and Procedures are directed towards VicForests and operators for the purpose of conducting timber harvesting operations, and the reforms in 2014 were intended to streamline the environmental regulatory framework. The Code is intended to be a repository of the obligations for operators, such that, if operators comply with the Management Standards and Procedures, they will be deemed to comply with the Mandatory Actions in the Code.³³⁹ This construction of the deeming provision provides certainty to timber harvesting entities and operators. Where known values are concerned (by way of contrast to detection of previously unknown species where the precautionary principle would have a clear application), it is not for timber harvesting entities to second-guess the executive's promulgated regulatory position in regard to that value.
301. On 26 March 2018 Commonwealth accreditation of the regulatory regime as currently in force was extended to 31 March 2020.³⁴⁰ There is no prescription contained in the Planning Standards based on detection of Greater Gliders in the CH RFA (in contrast to the position that obtains in the East Gippsland RFA).
302. In light of the practical considerations to which the Code, the Management Standards and Procedures, and the Planning Standards are directed, and in the absence of any identified prescription alleged to be breached in the Scheduled Coupes, the deeming provision operates to ensure that in the circumstances of this case VicForests' operations will be deemed to comply with the Code, and thus the precautionary principle.
303. VicForests notes that the Secretary to the Department of Environment, Land, Water & Planning has, in proceeding number S CI 2017 04392 in the Supreme Court of Victoria made submissions inconsistent with the above, and that a copy of those submissions has been filed with this Court. VicForests has made a submission in response orally.³⁴¹

C.2.3. No threat of serious or irreversible environmental damage

304. These submissions are further and in the alternative to sections C.2.1 and C.2.2.

³³⁹ See section 1.2.8 of the Code [CB 6.9; p 25].

³⁴⁰ First Davey Report [CB 5.1.1.15], [67].

³⁴¹ T 788:5.

305. The applicant alleges that VicForests has failed to comply with cl 2.2.2.2 of the Code. One of the particulars of this allegation is that it was and remains probable or seriously possible that the logging of each, some or all of the Logged Glider Coupes, posed and continues to pose a threat of serious or irreversible damage to the Greater Glider and there was and remains scientific uncertainty as to that threat.³⁴² This allegation is picked up and repeated as to each, some or all of the Scheduled Coupes.³⁴³
306. In *Brown Mountain*, Osborn J considered the type of evidence relevant to the question of a threat of serious or irreversible damage to a species. Where his Honour considered the requisite threat existed, that evidence included:
- (a) Giant Burrowing Frog and Large Brown Tree Frog:³⁴⁴
 - (i) rare or vary rare detections;
 - (ii) evidence that both frog species were present in the coupes;
 - (iii) the proposed timber harvesting occurred in the “relatively limited parts of Victoria” in which the detections of each species occurred;
 - (iv) the limitations of scientific knowledge which raised the possibility that the Giant Burrowing Frog was vulnerable to extinction;
 - (v) the relevant Action Statement emphasised the need for further investigation into the biology, distribution and habitat requirements of the Giant Burrowing Frog;
 - (vi) timber harvesting was a greater threat to the Large Brown Tree Frog because it could not protect itself by burrowing;
 - (vii) expert evidence that the 100 m streamside buffers would not necessarily offer effective protection to either frog species; and

³⁴² Particular (e) to paragraph [113A] of the 3FASOC

³⁴³ Paragraph [113H] of the 3FASOC.

³⁴⁴ *Brown Mountain*, [506(a)].

- (viii) the threat of loss of essential habitat to members of both frog species was a threat of serious and irreversible damage to the environment;
- (b) Powerful Owl and Sooty Owl:³⁴⁵
- (i) both species were rare;
 - (ii) evidence that the Victorian Flora and Fauna Guarantee Scientific Advisory Committee determined that both species were significantly prone to future threats likely to result in extinction and both were very rare in terms of abundance or distribution;
 - (iii) expert evidence that established that both species required extensive home ranges, low breeding success and low prey availability in modified landscapes;
 - (iv) evidence that both species had been detected in the coupes;
 - (v) evidence that regrowth forest was of limited value to both species; and
 - (vi) expert evidence that habitat fragmentation, loss of hollow bearing trees, and reduction of prey density as a result of timber harvesting were serious threats to both species;
- (c) Spot-tailed Quoll:³⁴⁶
- (i) East Gippsland (and in particular, the Errinundra Plateau),³⁴⁷ contained the last functional population of the species;

³⁴⁵ *Brown Mountain*, [601(a)].

³⁴⁶ *Brown Mountain*, [633(a)].

³⁴⁷ *Brown Mountain*, [616]. This paragraph is omitted from the authorised version: see [2010] VSC 335.

- (ii) expert evidence that the species was suffering an ongoing major contraction in Victoria, and unless current land management practices were altered, the species was likely to continue to decline to extinction;³⁴⁸
- (iii) timber harvesting was a potentially serious threat to the species;
- (iv) the four coupes provided suitable habitat for the species and it was reasonable to expect the species were using the coupes having regard to the records of the species to the east and west of the coupes;
- (v) the species was particularly vulnerable to the loss of further habitat and was likely to become critically endangered in the short to medium term if the decline in the species range and abundance continued;
- (vi) the 75 sites specified in the Action Statement which were protected from timber harvesting operations were highly unlikely to support a viable population; and
- (vii) extinction of a species constituted irreversible damage to the environment.

307. Conversely, with respect to the Square Tailed Kite, his Honour considered that the evidence did not establish the requisite threat, in part because the coupes in question constituted a very small portion of the probable range of the species.³⁴⁹

308. In this case, the evidence, when considered as a whole, does not establish a threat of serious or irreversible damage to the Greater Glider by reason of VicForests' forestry operations in the Logged Glider Coupes or the Scheduled Coupes (individually, collectively or in some combination, and to the extent they can be ascertained), for the following reasons.

³⁴⁸ *Brown Mountain*, [619]; [624]. These paragraphs are omitted from the authorised version: see [2010] VSC 335.

³⁴⁹ *Brown Mountain*, [743(a)].

C.2.3.1. Listing under the FFGA and the EPBC Act

309. The Greater Glider is listed as a threatened taxon in the list made under s 10 of the FFG Act.³⁵⁰
310. The Greater Glider is contained on the list maintained under s 178 of the EPBC Act in the vulnerable category.³⁵¹ The Threatened Species Scientific Committee recommended that the Greater Glider be listed in the vulnerable category on the basis that the Greater Glider met the eligibility requirements under criterion 1 only (population size reduction (reduction in total numbers measured over the longer of 10 years or 3 generations)).³⁵² The Greater Glider did not meet the eligibility requirements under criteria 2, 3 4 or 5.³⁵³ This is discussed in more detail below.

C.2.3.2. Distribution and abundance

311. The Greater Glider has a wide distribution along the east coast of mainland Australia,³⁵⁴ encompassing Victoria (Central Highlands, Strezlecki and Strathbogie Ranges,³⁵⁵ and East Gippsland), New South Wales and Queensland.
312. The extent of occurrence is estimated at 1,586,870 km², and the area of occupancy estimated at 16, 164 km².³⁵⁶ Dr Smith accepted these figures.³⁵⁷ These figures are based on the mapping point records from 1995 to 2015.³⁵⁸ In order to qualify for eligibility for listing under criterion 2 (geographic distribution) in the vulnerable category, an extent of occurrence must be less than 20,000 km², or the area of occupancy less than 2,000 km².³⁵⁹ The Greater Glider estimated extent of occurrence is therefore nearly 80 times larger than the minimum required for eligibility for listing in the vulnerable category under criterion 2.

³⁵⁰ List of taxa and communities of flora and fauna which are threatened [CB 6.19; p 1].

³⁵¹ EPBC Act list of threatened fauna [CB 6.17; p 13].

³⁵² Conservation Advice [CB 6.18; p 5].

³⁵³ Conservation Advice [CB 6.18; pp 5-8].

³⁵⁴ Conservation Advice [CB 6.18; pp 2, 7].

³⁵⁵ Draft Action Statement for the Greater Glider [CB 3.4.52; p 2].

³⁵⁶ Conservation Advice [CB 6.18; p 7].

³⁵⁷ T. 396:39-41 (Dr Smith XXN).

³⁵⁸ Conservation Advice [CB 6.18; p 7].

³⁵⁹ Conservation Advice [CB 6.18; p 7 criterion 2].

313. By reason of the above, the Scientific Committee determined that the geographic distribution for the Greater Glider is not very restricted, restricted or limited,³⁶⁰ and therefore the species did not meet the required element of criterion 2.³⁶¹
314. By reason of failing to meet the minimum areas of occupancy and extent of distribution, the Scientific Committee did not consider whether the species was severely fragmented or the numbers of locations in which the species is found.³⁶²
315. In forming his opinions, Dr Smith, did not take into account the populations of Greater Gliders in New South Wales or Queensland,³⁶³ or East Gippsland.³⁶⁴ Dr Smith’s opinions as to both threat of serious or irreversible damage, and significant impact, are limited geographically, such that there is no evidence that VicForests’ proposed forestry operations in the Scheduled Coupes (to the extent they can be ascertained) constitutes a threat of serious or irreversible damage to the Greater Glider when considered across its species distribution and range across Australia.
316. As such, even if this Court concluded that:
- (a) the population of Greater Glider in the CH RFA Area constitutes an “important population” within the meaning of the Guidelines;³⁶⁵ and
 - (b) VicForests’ forestry operations in the Logged Glider Coupes or proposed forestry operations in the Scheduled Coupes constitute a threat of serious or irreversible damage to that important population;

there is no evidence that a threat to an important population will nevertheless constitute, or is likely to constitute, a threat of significant or irreversible harm to the Greater Glider across its total distribution and range.

³⁶⁰ Conservation Advice [CB 6.18; p 7].

³⁶¹ Conservation Advice [CB 6.18; pp 7-8].

³⁶² Conservation Advice [CB 6.18; p 7 criterion 2].

³⁶³ T. 399:40-43 (Dr Smith XXN).

³⁶⁴ T. 432: 34 (Dr Smith XXN).

³⁶⁵ [CB 4.2.2.14; p 13]; T. 399:41-42 (Dr Smith XXN); First Davey Report [CB 5.1.1; pp 112-113 [249]].

C.2.3.3. Population and population decline

317. The number of mature Greater Gliders is estimated to be greater than 100,000.³⁶⁶ Dr Smith considered this to be a reasonable estimate.³⁶⁷ Unlike the Spot-tailed Quoll in *Brown Mountain*,³⁶⁸ this is not a case where the Greater Gliders in the CH RFA Area are the last “functional population” of a species. To the contrary, there are populations of Greater Glider spread along the east coast of mainland Australia, including in other parts of Victoria.
318. The Scientific Committee did not consider the total number of mature individuals to be limited, or very low.³⁶⁹ The number of estimated mature individuals for listing in the vulnerable category is less than 10,000 and an observable, estimated or projected continuing decline.³⁷⁰ The estimated number of mature individuals of Greater Glider is therefore ten times greater than that specified in criterion 3 (population size and decline). The species did not meet the required element for listing under criterion 3 or criterion 4 (number of mature individuals).
319. No population viability analysis has been undertaken for the species as a whole,³⁷¹ meaning that the Greater Glider did not meet the required elements for listing under criterion 5 (quantitative analysis indicating the probability of extinction in the wild).
320. There are no robust estimates of populations size, or populations trends of the Greater Glider across its total distribution.³⁷² Total rates of decline are based on extrapolations from declines in numbers, occupancy rates and extent of habitat at individual sites.³⁷³
321. As for occupancy models:

³⁶⁶ Conservation Advice [CB 6.18; pp 8-9].

³⁶⁷ T. 396:46-T. 397:2 (Dr Smith XXN).

³⁶⁸ See paragraph 306(c) above.

³⁶⁹ Conservation Advice [CB 6.18; pp 8-9].

³⁷⁰ Conservation Advice [CB 6.18; pp 8-9].

³⁷¹ Conservation Advice [CB 6.18; p 9]; T. 396:30-31 (Dr Smith XXN).

³⁷² Conservation Advice [CB 6.18; p 5].

³⁷³ Conservation Advice [CB 6.18; p 5].

- (a) Dr Smith considered Dr Lumsden’s occupancy surveys and model described in the Conservation Advice,³⁷⁴ as neither “reliable nor accurate”;³⁷⁵ and
- (b) Dr Smith’s own model which he prepared for this proceeding, for the purpose of predicting Greater Glider numbers at site level, cannot be properly extrapolated to the whole of Victoria,³⁷⁶ or even the Central Highlands,³⁷⁷ and his model does not predict the population of the Greater Glider across the Central Highlands generally.³⁷⁸

322. Unlike the evidence considered by Branson J in *Booth v Bosworth*³⁷⁹ (discussed below) which enabled her Honour to draw inferences as to the impact of the deaths of Spectacled Flying Foxes from the operation of the electric grid on the overall population of Spectacled Flying Foxes in Australia (estimated to be around 100,000), there is no evidence that enables this Court to draw any proper inference as to the threat to Greater Glider as a whole across its known range, occasioned by VicForests’ proposed forestry operations to the extent they can be ascertained.

C.2.3.4. Any threat is not irreversible

323. There is no evidence that VicForests’ proposed forestry operations in the Scheduled Coupes are likely to result in extinction of the Greater Glider across its species range or distribution.³⁸⁰

324. Dr Smith’s opinion that current silvicultural practices in the Central Highlands “are likely to lead to the elimination of the Greater Glider from timber production forests and increase the risk of population extinction in unlogged reserves and the Central Highlands as a whole”,³⁸¹ should be rejected because Dr Smith in fact accepted that

³⁷⁴ See Conservation Advice [CB 6.18; p 6].

³⁷⁵ First Smith Report [CB 4.2.1; pp 35-36]; T. 397:36; T.398:31 (Dr Smith XXN);

³⁷⁶ T. 399:2-14 (Dr Smith XXN).

³⁷⁷ T. 397: 41-44 (Dr Smith XXN).

³⁷⁸ T. 397:45 (Dr Smith XXN).

³⁷⁹ (2001) 114 FCR 39, [45]; see also *Northern Inland Council for the Environment Inc v Minister for the Environment* (2013) 218 FCR 491, [116] (Cowdroy J).

³⁸⁰ *Brown Mountain*, [620], [625].

³⁸¹ First Smith Report, [CB 4.2.1; p 35]. See also First Smith Report [CB 4.2.1; p 37].

Greater Gliders may recolonise coupes (although his opinion was that the time within which that would occur was longer than that suggested by Dr Davey).³⁸²

325. Dr Davey's evidence is that Greater Gliders:

- (a) use riparian systems and associated buffer exclusions in coupes within 15 years of harvesting where adequate habitat trees are available;³⁸³
- (b) recolonize coupes subject to clearfell, seed tree or retention harvesting, with scattered retained habitat trees, beginning within 25 years, with the average return rate being after 40 years;³⁸⁴ and
- (c) use coupes subject to clearfell, seed tree or retention harvesting stems, with nil retention of suitable habitat trees, within 30 years, with colonization resuming more than 80 years post-harvesting.³⁸⁵

C.2.3.5. VicForests' forestry operations in the Scheduled Coupes occur in a relatively small proportion of the total area of habitat occupied by the Greater Glider

326. Unlike the Giant Burrowing Frog and Large Brown Tree Frog in *Brown Mountain*, where the proposed timber harvesting occurred in the relatively limited parts of Victoria in which each species had been detected, here VicForests' forestry operations in the Scheduled Coupes will occur (if they occur at all) in a small proportion of the total area of habitat occupied by Greater Gliders.

327. The evidence of Mr Paul is that the total net area for the Scheduled Coupes constitutes 0.14% of the total CH RFA Area and 0.24% of the Victorian forest estate.³⁸⁶ Dr Smith accepted that figure was correct,³⁸⁷ but did not accept that when considering the threat of harvesting, it was relevant to have regard to that percentage comprised within the Central Highlands or the Victorian forest estate.³⁸⁸

³⁸² T. 408:37-T. 409:4 (Dr Smith XXN).

³⁸³ First Davey Report, [CB 5.1.1; p 113 [250]].

³⁸⁴ First Davey Report, [CB 5.1.1; p 113 [251]]; Second Davey Report, [CB 5.4.1; p 68 [203]].

³⁸⁵ First Davey Report, [CB 5.1.1; pp 113-114 [253]]; Second Davey Report, [CB 5.4.1; p 68 [203]].

³⁸⁶ [CB 3.8.6].

³⁸⁷ T. 444:10 (Dr Smith XXN).

³⁸⁸ T. 443: 24; T. 444: 20 (Dr Smith XXN).

328. Mr Paul’s evidence is that the area of Greater Glider Higher Quality Class 1 habitat in the net area within the Scheduled Coupes as a proportion of the total area of Greater Glider Higher Quality Class 1 habitat across the State of Victoria is 0.07%.³⁸⁹
329. The Conservation Advice for Greater Glider provides that the “extent of occurrence [of the Greater Glider] is estimated at 1 586 870 km², and the area of occupancy estimated at 16 164 km².”³⁹⁰ The total net area of the Scheduled Coupes³⁹¹, as a proportion of those areas respectively³⁹² is:
- (a) 0.00057% of the extent of occurrence of the Greater Glider; and
 - (b) 0.056% of the area of occupancy of the Greater Glider.

C.2.3.6. Abundance of reserve and National Park

330. Dr Davey’s evidence is that whilst habitats most preferred by Greater Gliders are high elevation mature and old growth Mountain Ash and Mixed Forests, Greater Gliders are found in other Ash forest types and low elevation Mixed Species.³⁹³ Dr Davey’s evidence is that these forests are well represented in the CAR reserve system in the Central Highlands.³⁹⁴ His evidence is that individual ecological vegetation classes (ECVs) described in table 5 of his report are not distributed primarily within the timber harvesting estate.³⁹⁵ The CAR reserve system contains 54% of the total Mountain Ash forest types in the Central Highlands.³⁹⁶ This was accepted by Dr Smith.³⁹⁷ Dr Davey’s evidence is that the CAR reserve system contained 44% of the high elevation Mixed Species forest types and 48% of the total of low elevation Mixed Forest types.³⁹⁸ Dr Smith’s observation that the true representation of Ash forest that Greater Gliders can use in the CAR system was “probably extremely low and nothing like 54%” was speculation from the witness box, and Dr Smith acknowledged he could not say what

³⁸⁹ [CB 3.8.6].

³⁹⁰ [CB 6.18; p 7].

³⁹¹ [Table A].

³⁹² Noting that one square kilometre is equal to 100 hectares.

³⁹³ Second Davey Report [CB 5.4.1; p 63-64 [186] and table 5].

³⁹⁴ Second Davey Report [CB 5.4.1; p 63-64 [186] and table 5].

³⁹⁵ Second Davey Report [CB 5.4.1; p 63-64 [186] and table 5].

³⁹⁶ Second Davey Report [CB 5.4.1; p 63-64 [186] and table 5].

³⁹⁷ T. 425:18 (Dr Smith XXN).

³⁹⁸ Second Davey Report [CB 5.4.1; p 63-64 [186] and table 5].

the figure would be.³⁹⁹ Dr Smith acknowledged that he only had regard to the structure and layout of the reserve system in a limited way by reference to what he described as “broad SPZ mapping” and without site inspection.⁴⁰⁰

331. The components of the CAR reserve system —dedicated reserves, informal reserves and values protected by prescription on public land and private land protection mechanisms— are an embodiment of the precautionary principle.⁴⁰¹ Dr Davey’s evidence is that Victoria had good systems and processes for conservation and management of biodiversity and ecologically sustainable forest management with the draft Greater Glider Action Statement and Interim Strategy providing guidance and enhancing those systems and processes pending finalisation of a Greater Glider Recovery Plan.⁴⁰² Dr Smith accepted that National Parks and reserves are reasonably widely distributed.⁴⁰³
332. As explained in section C.2.1 above, in respect of the Scheduled Coupes, VicForests’ primary position is that there are no sufficiently advanced plans in respect of VicForests’ forestry operations in those coupes that enable this Court to properly analyse any threat of serious or irreversible damage such as to engage the precautionary principle.
333. **Table A** to these submissions sets out —on a coupe by coupe basis— the specific coupe level and landscape level protection measures in each of the Logged Glider Coupes (and other Logged Coupes), together with information as to the silvicultural system actually used and the gross and net coupe area.
334. **Table B** to these submissions sets out —on a coupe by coupe basis— the specific coupe level and landscape level protection measures in each of the Scheduled Coupes, together with information as to the silvicultural system denoted on the TRP and the gross and net coupe area.
335. **Table C** to these submissions sets out —on a coupe by coupe basis— the specific coupe level and landscape level protection measures in each of the coupes not the subject of this proceeding which have been harvested since 31 August 2018 which the applicant

³⁹⁹ T. 426: 14 (Dr Smith XXN).

⁴⁰⁰ T, 427:6 (Dr Smith XXN).

⁴⁰¹ First Davey Report [CB 5.1.1; pp 97 to 99 [213]-[216]].

⁴⁰² First Davey Report [CB 5.1.1; p 139 [274]].

⁴⁰³ T. 441: 8-10 (Dr Smith XXN).

sought to use to draw inferences as to the method and manner by which the Scheduled Coupes would be harvested, together with information as to the silvicultural system actually used and the gross and net coupe area.⁴⁰⁴

336. To the extent there is evidence as to the context in which future forestry operations in the Scheduled Coupes will occur (if they occur at all), that evidence permits the following inferences to be drawn:
337. *First*, any future forestry operations in the Scheduled Coupes will occur in areas flanked by substantial areas of reservation by way of formal reserve (for example, National or State Parks and reserves) or informal reserves such as SPZ.
338. *Second*, the net harvest area will comprise a small or relatively smaller portion of the coupe. Dr Smith's evidence was it was relevant to have regard to the difference between the gross area and the net area of the coupes.⁴⁰⁵
339. *Third*, there is a real possibility that the silvicultural system used will be less intensive than that described on the TRP.

C.2.3.7. Surveys

340. As noted elsewhere, Mr Paul's evidence in respect of the Scheduled Coupes is that their planning is changeable and subject to more detailed surveys (including by the Department under its own survey program),⁴⁰⁶ is not complete,⁴⁰⁷ and in any event, is on hold.⁴⁰⁸
341. The Department has not surveyed any coupes the subject of this proceeding, as those coupes are no longer on the harvesting schedule for the next 18 months.⁴⁰⁹ However, Mr

⁴⁰⁴ This table is the same as the table tendered as evidence under s 50 of the *Evidence Act 2008* (Cth) save for the additional two columns on the far right hand side, and the fact that VicForests understands the applicant to no longer rely on Conrad coupe.

⁴⁰⁵ T. 444. 37-41 (Smith XXN).

⁴⁰⁶ T. 213:20-22; T. 213:29-30; T. 205:37-40 (B. Paul XXN). Mr Paul's evidence (at T. 205:37-40) was that, assuming some level of harvesting occurs in the Scheduled Coupes) was that "they [the Scheduled Coupes] would then be lined up for the department's survey program". That proposition, i.e. that the Scheduled Coupes would be subject to a survey, was not challenged in cross-examination.

⁴⁰⁷ T. 212:17 (B. Paul XXN).

⁴⁰⁸ T. 212:25; T. 212: 44-46; T. 213:6-7; T. 214:14-15 (B. Paul XXN).

⁴⁰⁹ T. 205:37-40; T. 14:13-14 (B. Paul XXN).

Paul’s evidence is that if the Scheduled Coupes ever go back on that schedule, those coupes “would be lined up for the department’s survey program”.⁴¹⁰ The evidence that the Scheduled Coupes would be the subject of the Department’s survey program (over and above any other surveys conducted by VicForests),⁴¹¹ should be accepted. Of course, the outcome of those surveys —and whether they would result in areas to be protected specifically for Greater Glider— is not able to be presently known due to the planning hiatus pending resolution of this proceeding.

C.2.3.8. VicForests’ silvicultural systems are changing

342. VicForests planning and harvesting methods are in the process of changing from the traditional or “existing systems”, towards a more adaptive suite of silvicultural practices.⁴¹² That change is occurring within the broader context of VicForests’ move to obtain FSC certification.⁴¹³ Those silvicultural systems,⁴¹⁴ are under development and are therefore changeable.⁴¹⁵ As a result of an undertaking that was given by VicForests at the request of the applicant, planning in the Scheduled Coupes is paused pending resolution of this proceeding.⁴¹⁶ Planning in the Scheduled Coupes is not complete.⁴¹⁷ Assuming some level of harvesting ever occurs within the Scheduled Coupes, those coupes will need to be replanned in accordance with the new adaptive silvicultural systems policies that are in place.⁴¹⁸ Therefore, this Court could not draw any inference, or make any finding, with the requisite evidentiary foundation, as to which silvicultural system would be used, or would be likely to be used, in any of the Scheduled Coupes,⁴¹⁹ and therefore this Court should not make any finding as to the existence of a serious or irreversible threat based on an unknowable state of affairs.

C.2.3.9. Dr Davey’s opinion should be accepted

343. In assessing the impact of past and future forestry operations in the Logged Coupes and Scheduled Coupes respectively, Dr Davey took account of the reserve system and also

⁴¹⁰ T. 205:37-40 (B. Paul XXN).

⁴¹¹ T. 388.3-27 (McBride XXN).

⁴¹² Fourth Paul Affidavit [CB 3.4; Section M]; Fifth Paul Affidavit [CB 3.8; paragraphs [6] to [19]].

⁴¹³ Fourth Paul Affidavit [CB 3.4; Section M]; T. 321: 26-28 (B. Paul XXN).

⁴¹⁴ [CB 12.1] and [CB 12.2]; Fifth Paul Affidavit [CB 3.8; paragraphs [6] to [19]].

⁴¹⁵ Fourth Paul Affidavit [CB 3.6; paragraph [118]]; T. 212:29-32; T. 213:21-30 (B. Paul XXN).

⁴¹⁶ See paragraph 244 ff above.

⁴¹⁷ T. 212:17 (B. Paul XXN).

⁴¹⁸ Fifth Paul Affidavit [CB 3.8; paragraphs [18]-[19]]; T. 212:29-32 (B. Paul XXN).

⁴¹⁹ T. 326.3-5 (B. Paul XXN).

performed a desktop assessment of the coupes in question, which desktop assessment considered, among other things, aerial imagery, available habitat modelling, harvest history, modelled timber harvesting exclusions and coupe plan records of forest type, aspect, slope, proportion of dead limbs and interlocking crowns, age classes and growth forms present, harvest area foot print, habitat tree prescription and placement, the implementation of Code prescriptions and various aspects of coupe plans that concern the management of forest sites with Greater Glider or Leadbeater's Possum present.⁴²⁰ He was present on the view.

344. Dr Davey's opinion is that, when viewed as a whole, VicForests' forestry operations in the Logged Coupes and the Scheduled Coupes (individually or collectively) did not, and will not, pose a serious or irreversible threat of damage to an important population of Greater Glider or Greater Glider habitat.⁴²¹ Self-evidently, if there is no threat of serious or irreversible damage to an important population, it cannot be said that there is such a threat to the species across its entire distribution and range.
345. On the other hand, Dr Smith's opinion as to the threat of serious or irreversible damage to Greater Glider in the Scheduled Coupes and Logged Glider Coupes should be discounted for the following reasons.
346. *First*, in forming his opinion in relation to the precautionary principle, Dr Smith failed to consider the reserve system,⁴²² notwithstanding his view that certain SPZs and aspects of the reserve system could act as wildlife corridors,⁴²³ and Greater Glider are present in the reserve system.⁴²⁴ In cross examination, Dr Smith accepted that the continued existence of the Greater Glider in areas of reserve and National Park must be factored into any analysis of threat to the species or impact if one is considering the species population as a whole in the Central Highlands.⁴²⁵ It is clear that Dr Smith's assessment of threat and impact is limited to individual Greater Gliders existing at a coupe level, or

⁴²⁰ First Davey Report [CB 5.1.1; at [231], [256]–[259], [264 (iv–(v))], [278], [285],[289 (iv)–(vii)], Tables 15 and 16 (Table 16 as amended by Table 3 of Second Davey Report [CB 5.4.1])].

⁴²¹ First Davey Report [CB 5.1.1; pp 112-113, 175 [249], [276], [303], [305]].

⁴²² T. 427:20-23 (Dr Smith XXN).

⁴²³ T. 427: 6-9 ; T. 422: 16-20; T 440: 19 (Dr Smith XXN).

⁴²⁴ T. 400:14-17; T. 426:32-37; T. 440:26-45 (Dr Smith XXN); see also Conservation Advice [CB 6.18; p 9].

⁴²⁵ T. 443: 8 (Dr Smith XXN).

a sub-set of the population in the Central Highlands. For the reasons explained above, the threat must be one that is directed at the species as a whole.

347. *Second*, Dr Smith failed to take into account populations of Greater Glider in New South Wales, Queensland, and Victoria.⁴²⁶ His opinion as to the threat posed by forestry operations in the Scheduled Coupe is again limited geographically.
348. *Third*, Dr Smith's coupe impact assessments⁴²⁷ —in which he concluded that the Scheduled Coupes and some Logged Coupes are likely to, or in fact, contain areas of critical habitat— are to be treated with caution because they are to be understood in the context of Dr Smith's treatment of "old growth" and "critical habitat" in an unorthodox manner and (wrongly) as a proxy for suitable habitat.⁴²⁸
349. Dr Smith admitted that he treated the concept of critical habitat for Greater Glider as synonymous with suitable habitat.⁴²⁹ Dr Davey's evidence is that the term "critical habitat" has a specific meaning in forestry science.⁴³⁰ Dr Davey's opinion is that Dr Smith's description of "critical habitat" better describes suitable habitat found in the Central Highlands.⁴³¹
350. Dr Smith used a fundamentally unorthodox definition of "old growth".⁴³² Dr Davey's evidence is that the concept of "old growth" has a specific meaning in Australian forest science and policy meaning forest that is ecologically mature and has been subjected to negligible unnatural disturbance (such as logging, roading and clearing).⁴³³ Dr Smith accepted that he did not use the forestry definition of "old growth".⁴³⁴ Dr Davey's

⁴²⁶ T. 399:40-43; T. 432: 34 (Dr Smith XXN).

⁴²⁷ First Smith Report [CB 4.2.1; pp 68 ff].

⁴²⁸ See for example: In respect of the Ada River Scheduled Coupes (Turducken and Johnny), Dr Smith's opinion is that the significance of logging impact was extremely high due to the "total loss of high quality (important and critical old growth)". In respect of Ada Tree Scheduled Coupe (Blue Cat), Dr Smith's opinion is that areas of the coupe are "likely to be Critical and Important habitat". In respect of Big River Scheduled Coupe (Vice Captain), Dr Smith concluded that the significance of impact would be very high if clearfelled on short rotations due to permanent loss of critical and important mature and old growth habitat with abundant hollows. Dr Smith's opinion is that Camberwell Junction Logged Coupe contained important and critical old growth Greater Glider habitat. See also his opinion as to Rowles Logged Coupe.

⁴²⁹ T. 429: 40-41 (Dr Smith XXN).

⁴³⁰ Second Davey Report [CB 5.4.1; pp 20, 21 [42]-[45]].

⁴³¹ Second Davey Report [CB 5.4.1; pp 20, 21 [42]-[45]].

⁴³² T. 416:24 – T.424:4 (Dr Smith XXN).

⁴³³ Second Davey Report [CB 5.4.1; pp 6 – 12 [4]-[18]].

⁴³⁴ T. 415:14 (Dr Smith XXN).

opinion is that Dr Smith misused the concept of old growth in assessing critical habitat,⁴³⁵ and attempted to introduce a definitional change to reclassify mature forest as “old growth”.⁴³⁶

351. *Fourth*, Dr Smith’s coupe impact assessments should be further discounted because he accepted that an impact assessment could not be undertaken where there is no certainty as to future management considerations.⁴³⁷ In this case, as set out in section C.1.2 above, VicForests planning and harvesting methods are in the process of changing from the traditional or “existing systems”, towards a more adaptive suite of silvicultural practices.⁴³⁸ It is not known how the Scheduled Coupes will be harvested (if they are to be harvested at all). Dr Smith accepted that in approaching the task of assessing either the threat of harvesting or impact, he was faced with a number of uncertainties.⁴³⁹ Dr Smith himself described his assessment as “not detailed” due to a lack of sufficient data to perform that assessment accurately or reliably.⁴⁴⁰ He also described his own assessment as “not precise” because he didn’t “know anything about the adequacy of SPZs to act as corridors linking these coupes”.⁴⁴¹ Dr Smith accepted that because he did not know what the future arrangements were going to be, and he did not know where the nearest Greater Glider reserves were and how well they were linked to the coupe, it was “not possible ... to be more accurate than to make a generalised statement”. He characterised his own opinions as “very general and not highly specific”.⁴⁴² Notwithstanding these limitations, Dr Smith went on to express an opinion about the likely impact of timber harvesting in the Logged and Scheduled Coupes.⁴⁴³
352. *Fifth*, aligned to the above, Dr Smith was instructed to assume that forestry operations in the Scheduled Coupes would be conducted in a manner similar to forestry operations in the Logged Coupes and conducted with the silvicultural method and net harvested area set out for each coupe on the TRP.⁴⁴⁴ Under cross-examination, Dr Smith accepted that it was uncertain to what extent VicForests will seek to harvest the Scheduled

⁴³⁵ Second Davey Report [CB 5.4.1; pp 20 [43]].

⁴³⁶ Second Davey Report [CB 5.4.1; p 12 [18]].

⁴³⁷ T. 408:43-47 (Dr Smith XXN).

⁴³⁸ Fourth Paul Affidavit [CB 3.4; Section M]; Fifth Paul Affidavit [CB 3.8; paragraphs [6] to [19]].

⁴³⁹ T. 440: 28 (Dr Smith XXN).

⁴⁴⁰ T. 431: 21-34 (Dr Smith XXN).

⁴⁴¹ T. 432:44-T 433:5 (Dr Smith XXN).

⁴⁴² T. 432:44-T 433:5 (Dr Smith XXN).

⁴⁴³ First Smith Report [CB 4.2.1; pp 68 ff].

⁴⁴⁴ First Smith Report [CB 4.2.1; p 53]; T. 449:40 – T. 450:16 (Dr Smith XXN).

Coupes, by what configuration and by which silvicultural method.⁴⁴⁵ Dr Smith conceded that the extent of any impact was actually uncertain.⁴⁴⁶

353. *Finally*, Dr Smith was not familiar with the Department's survey program.⁴⁴⁷ He was not familiar with the manner in which the Department conducts its surveys.⁴⁴⁸

C.2.4. No considerable scientific uncertainty

354. In *Telstra*, Preston CJ said:

If there is no, or not considerable, scientific uncertainty (the second condition precedent is not satisfied), but there is a threat of serious or irreversible environmental damage (the first condition precedent is satisfied), the precautionary principle will not apply. The threat of serious irreversible environmental damage can be classified as relatively certain because it is possible to establish a causal link between an action or event and environmental damage, to calculate the probability of their occurrence, and to insure against them. Measures will still need to be taken but these will be preventative measures to control or regulate the relatively certain threat of serious or irreversible environmental damage, rather than precautionary measures which are appropriate in relation to uncertain threats.⁴⁴⁹

355. If the Court finds (contrary to VicForests' submissions) that VicForests' forestry operations in each, some or all of the Logged Glider Coupes or the Scheduled Coupes pose a threat of serious or irreversible damage to the Greater Glider, and that there is no, or not considerable, scientific uncertainty about that threat, then the precautionary principle will not apply.

356. In cross examination, Dr Smith said:

I'm certain that there is an immediate short-term loss of gliders, and in the majority of coupes I'm sure that this loss will be permanent, because the number of habitat trees retained is not sufficient to maintain even an average density of gliders, but in the areas where habitat trees are retained — I still can't be certain that gliders will get back to that space to recolonise it in 40 or 50 years' time, when the trees have regrown, unless I know more about where the greater gliders are residing close to that coupe to allow them to get back to that space. That is —the area of uncertainty is in recovery. The area

⁴⁴⁵ T. 449:40 – T. 450:16 (Dr Smith XXN).

⁴⁴⁶ T. 450:18-27 (Dr Smith XXN).

⁴⁴⁷ T. 412:15 (Dr Smith XXN).

⁴⁴⁸ T. 415: 29 (Dr Smith XXN).

⁴⁴⁹ *Telstra*, [149].

of uncertainty is not in assessing the immediate short-term impact, which is a —quite a major loss.⁴⁵⁰

357. If the Court accepts this evidence of Dr Smith, then the second condition precedent is not satisfied and the precautionary principle has no application. The threat of serious or irreversible environmental damage would be found to be relatively certain because (accepting Dr Smith’s evidence) it is possible to establish a causal link between an action or event and environmental damage.
358. Such a finding would not preclude appropriate action being taken, but these would be *preventative* measures to control or regulate the relatively certain threat of serious or irreversible environmental damage, rather than *precautionary* measures which are appropriate in relation to uncertain threats. Preventative measures could include an authorised officer issuing a direction or suspension notice under the SFT Act if they form the view that continuation of a timber harvesting operation would cause imminent damage to the environment.⁴⁵¹

C.2.5. Alternatively, careful evaluation of management options will be undertaken

359. It will be recalled that the precautionary principle requires caution, but it does not mandate inaction, and it will not generally dictate one specific course of action to the exclusion of others. Further, the precautionary principle should not be used to avoid all risks.⁴⁵²
360. The evidence establishes, as has been set out in section C.2.1.1 above, that VicForests is moving towards a more adaptive suite of silvicultural practices and the FSC certification process and that VicForests’ own high conservation values identification and management process is undergoing change.⁴⁵³
361. For the purpose of the FSC Controlled Wood Standard,⁴⁵⁴ there are six categories of HCVs. Under a previous HCV assessment conducted by VicForests in 2014, VicForests identified a range of HCVs in eastern FMUs (which include the CH RFA Area),

⁴⁵⁰ T. 440: 36-44 (Dr Smith XXN).

⁴⁵¹ See paragraph 143 above.

⁴⁵² See Section C.1.1. above.

⁴⁵³ [CB 12.1]; Fifth Paul Affidavit [CB 3.8; paragraph [11] to [15].

⁴⁵⁴ Fourth Paul Affidavit [CB 3.6; paragraphs [52] to [60]; [71] [CB 3.6.119].

including, in respect of category HCV 1,⁴⁵⁵ recovery plans and HCV management plans for Leadbeater's Possum and Greater Glider, and recognition of listings provided in the FFGA and the EPBC Act for an extensive range of fauna, and communities of flora and fauna.⁴⁵⁶ In respect of the 2019 HCV Document,⁴⁵⁷ VicForests is currently updating its HCV assessment in eastern FMUs (which include the CH RFA Area).⁴⁵⁸ Mr Paul's evidence was that, based on his knowledge and experience, the likely result of that process is that the number and scope of identified high conservation values and their elements will increase.⁴⁵⁹ That review process remains ongoing,⁴⁶⁰ and the adaptive silvicultural systems policies remain in development. Any harvesting in the Scheduled Coupes will occur in accordance with the new adaptive silvicultural systems policies (in whatever form they may ultimately take),⁴⁶¹ which will likely involve identification of and greater protection of HCVs, including Greater Glider and Leadbeater's Possum.

362. The nature of these developments is evidence on its own of a careful evaluation of management options, and the undertaking of a sufficiently cautious approach to timber harvesting in areas identified to contain high conservation values.
363. Further, the undertaking of pre-harvest surveys,⁴⁶² together with the surveys produced in this proceeding, and the expert reports filed, are all matters which will need to be considered in any planning of timber harvesting operations in the Scheduled Coupes.⁴⁶³ That consideration itself is a manifestation of the cautiousness required as part of the careful evaluation of management options.
364. Dr Smith's adaptive management measures go beyond any requirements of the precautionary principle in that they effectively seek a zero-risk outcome in respect of the Greater Glider. Dr Smith accepted as fair comment that the object of his proposed measures was to achieve removal of the species from the vulnerable species list.⁴⁶⁴ More expressly, Dr Smith agreed that his proposed adaptive measures were aimed at reducing

⁴⁵⁵ Forest areas containing globally, nationally and regionally significant concentrations of biodiversity e.g. endemism, endangered species, refugia.

⁴⁵⁶ [CB 12.1; p 18].

⁴⁵⁷ [CB 12.1].

⁴⁵⁸ [CB 12.1; p 19]; Fifth Paul Affidavit [CB 3.8; paragraph [13]].

⁴⁵⁹ Fifth Paul Affidavit [CB 3.8; paragraph [13]].

⁴⁶⁰ Fifth Paul Affidavit [CB 3.8; paragraph [14]].

⁴⁶¹ T. 212:29-32; T. 213:21-30 (B. Paul XXN).

⁴⁶² Section C.2.1.2.

⁴⁶³ See cl 2.2.2.3 of the Code [CB 6.9], 34.

⁴⁶⁴ T 401:17-35.

all risks to Greater Glider in the Central Highlands and across its species range.⁴⁶⁵ As the cases demonstrate, the precautionary principle does not require the avoidance of all risks.⁴⁶⁶

365. Insofar as the Logged Glider Coupes are concerned, VicForests relies on the evidence summarised in Table A as to the local biodiversity measures, and landscape biodiversity protection measures, as well as the net harvested area (compared to the gross area) of the applicable coupes, as evidence of an appropriate cautious assessment of management options insofar as those coupes are concerned.

C.2.6. Has there been a failure to apply the precautionary principle in the Logged Coupes?

366. For the reasons set out in section A.1 above, the claimed relief in relation to the Logged Coupes under the EPBC Act is not available absent a prohibitory injunction having been granted in relation to the Scheduled Coupes.

367. VicForests relies on Dr Davey's analysis of the question of any serious or irreversible threat to Greater Glider as set out in section C.2.3 above, insofar as it is applicable to the Logged Glider Coupes. Dr Davey's opinion is that forestry operations undertaken in the Logged Coupes did not pose a serious or irreversible threat to the Greater Glider, and thus VicForests' forestry operations did not breach the precautionary principle.⁴⁶⁷

368. In addition, VicForests relies on Dr Davey's evidence of the relatively limited impact on Greater Glider arising from VicForests' forestry operations in the Logged Glider Coupes, noting in particular that:

- (a) VicForests' forestry operations in the Logged Glider Coupes occurred in a small proportion of the total area of habitat occupied by Greater Gliders. Mr Paul's evidence is that the net area of the Logged Coupes the subject of this proceeding comprises 0.7% of the CH RFA and 0.01% of the Victorian Forest estate.⁴⁶⁸ Dr Smith accepted those figures were correct.⁴⁶⁹

⁴⁶⁵ T 402:27.

⁴⁶⁶ See section C.1.1 above.

⁴⁶⁷ First Davey Report [CB 5.1.1; p 139 [276]].

⁴⁶⁸ [CB 3.8.6].

⁴⁶⁹ T. 444:10-32 (Dr Smith XXN).

- (b) Dr Davey’s opinion is that the planning and carrying out of forestry operations in the Logged Coupes has been appropriate for a recently listed vulnerable species. He considers there has been satisfactory retention of forests through the Code and the other regulatory instruments to provide suitable habitat for Greater Glider both currently and in the future.⁴⁷⁰
- (c) Dr Davey considers that whilst local populations of Greater Glider may be impacted, those decreases would not result in the overall decrease of the size of an important population or threaten the viability of the species.⁴⁷¹ If there is no threat of serious or irreversible threat to a regional or important population, it cannot be said that there is such a threat to the species across its entire distribution and range.
- (d) Dr Davey considers that forestry operations taken as a whole or as a collective would not result in the reduction or fragmentation of available habitat for the Greater Glider to the extent that those operations would be likely to displace a regional population, result in a long term decline in a regional population or threaten the viability of the species.⁴⁷²
- (e) Dr Davey considers that the presence of forest in the formal and informal reserve system and remaining SMZ and GMZ means that areas the subject of past forestry operations are unlikely to comprise habitat critical for the Greater Glider. VicForests repeats the observations in section C.2.3.9 above regarding Dr Smith’s treatment of “critical habitat” and why his opinion in that regard should be rejected.
- (f) Dr Davey’s opinion is that the existing areas of harvesting exclusion are sufficient to avoid displacement, reduction or substantial limitation of the movement or dispersal of populations of Greater Glider.⁴⁷³
- (g) Dr Davey considers that forestry operations in the Logged Coupes have not modified, destroyed, removed, isolated or decreased the availability or quality of

⁴⁷⁰ First Davey Report [CB 5.1.1; p 134 [264(i)].

⁴⁷¹ First Davey Report [CB 5.1.1; p 134 [264(i)].

⁴⁷² First Davey Report [CB 5.1.1; p 134 [264(i) and (iii)].

⁴⁷³ First Davey Report [CB 5.1.1; p 134 [264(v)].

habitat to the extent that would cause the population of Greater Glider to decline.⁴⁷⁴

- (h) Dr Davey considers there has been satisfactory policy and planning systems implemented in the Central Highlands such that he considers that forestry operations in the Logged Coupes have not interfered with the recovery of the Greater Glider.⁴⁷⁵

369. VicForests otherwise refers to its observations regarding the limitations of Dr Smith's impact assessment set out in section C.2.3.9 above.

D. MISCELLANEOUS ALLEGATIONS IN THE LOGGED COUPES

D.1. Alleged failure to identify and protect mature Tree Geebung where possible

D.1.1. The pleaded allegation

370. Paragraph 113B of the 3FASOC concerns an allegation that VicForests failed to comply with cl 2.2.2.4 of the Code.

371. The particulars of the allegation are that VicForests failed to identify mature Tree Geebung in Skerry's Reach coupe and, contrary to cl 4.5 of the Management Procedures, read with the prescriptions for the Central Highlands FMA in Appendix 3, Table 14, failed to protect those mature Tree Geebungs from disturbance when logging Skerry's Reach coupe where it was possible to do so.

372. Appendix 3, Table 14 of the Management Standards,⁴⁷⁶ provides that in respect of Tree Geebung (*persoonia arborea*) the required management action is to protect mature individuals from disturbance where possible.

D.1.2. Insufficient evidence of a breach of the Management Standards

373. The evidence of Jake McKenzie is that on 7 February 2018, he sent a report to the Department (copied to VicForests) regarding the presence of 9 Tree Geebung specimens

⁴⁷⁴ First Davey Report [CB 5.1.1; p 134 [264(vi)].

⁴⁷⁵ First Davey Report [CB 5.1.1; p 134 [264(vii)].

⁴⁷⁶ [CB 6.10].

in this coupe that he observed on the night of 6-7 February 2018.⁴⁷⁷ Those nine specimens are depicted on the map that forms part of that report,⁴⁷⁸ and are listed on the table at page 5 of that report with the GPS coordinates and waypoint identifiers.

374. Mr McKenzie's evidence is that he returned to Skerry's Reach coupe on the evening of 26-27 March 2018 and surveyed a logged part of the coupe.⁴⁷⁹ Mr McKenzie's evidence is that he observed five damaged Tree Geebungs during this survey.⁴⁸⁰ It seems — although it is not entirely clear from the First McKenzie Affidavit— that the five damaged Tree Geebung comprised two specimens that had been “knocked over” and three that “had broken and snapped off limbs and looked like they were dying”.⁴⁸¹
375. He sent a report to the Department, which was given a case reference number 2018-0009.⁴⁸² The photographs and video of those specimens are contained in annexure JRM-75 and the five files are marked TTT01PA to TTT015PA.⁴⁸³
376. The First Mueck Report,⁴⁸⁴ contains a table where he is asked to provide an opinion as to the specimens the subject of JRM-75.⁴⁸⁵ His opinion as to the photographs in JRM-75 makes reference to the file names TTT01PA to TTT015PA in the third column.
377. With respect to all specimens with the exception of TTT03PA, Mr Mueck is unable to, or fails to, express an opinion as to the maturity of the specimen.⁴⁸⁶ The allegations with respect to these specimens fails at this threshold level.
378. In respect of the specimen which Mr Mueck expresses an opinion is a mature shrub TTT03PA, Mr Mueck's opinion is that the video shows some branch damage and damage to the main trunk.⁴⁸⁷

⁴⁷⁷ [CB 2.3.72]; First McKenzie Affidavit [CB 2.3; paragraph [234]].

⁴⁷⁸ [CB 2.3.73; p 10].

⁴⁷⁹ First McKenzie Affidavit [CB 2.3; paragraph[246]].

⁴⁸⁰ First McKenzie Affidavit [CB 2.3; paragraph [247]].

⁴⁸¹ First McKenzie Affidavit [CB 2.3; paragraph [247]].

⁴⁸² [CB 2.3.74].

⁴⁸³ [CB 9.38].

⁴⁸⁴ [CB 4.4.1]

⁴⁸⁵ Commencing at p 5 of that document.

⁴⁸⁶ [CB 4.4.1; pp 6-7].

⁴⁸⁷ The evidence of Tim McBride is that the Department determined after an inspection of the coupe following receipt of the report from Mr McKenzie that two specimens were removed during landing and construction of the snig track: McBride Affidavit [CB 3.3; paragraph [87]].

379. In cross-examination,⁴⁸⁸ Mr Paul was taken to an email dated 13 March 2018,⁴⁸⁹ regarding the application of the management prescription with respect to Tree Geebung. Mr Paul's evidence was that where mature individuals are detected within the harvestable area (marked coupe boundary) and it is not practicable to include them in exclusion areas, avoiding any disturbance is in many cases not possible and whilst mechanical disturbance is avoided where possible, the individuals will almost certainly be disturbed by fire during regeneration burning.⁴⁹⁰ When it was put to Mr Paul that this was what happened in Skerry's Reach, Mr Paul's evidence was that he was not sure and would need to see the details.⁴⁹¹ He was not pressed for those details.
380. Mr Paul's evidence was that Tree Geebung specimens are incorporated into other buffers and boundaries when they are identified and it is possible to do so.⁴⁹²
381. Mr Mueck offers no opinion that the specimen was damaged during any regeneration burn. There is no evidence that TTT03PA was disturbed during forestry operations. Even if it was, there is no evidence that it was in fact possible to avoid disturbance to TTT03PA.
382. In fact, the evidence establishes that Tree Geebung was appropriately identified and marked in Skerry's Reach coupe.⁴⁹³ The audit undertaken by the Department,⁴⁹⁴ referred to in the email of 13 March 2018 (which Mr Paul was taken to in cross examination), concluded that Tree Geebung occurrences reported by Mr McKenzie had been well managed in the coupe, and most of the specimens had largely been protected, with only one sustaining significant damage. The audit expressed no view as to the maturity of those specimens.⁴⁹⁵
383. In respect of the specimen which Mr Mueck expresses an opinion is a mature shrub, there is no evidence that would establish that it was actually possible to retain the

⁴⁸⁸ T. 326:24 (B. Paul XXN).

⁴⁸⁹ [CB 11.80].

⁴⁹⁰ T. 327: 1-23 (B. Paul XXN).

⁴⁹¹ T. 328: 2(B. Paul XXN).

⁴⁹² T. 327:42-44 (B. Paul XXN).

⁴⁹³ See the coupe marking map for Skerry's Reach coupe [CB 3.6.98]; McBride Affidavit [CB 3.3; paragraphs [69] to [78]].

⁴⁹⁴ [CB 3.3.9].

⁴⁹⁵ [CB 3.3.9; p 2 "management in field"].

specimen,⁴⁹⁶ or, in any event, that the disturbance had occurred during the course of VicForests' forestry operations in that coupe as opposed to some other cause.⁴⁹⁷

384. It follows that the allegation should be dismissed.

D.1.3. Alternatively, there has been substantial compliance

385. In the alternative, VicForests submits that there has been substantial compliance with Appendix 3, Table 14 of the Management Standards (and thus cl 2.2.2.4 of the Code), such that any irregularity would not remove the benefit of s 38(1) of the EPBC Act.⁴⁹⁸ Appendix 3, Table 14 of the Management Standards does not impose an absolute prohibition. The prohibition is conditioned so that it applies "where possible". This affords a degree of latitude, no doubt recognising there will be operational constraints on retention in some circumstances.

D.2. Alleged failure to identify and protect Zone 1A habitat in Blue Vein coupe

D.2.1. The pleaded allegation

386. Paragraph 113C of the 3FASOC concerns an allegation that VicForests failed to comply with cl 2.2.2.4 of the Code.

387. The particulars of the allegation are that VicForests failed to identify an area of Leadbeater's Possum Zone 1A habitat in the Blue Vein coupe and, contrary to cl 4.2 of the Management Standards,⁴⁹⁹ failed to follow cl 2.1.1.3 of the Management Procedures,⁵⁰⁰ in that it did not apply to the Secretary to the Department to create a special protection zone that includes the Zone 1A habitat in accordance with Appendix 5 of the Planning Standards prior to commencing logging in the Blue Vein coupe.

⁴⁹⁶ The evidence of Mr McBride is that the Department determined after an inspection of the coupe following receipt of the report from Mr McKenzie that two specimens were removed during landing and construction of the snig track: McBride Affidavit [CB 3.3; paragraph [87]].

⁴⁹⁷ Indeed, the evidence of Mr McBride is that he observed on uprooted Tree Geebung in this coupe when he visited on 30 May 2018, but the tree did not have mechanical marks on it consistent with mechanical disturbance: McBride Affidavit [CB 3.3; paragraph [91]].

⁴⁹⁸ Separate Question reasons, [208].

⁴⁹⁹ [CB 6.10; p 36].

⁵⁰⁰ [CB 6.10; p 23].

388. In the Central Highlands FMA, where evidence of Zone 1A habitat is identified within areas affected by timber harvesting operations, an SPZ must be created over the area of Zone 1A habitat where there are more than 10 hollow bearing trees per 3 ha in patches greater than 3 ha.⁵⁰¹
389. The definition of hollow bearing tree in the context of Zone 1A habitat is contained in the Management Standards and means mature or senescent trees of Ash eucalypt species containing hollows.⁵⁰² The terms “Mature” and “senescent” are also defined.⁵⁰³
390. This allegation raises three issues:
- (a) whether one tree in the coupe, identified as FE010, has the characteristics that meet the description of a hollow bearing tree in the context of Zone 1A habitat. This was disputed by the Respondent by its notice of dispute,⁵⁰⁴ however that document was filed before the applicant filed and served its evidence on this issue. VicForests now does not dispute (and Mr Paul accepted in cross examination),⁵⁰⁵ that FE010 has the characteristics that meet the description of a hollow bearing tree in the context of Zone 1A habitat;
 - (b) whether if it is, it should be included in any patch for the purposes of a Zone 1A habitat assessment; and
 - (c) whether, if it is not, there still exists a patch for the purposes of Zone 1A.
391. This allegation turns on the question of what constitutes a “patch” for the purpose of the prescription. That term is not defined in the Management Procedures or Planning Standards. For this purpose, the Department has prepared a survey standard (**the Standard**).⁵⁰⁶ The Standard describes the method for identifying a patch for the purposes of the prescription.

⁵⁰¹ Planning Standards [CB. 6.11; p 39].

⁵⁰² [CB 6.10; p 12].

⁵⁰³ [CB 6.10; pp 12-13 and p 18].

⁵⁰⁴ [CB 1.10; paragraph [2]].

⁵⁰⁵ T. 331:36 (B. Paul XXN).

⁵⁰⁶ [CB 3.4.49].

392. The Standard describes the method as follows:⁵⁰⁷

- A. Identifying Leadbeater’s Possum Zone 1A habitat**
- I. Create a ‘tree map’ using the GPS coordinates for all hollow-bearing live mature or senescing Mountain Ash, Alpine Ash or Shining Gum trees.
- II. Create a closed polygon(s) around the tree location where the vertices of the polygon coincide with tree locations. Ensure that no side of the polygon is greater than 100 m and its perimeter is as short as possible. If a tree is more than 100 m from another tree, then create a new polygon. Buffer each polygon by ten meters. Each polygon now represents a separate patch of hollow-bearing trees (Appendix 8 provides an example). Measure the size of each polygon.
- III. Assign polygons to Leadbeater’s Possum Zone 1A habitat if the area of the polygon is >3 ha and the number of trees inside the polygon is > (3.3333 x polygon area in ha). For example, if the polygon area = 4 ha and the number of hollow bearing trees inside the polygon is 24, the polygon is Leadbeater’s Possum Zone 1A habitat, as $24 > 13/3$ (3.3333 x 4).

393. The applicant disputes the Department’s method of determining a “patch” by reference to there being more than 100 m separating polygons.⁵⁰⁸ The applicant’s position is that there is no requirement that mature or senescent hollow-bearing trees within Zone 1A habitat be less than 100 m apart.⁵⁰⁹ The applicant alleges that there are no restrictions in the Code, the Management Procedures or the Planning Standards relating to the configuration or distance between the trees within Zone 1A.⁵¹⁰ The applicant’s position is that the Standard cannot operate to alter the terms of the Management Procedures or Planning Standards insofar as they define Zone 1A habitat.⁵¹¹

⁵⁰⁷ [CB 3.4.49; p 20].

⁵⁰⁸ See letter from EJA to VicForests dated 15 February 2016 [CB 2.8.99].

⁵⁰⁹ See letter from EJA to VicForests dated 15 February 2016 [CB 2.8.99].

⁵¹⁰ See letter from EJA to VicForests dated 15 February 2016 [CB 2.8.99]; T. 328:41-47 (B. Paul XXN).

⁵¹¹ See letter from EJA to VicForests dated 15 February 2016 [CB 2.8.99].

D.2.2. VicForests' evidence

394. The timing of this alleged breach is not particularized but it is apparent from the pleading that it is alleged that VicForests failed to detect the Zone 1A habitat prior to the commencement of harvesting.
395. The evidence of Mr Paul is that timber harvesting commenced in this coupe on around 1 February 2017, ceased on about 27 February 2017, and that an area of 2.52 ha has been harvested.⁵¹² Harvesting has not recommenced in the coupe and the evidence is that VicForests would now have to give serious consideration to the viability of conducting any future timber harvesting in this coupe.⁵¹³
396. The evidence demonstrates that there were a series of surveys and/or investigation for both Leadbeater's Possum and Leadbeater's Possum habitat prior to the commencement of timber harvesting.⁵¹⁴
397. The first survey was conducted by Dr Lindy Lumsden (Section Leader, Wildlife Ecology at ARI) in January 2016.⁵¹⁵ The survey was conducted in accordance with the Department's Standard.⁵¹⁶ Dr Lumsden reported that there were 13 large live hollow-bearing trees, but when the polygons around them were plotted, there were two polygons (0.6 ha and 1.2 ha in size) as they were separated by just over 100 m, "thus not quite meeting the criteria for Zone 1A habitat for 3 ha (although had the gap between them been slightly less the total area would have been > 3 ha)".⁵¹⁷
398. Following this notification, Blue Vein coupe was flagged by VicForests for possible Zone 1A habitat and the information was inputted into VicForests' electronic records.⁵¹⁸
399. The second survey occurred on 15 and 16 June 2016.⁵¹⁹ The area of potential Zone 1A habitat in the gross coupe boundary in the Northern half and Western edge of the coupe was surveyed and 17 mature or senescent live Ash trees were identified in two separate

⁵¹² Second Paul Affidavit [CB 3.4; table at paragraph [161]].

⁵¹³ Second Paul Affidavit [CB 3.4; paragraph [370(f)]].

⁵¹⁴ Second Paul Affidavit [CB 3.4; paragraphs [331] to [345], [350]-[353]].

⁵¹⁵ [CB 3.4.63].

⁵¹⁶ [CB 3.4.49; p 20].

⁵¹⁷ [CB 6.4.63].

⁵¹⁸ Second Paul Affidavit [CB 3.4; paragraphs [335] to [339]; [CB 3.4.64].

⁵¹⁹ [CB 3.4.65].

patches mapped using the Standard.⁵²⁰ The trees were buffered by 50 m. The gap between the two polygons was greater than 100 m and, in accordance with the Standard, those polygons were treated as separate patches.⁵²¹

400. Third party contractors conducted surveys for Leadbeater's Possum using remote cameras and bait stations in and around the coupe throughout July 2016.⁵²² No Leadbeater's Possum were detected.⁵²³
401. Mr Paul gave evidence that before the commencement of timber harvesting operations in Blue Vein coupe, on 17 January 2017, VicForests undertook a field inspection for Leadbeater's Possum habitat as part of VicForests' practice of coupe marking.⁵²⁴ The handwritten annotations on the relevant field map depicted the areas of, and features within, the coupe that were to be excluded from timber harvesting operations.⁵²⁵
402. The operations map dated 27 January 2017,⁵²⁶ depicts the areas in and around Blue Vein coupe that were excluded from harvesting prior to its commencement. The excluded areas included a 200 m THEZ in the Northern portion of the coupe, pre-1900 Mountain Ash in the centre and North of the coupe, a 60 m rainforest buffer and an area of Leadbeater's Zone 1A habitat in the Western portion of the coupe.
403. Harvesting commenced in the coupe on around 1 February 2017.⁵²⁷
404. Following correspondence from Ms Jacobs of EJA to VicForests dated 8 February 2017,⁵²⁸ the harvesting operations in this coupe were the subject of two directions given by Authorised Officers under s 70(1) of the SFT Act.⁵²⁹
405. The first direction dated 9 February 2017,⁵³⁰ required VicForests to protect all live and dead hollow bearing eucalyptus trees and wattle species occurring within the area of

⁵²⁰ [CB 3.6.65].

⁵²¹ [CB 3.6.65].

⁵²² Treetec Report [CB 2.8.85; p 4].

⁵²³ Treetec Report [CB 2.8.85; p 18].

⁵²⁴ Second Paul Affidavit [CB 3.4; paragraph [350]].

⁵²⁵ [CB 2.8.88; p 4].

⁵²⁶ [CB 2.8.85; p 26].

⁵²⁷ Second Paul Affidavit [CB 3.4; paragraph [362]].

⁵²⁸ [CB 2.8.83].

⁵²⁹ [CB 3.4.71; CB 3.4.72]; Second Paul Affidavit [CB 3.4; paragraphs [356] to [360]].

⁵³⁰ [CB 3.7.71 and CB 12 (map)].

provisional Leadbeater's Possum Zone 1B habitat identified on a map.⁵³¹ The area demarcated on the map as protected covered the overwhelming majority of the coupe, and continued into the coupe adjacent to Blue Vein.

406. On 10 February 2017, the Department directed VicForests to cease harvesting in the coupe.⁵³²
407. On 16 February 2017 the Department further directed VicForests to:⁵³³
- (a) protect and retain all standing, live and dead pre-1900 eucalypt trees within the coupe, including the “dead stag” trees identified in the report provided by Ms Jacobs on 8 February 2017;
 - (b) provide the Department with a revised timber harvesting plan describing how VicForests would protect and retain all remaining live and dead pre-1900 eucalypt trees during future timber harvesting operations (including regeneration burning) within the coupe; and
 - (c) protect all live and dead hollow bearing eucalyptus trees and wattle species occurring within the area of provisional Leadbeater's Possum Zone 1B habitat identified on the map included with the direction.
408. Both directions indicated that the Department would undertake further field verification of Ms Jacobs' report.⁵³⁴
409. On 17 February 2017, the Department determined that the lower section of Blue Vein coupe did not meet Leadbeater's Possum Zone 1B requirements. Harvesting then recommenced in the lower section.⁵³⁵ Harvesting ceased in the coupe on 21 February 2017 following a report of a detection of a Leadbeater's Possum in the coupe.⁵³⁶ The

⁵³¹ [CB 3.7.71 and CB 12 (map)].

⁵³² Second Paul Affidavit [CB 3.4 [362]].

⁵³³ [CB 3.4.72].

⁵³⁴ [CB 3.4.71; p 2 and CB 3.4.72; p 5].

⁵³⁵ Second Paul Affidavit [CB 3.4; paragraph [362]].

⁵³⁶ Second Paul Affidavit [CB 3.4; paragraphs [364] to [365]].

detection occurred in an area of the edge of the coupe next to the area that had been harvested prior to the detection.⁵³⁷

410. The Department later determined that no Leadbeater’s Possum Zone 1A habitat or Zone 1B habitat was present in the coupe.⁵³⁸

D.2.3. The area does not constitute a “patch”

411. In *MyEnvironment*⁵³⁹ Osborn JA said:

There is also a dispute between the parties as to the word ‘patches’. I do not accept that patches is simply a synonym for areas. A patch must be a patch of forest. I do accept, however, that it need not be regular in configuration. It is an ordinary English word and its applicability is a question of fact.

412. In his first report, the applicant’s expert, Mr Shepherd,⁵⁴⁰ drew 10 different configurations of “patches” using three separate methods.
413. Using method 1, Mr Shepherd identified a single patch incorporating tree FE010 (**Patch 1**) displayed in Figure 1 of his report.⁵⁴¹ Using method 2, Mr Shepherd identified a range of patches, some of which were linear, contained narrow corridors and did not “facilitate a Tree Protection Zone”.⁵⁴² The polygon depicted using method 3 was described as “linear (not patch-like).”⁵⁴³
414. It is therefore to be accepted that where a polygon is linear, it is not a “patch”.
415. In his first supplementary report,⁵⁴⁴ Mr Shepherd drew a polygon which does not incorporate FE010 but does incorporate the extant Zone 1A and joins trees to the north of the coupe, which are already marked to be excluded from harvesting.

⁵³⁷ Second Paul Affidavit [CB 3.4; paragraphs [364] to [365]]; [CB 2.3.5; p 5].

⁵³⁸ Second Paul Affidavit [CB 3.4; paragraphs [369]]; Fourth Paul Affidavit [CB 3.6.115].

⁵³⁹ At [253].

⁵⁴⁰ [CB 4.6.1].

⁵⁴¹ [CB 4.6.1; p 12].

⁵⁴² [CB 4.6.1; p 13].

⁵⁴³ [CB 4.6.1; p 15].

⁵⁴⁴ [CB 4.6.4; p 8].

416. In his second supplementary report,⁵⁴⁵ Mr Shepherd drew a polygon incorporating the extant Zone 1A and FE010 to join the trees in the north of the coupe which are marked to be excluded from harvesting. In cross-examination, Professor Baker was taken to this polygon and observed:⁵⁴⁶

Well, what appears to be the case in the right-hand panel Mr Shepherd's report is that you have a very low density of live mature trees which means it wouldn't be zone 1A. And I note that he has also drawn his boundary to effectively minimise the area which would effectively inflate the likelihood that it would be zone 1A.

...

I mean the obvious question is why he took from FE010 straight up to 952 and not straight across to 954 to make it a proper patch. And so what he has done there is specifically reduce the area to perimeter ratio.

That's what you assume he has done. You don't actually know that?--No. I mean if he drew a straight line from FE10 to 954 you certainly wouldn't meet the qualifications for zone 1A, and I don't know why he would have turned up instead of to go and make it a proper circle.

But he certainly found 13 relevant trees in that area that he has shaded - - -?---It appears to be, but he also seems to have taken the minimum possible area in terms of doing the assessment, so I would have thought this is a pretty marginal case for zone 1A.

417. Professor Baker's opinion was that Mr Shepherd had "done everything he could possibly do to minimise the area relative to the number of trees".⁵⁴⁷ Professor Baker's opined that had the line been drawn directly between FE010 and the tree marked 954 then the "patch" would certainly go below the Zone 1A threshold, in which case it would be consistent with his own modelling of the coupe.⁵⁴⁸

418. What emerges from the evidence is that unless parameters are in place, a "patch" assessment is easily manipulated in order to produce a desired result.⁵⁴⁹ The Standard has a practical application in the sense that it describes how a patch of Zone 1A habitat

⁵⁴⁵ [CB 4.6.5; p 8].

⁵⁴⁶ T. 621: 12-16, 42-45 to T. 622:1-9 (Prof Baker XXN).

⁵⁴⁷ T. 622: 11-13 (Prof Baker XXN).

⁵⁴⁸ T. 622. 40(Prof Baker XXN).

⁵⁴⁹ T. 622: 11-41 (Prof Baker XXN).

is to be identified on the ground. Mr Paul said in cross examination in reference to the Standard:⁵⁵⁰

... you actually can't apply the management standards on the ground without some form of interpretation. It's not possible.

419. This is a dispute between the applicant and the Department as to how the Department interprets the prescription by reference to the Standard, and how VicForests applied the Standard in this case,⁵⁵¹ as required by the Department.⁵⁵² The Department has determined there is no patch of Zone 1A habitat in this coupe incorporating FE010 or otherwise.
420. Of course, if VicForests had indeed applied to the Secretary to the Department to create a special protection zone to include the alleged Zone 1A habitat prior to commencing logging in the Blue Vein coupe (as the applicant alleges VicForests ought to have done), the Department would have refused such a request because it had formed the view that no such patch existed. This emphasises the point that the applicant's real dispute is with the Department.
421. VicForests' timber harvesting operations in Blue Vein coupe were the subject of pre-harvest surveys, two directions under s 70(1) of the SFT Act and a separate investigation by the regulator. The Department has concluded there has been no breach of the Code. The weight of the evidence demonstrates that there has been no breach of the Code by reason of any failure to comply with the Management Procedures. It follows that this allegation ought to be dismissed.

D.3. Alleged failure to identify Leadbeater's Possum colony

D.3.1. The pleaded allegation

422. Paragraph 113D of the 3FASOC concerns a further allegation that VicForests failed to comply with cl 2.2.2.4 of the Code.⁵⁵³

⁵⁵⁰ T. 330:8-9 (B. Paul XXN).

⁵⁵¹ T. 330: 21-22 (B. Paul XXN).

⁵⁵² T. 331: 5-11 (B. Paul XXN).

⁵⁵³ [CB 6.9; at p 34].

423. The particulars of the allegation are that VicForests:
- (a) failed to identify a Leadbeater’s Possum colony within the Hairy Hyde coupe; and
 - (b) contrary to cl 4.2 of the Management Procedures⁵⁵⁴ failed to follow cl 2.1.1.3 of the Management Procedures,⁵⁵⁵ in that it did not apply to the Secretary to the Department to create an SPZ for the colony in accordance with Appendix 5 of the Planning Standards prior to commencing logging the Hairy Hyde coupe.
424. VicForests has admitted the following facts for the purpose of this proceeding:⁵⁵⁶
- (a) a Leadbeater’s Possum was detected on 2 August 2016 within coupe 345-505-0006 (Hairy Hyde) at the location marked by a white cross numbered “567” on the maps at Annexure BTN-5,⁵⁵⁷ to the Affidavit of Blake Nisbet affirmed 17 September 2018; and
 - (b) the Respondent had conducted forestry operations within Hairy Hyde prior to 2 August 2016.
425. The timing of this alleged breach is not particularised but it is apparent from the pleading that it is alleged that VicForests failed to detect a Leadbeater’s Possum colony prior to the commencement of harvesting.

D.3.2. Insufficient evidence of a breach of the Management Standards

426. There is no evidence that a Leadbeater’s Possum colony was within Hairy Hyde coupe before the commencement of harvesting on 31 May 2016.⁵⁵⁸ It cannot be said, therefore, that VicForests failed to follow cl 2.1.1.3 of the Management Standards and Procedures. This allegation must fail at this threshold level.

⁵⁵⁴ [CB 6.10; p 35].

⁵⁵⁵ [CB 6.10; p 23].

⁵⁵⁶ See notice to admit and notice of dispute at [CB 1.9] and [CB 1.10].

⁵⁵⁷ [CB 2.4.5].

⁵⁵⁸ [CB 3.4; p 68]. Mr Paul was asked in cross examination: And it’s the case, isn’t it, that VicForests had not conducted a survey for Leadbeater’s Possum prior to commencing forestry operations?-- I’m not – I’m not certain (T. 332:4-5 (B. Paul XXN)).

427. The evidence of Mr Paul is that harvesting was suspended temporarily from 30 June 2016 because of winter and would ordinarily have recommenced in October of that year.⁵⁵⁹ It has not recommenced. The area of the coupe that was harvested prior to the suspension of harvesting on 30 June 2016 is depicted on a map dated 1 July 2016: this area was visited during the view.⁵⁶⁰
428. Mr Nisbitt (on behalf of WOTCH) notified the Department of the detection of a Leadbeater's Possum in Hairy Hyde coupe on 3 August 2016.⁵⁶¹ Harvesting had already ceased in that coupe on 30 June 2016. The Department verified that detection and notified VicForests of that verification on 5 August 2016.⁵⁶²
429. Following the detection, a 200 m radius THEZ was applied from which timber harvesting is excluded.
430. As is depicted on the context map dated 5 August 2016,⁵⁶³ the THEZ from which timber harvesting is excluded overlaps the area already harvested in this coupe by a small margin.
431. The evidence of Bill Paul is that any future harvesting in this coupe is subject to VicForests re-running the coupe overlay process to identify new information which may, in turn, generate requirements for future targeted species surveys.⁵⁶⁴
432. Mr Paul's evidence is that VicForests will conduct any future timber harvesting operations in Hairy Hyde in accordance with the Code, applicable management actions and management prescriptions.⁵⁶⁵
433. It follows therefore that this allegation is not established on the evidence.

⁵⁵⁹ Second Paul Affidavit [CB 3.4; p 147 [374]].

⁵⁶⁰ [CB 3.4.78].

⁵⁶¹ [CB 2.4.2].

⁵⁶² [CB 3.4.80 and CB 3.4.81]

⁵⁶³ [CB 3.4.82].

⁵⁶⁴ Second Paul Affidavit [CB 3.4; p 149 [385]].

⁵⁶⁵ Second Paul Affidavit [CB 3.4; p 149 [385]].

D.4. Alleged failure to maintain a 20m buffer

D.4.1. The pleaded allegation

434. In paragraph 113E of the 3FASOC it is alleged that forestry operations in any, some or all of the logged coupes other than Blue Vein, Hairy Hyde, Tarzan, Rowels, the Cambarville logged coupes,⁵⁶⁶ and Swing High (the 113E coupes) were not in accordance with cl 47 of the CH RFA because VicForests failed to comply, in planning and conducting those forestry operations, with cl 2.3.1.1 and cl 2.5.1.1 of the Code.⁵⁶⁷
435. The particulars under paragraph 113E make clear that the allegation is that in the 113E coupes VicForests failed to screen timber harvesting operations and new road alignments from view with a 20 m vegetation buffer, and thus failed to:
- (a) plan and manage timber harvesting for the 113E coupes in accordance with cl 5.3.1.5 of the Management Standards and Procedures;⁵⁶⁸ and
 - (b) exclude timber-harvesting operations from the exclusion areas created for the 113E coupes in accordance with cl 7.1.2.1(c) of the Management Procedures.⁵⁶⁹
436. The only evidence in support of this allegation is contained in the Third Lincoln Affidavit.⁵⁷⁰ His evidence concerns five Logged Coupes only: Greendale, De Valera, Professor Xavier, Bullseye and Opposite Fitzies.
437. The allegation concerning the balance of the 113E coupes⁵⁷¹ must therefore be dismissed irrespective of whether VicForests' submissions as to the proper construction of cl 5.3.1.5 of the Management Procedures are accepted.

D.4.2. Proper construction of the landscape vegetation buffer

438. Clause 5.3.1.5 of the Management Standards and Procedures is contained within section 5.3 titled "Landscape" of chapter 5 "Other values." The clause follows detailed

⁵⁶⁶ Bromance and Lovers Lane.

⁵⁶⁷ [CB 6.9; pp 36 and 42].

⁵⁶⁸ [CB 6.10; p 43].

⁵⁶⁹ [CB 6.10; p 53].

⁵⁷⁰ [CB 2.11].

⁵⁷¹ Glenview, Flicka, Guitar Solo, Mont Blanc, Kenya, The Eiger, Ginger Cat, Estate, Skerry's Reach, Golden Snitch, Hogsmead, Houston, Rocketman, Camberwell Junction.

provisions directed to ensure water quality, river health and soil protection (chapter 3) and biodiversity (chapter 4).⁵⁷²

439. Insofar as the CH FMAs are concerned, the landscape provisions state (with emphasis added):

5.3.1.1	Central Highlands FMAs
5.3.1.1	Retain all mature trees within 20 m of the Monda Track.
5.3.1.2	Apply a 50 m buffer either side of La La Falls walking track.
5.3.1.3	Apply a 50 m buffer either side of Island Creek walking track and a 100 m buffer around the Ada tree.
	<i>Foreground (0–500 m)</i>
5.3.1.4	Within 500 m of the scenic drives and designated lookouts listed in table 9 in Appendix 5 [of] the Planning Standards, manage timber harvesting operations to ensure landscape alterations are temporary, subtle and not evidence to the casual observer.
5.3.1.5	<u>Screen timber harvesting operations (except selective harvesting operations) and new road alignments from view. Use a minimum 20 m vegetation buffer with particular emphasis on the sensitive landscape features listed in table 9 in Appendix 5 [to] the Planning Standards.</u>
	<i>Middleground (500 m – 6.5 km)</i>
5.3.1.6	In the middle ground, between 500 m and 6.5 km, seen from the features listed in table 9 in Appendix 5 [to] the Planning Standards: (a) manage timber harvesting operations to ensure landscape alterations are only subtly apparent within 5 years of the operation; and (b) shape, position and time timber harvesting operations and new roads to minimise their visual impact.

440. The prescription in question is underlined in the table. Table 9 in Appendix 5 to the Planning Standards,⁵⁷³ sets out the fixed FMZ rules for landscape management.

441. On its proper construction, cl 5.3.1.5 requires a minimum 20 m vegetation buffer where a new coupe or road is within the foreground (0–500m) of, and may be visible from, a

⁵⁷² [CB 6.10; p 43].

⁵⁷³ [CB 6.11; p 141 ff].

landscape feature listed in table 9 in Appendix 5 to the Planning Standards, with particular emphasis on the sensitive landscape features in table 9.

442. That construction is consistent with surrounding context, in particular cl 5.3.1.6 relating to the middle ground (500 m — 6.5km), which makes plain that the clause is concerned with operations as seen from the features listed in table 9.

D.4.3. No evidence of any breach of cl 5.3.1.5

443. Mr Paul's evidence in the Fifth Paul Affidavit is that none of Greendale, De Valera, Bullseye or Opposite Fitzies are within 500 m of scenic drives or designated lookouts in Table 9 of Appendix 5.⁵⁷⁴ The allegation fails in respect of these coupes as the prescription is not engaged.
444. The one remaining coupe —Professor Xavier— is located on Warburton–Woods Point Road.⁵⁷⁵ Table 9 in Appendix 5 of the Planning Standards provides that, in respect of the environs of the Warburton–Woods Point Road, the zoning management action is to maintain a 50 m SPZ either side of each road and the relevant management action is to develop and comply with an SMZ plan.
445. The SMZ plan —prepared by the Department— records that a visual buffer was in place along the Warburton-Woods Point Road and that a strategic break along the Warburton-Woods Point Road was constructed during the 2006 fires.⁵⁷⁶ The SMZ plan records that the associated retention of a narrow strip of retained trees was causing public safety issues because the trees were prone to windthrow.⁵⁷⁷ Harvesting of trees within the SMZ was accordingly permitted where the strategic break existed.⁵⁷⁸
446. Contrary to the construction seemingly advanced by the applicant,⁵⁷⁹ cl 5.3.1.5 does not require a minimum 20 m vegetation buffer to be applied to *all* timber harvesting operations. Such a construction:

⁵⁷⁴ [CB 3.8; p 6 [21]].

⁵⁷⁵ [CB 3.8.3; p 9]

⁵⁷⁶ [CB 3.8.3; p 5].

⁵⁷⁷ [CB 3.8.3; p 5-6].

⁵⁷⁸ [CB 3.8.3; p 6].

⁵⁷⁹ See the Third Lincoln Affidavit [CB 2.11].

- (a) ignores the sub-heading “Foreground (0-500 m)”;
- (b) impermissibly construes the phrase “[u]se a minimum 20 m vegetation buffer” in isolation from its surrounding text, namely the introductory phrase “[s]creen timber harvesting operations ... and new road alignments from view”; and
- (c) would be inconsistent with surrounding context, namely cl 5.3.1.6.

447. There is no evidence in the Third Lincoln Affidavit that any of the five coupes Mr Lincoln visited are within the foreground (0–500 m) of a landscape feature listed in table 9 of Appendix 5 to the Planning Standards, and thus fall within the requirements of vegetation buffer requirements of cl 5.3.1.5.

448. In cross-examination, Mr Paul was asked questions about the use of the 20 m buffers for Greater Glider to be able to traverse roads.⁵⁸⁰ This questioning was misdirected. The 20 m buffer requirement is to provide a visual amenity, not to provide protection to Greater Glider.⁵⁸¹ The applicant has pleaded it as such.

449. It follows that the allegations in paragraph 113E must be dismissed in entirety.

D.5. Alleged failure to keep 150m gap

D.5.1. The pleaded allegation

450. In paragraph 113F of the claim it is alleged that forestry operations in any, some or all of the De Valera coupe, the Ginger Cat coupe, the Greendale coupe, the Professor Xavier coupe and the Rubicon logged coupes,⁵⁸² (the 113F coupes) were not in accordance with cl 47 of the CH RFA because VicForests failed to comply with cl 2.2.2.1 of the Code.

451. Clause 2.2.2.1 of the Code is a mandatory action contained in a section concerning conservation of biodiversity. It provides:

⁵⁸⁰ T.332:15

⁵⁸¹ T. 332:17 (B. Paul XXN).

⁵⁸² Defined in paragraphs 9.37–9.40 of the 3FASOC to be Golden Snitch, Hogsmeade, Houston and Rocketman coupes.

2.2.2.1	Planning and management of timber harvesting operations must comply with relevant biodiversity conservation measures specified within the Management Standards and Procedures .
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452. The particulars under paragraph 113F of the claim make clear that cl 4.1.4.4 of the Management Standards and Procedures is the ‘relevant biodiversity conservation measure’ relied on by the applicant. Clause 4.1.4.4 is within chapter 4 ‘Biodiversity’ and in section 1 ‘Habitat Retention’. To properly construe that cl it is necessary to consider it in its context. Clause 4.1.4 in entirety provides:

4.1.4	Central Highlands FMAs
4.1.4.1	When selecting habitat trees, prioritise hollow-bearing trees where they are present and trees most likely to develop hollows in the short-term.
4.1.4.2	Scatter habitat trees across the timber harvesting coupe in mixed-species forest .
4.1.4.3	Where possible, retain potential hollow-bearing ash eucalypts in clumps to increase their protection from exposure, windthrow and fire.
4.1.4.4	No gap between retained vegetation to be greater than 150 m.
4.1.4.5	Retain habitat trees where they can be most easily protected from damage during harvesting and site preparation treatment.

453. The phrase “retained vegetation” is not defined. This was accepted by the applicant’s expert, Mr Mueck.⁵⁸³ “Habitat tree” is defined in the Management Standards and Procedures to have the same meaning as in the Code. The Code definition is:

‘**habitat tree**’ means a tree identified and protected from harvesting to provide habitat or future habitat for **wildlife**. A habitat tree may be living or dead, and often contains hollows that are suitable shelter and/or nesting sites for animals such as possums and parrots.

454. Section 4.1.4 only applies to the Central Highlands FMAs. Section 4.1.1, that applies Statewide and precedes section 4.1.4, provides:

⁵⁸³ T. 175:16-35 (Mr Mueck XXN).

4.1.1	Statewide
4.1.1.1	Retain habitat trees in accordance with the FMA summary provided in Appendix 3 Table 12 (Habitat tree prescriptions).
4.1.1.2	Trees in buffers or other exclusion areas that have been extended beyond minimum required widths can contribute to habitat tree retention requirements.

455. Appendix 3 Table 12 states the following for Central Highlands FMAs:

Forest Type	Habitat Tree Requirements	Comment
Ash/HEMS ⁵⁸⁴	All ash eucalypts originating before 1900. At least 40 trees per 10 ha for the length of the rotation in ash forests originating since 1900.	Retain at least 1 potential hollow-bearing tree where gaps between retained trees are greater than 150-metres. Retained trees should be a mixture of hollow bearing trees where present and other trees most likely to develop hollows in the short term.
Mixed Species	40+ trees per 10 ha	

456. There is no allegation concerning cl 4.1.1.1.

D.5.2. Proper construction of the habitat retention requirement

457. Clause 4.1.4.4 requires VicForests to ensure that there are no gaps greater than 150 m between retained vegetation and hollow-bearing trees, or potential hollow-bearing trees, where such trees are present.

458. The reference to “retained vegetation” in cl 4.1.4.4 of the Management Standards and Procedures must be understood in light of the localised reference to the Central Highlands FMAs in Appendix 3 Table 12. In other words, cl 4.1.4.4 should be read harmoniously with Appendix 3 Table 12: the latter explaining that where gaps between retained trees (that is, vegetation) are greater than 150 metres, retain at least 1 potential

⁵⁸⁴ High Elevation Mixed Species.

hollow-bearing tree (that is, hollow-bearing trees, or other trees most likely to develop hollows in short term).

459. Such a construction is consistent with the CH FMP,⁵⁸⁵ which is a relevant policy document that has informed the Management Standards and Procedures.⁵⁸⁶ The “Management Guideline” for tree retention on timber harvesting coupes states (with emphasis added):

On timber harvesting coupes in the Central Highlands:

- all ash eucalypts originating before 1900 should be retained
- at least 40 trees per 10 hectares should be retained for the length of the rotation in ash-eucalypt forest originating since 1900, and in all mixed species forests
- retained tree should be a mixture of:
 - hollow bearing trees (where present)
 - *other trees most likely to develop hollows in short term*

Distribution of retained trees:

- In mixed species forest retained trees should remain scattered across the timber harvesting coupe
- Potential hollow-bearing ash eucalypts should be retained in clumps to increase their protection from exposure, windthrow and fire
- Within 150 m of retained vegetation there is no requirement to *retain potential hollow-bearing trees* (although at least 40 trees per 10 hectares should be retained across the coupe)
- Trees should be retained where they can be most easily protected from damage during harvesting and site preparation treatment

D.5.3. Insufficient evidence of breach of the 150m gap requirement

460. The evidence in support of this allegation is contained in the Second Mueck Report.⁵⁸⁷

461. Mr Mueck’s report does not deal with Ginger Cat coupe.⁵⁸⁸ In cross examination, Mr Paul was asked questions about that coupe by reference to a photograph contained in the First Smith Report.⁵⁸⁹ That photograph was of a small portion of the coupe, and because of its angle, provides no perspective. Mr Paul did not accept that there was no retained vegetation in that coupe without actually looking at the coupe,⁵⁹⁰ although he

⁵⁸⁵ [CB 6.15; p 26].

⁵⁸⁶ Code, [CB 6.9; p 24].

⁵⁸⁷ [CB 4.8].

⁵⁸⁸ T. 175:21 (Mueck XXN).

⁵⁸⁹ [CB 4.2.1; p 75].

⁵⁹⁰ T. 333:8-9 (B. Paul XXN).

accepted that he could not see any retained vegetation in the harvested portion of the coupe depicted in the (limited) photograph.⁵⁹¹ The evidence in respect of Ginger Cat coupe is so limited that the allegation should be dismissed in respect of this coupe at a threshold level.

462. Assuming VicForests' construction is accepted, it is apparent from the Second Mueck Report that he has misdirected himself as to the true construction of cl 4.1.4.4.⁵⁹² For example, although Mr Mueck recognises that trees have been retained in the coupes,⁵⁹³ he does not consider those trees to be retained vegetation within the meaning of cl 4.1.4.4, nor does he know whether there are (or were) any hollow-bearing trees, or potentially hollow-bearing trees, in the coupes.⁵⁹⁴ He did not perform any site inspection of the coupes the subject of his report.⁵⁹⁵ Mr Mueck acknowledged his own interpretation of cl 4.1.4.4 led to an impractical application of the rule.⁵⁹⁶
463. In that event, there is no evidence supporting a finding that VicForests' has breached cl 4.1.4.4 in any of the alleged coupes because there is no evidence that there are gaps greater than 150 m between retained vegetation and hollow-bearing or potential hollow-bearing trees that were or are present in any of the coupes. All of the coupes the subject of the allegation contained 1939 regrowth,⁵⁹⁷ and predominantly Mountain Ash or Alpine Ash.⁵⁹⁸ This type of regrowth forest generally contains only low numbers of mature and senescent trees.⁵⁹⁹ In other areas of the Central Highlands, particularly in the mixed-species forests in the east of the planning area, hollow-bearing trees are more abundant, and in those areas retained trees will be a mixture of existing and potential

⁵⁹¹ T. 333:20 (B. Paul XXN).

⁵⁹² T. 177:45 – T 178:3 (Mueck XXN).

⁵⁹³ Second Mueck Report, [CB 4.8, at paragraph [23]]; T. 177: 43 (Mueck XXN).

⁵⁹⁴ T. 178:12 (Mueck XXN).

⁵⁹⁵ T. 178:9 (Mueck XXN).

⁵⁹⁶ T. 178:15-20 (Mueck XXN).

⁵⁹⁷ See [CB 7.20.3e] [CB 8.18; p 3] [CB 11.104; p 3] [CB 8.20; p 3] and [CB 8.21; p 3] (Rubicon coupes: Golden Smith, Hogsmeade, Houston, Rocketman); [CB 7.21.3e] and [CB 8.22; p 2] (De Valera); [CB 7.17.3e] and [CB 8.16; p 2], (Greendale); [CB 7.14.3e] and [CB 8.26; p 3] (Professor Xavier); [CB 7.6.3e] and [CB 8.5; p 2], (Ginger Cat).

⁵⁹⁸ [CB 8.5 p 2] (Ginger Cat coupe plan); [CB 8.16 p 2]; (Greendale coupe plan); [CB 8.18; p 3] (Golden Snitch coupe plan); [CB 11.104 p 3] (Hogsmeade coupe plan); [CB 8.20 p 3] (Houston coupe plan); [CB 8.21; p 3] (Rocketman coupe plan); [CB 8.22; p 2] (De Valera coupe plan); [CB 8.26 p 3] (Professor Xavier coupe plan).

⁵⁹⁹ CH FMP [CB 6.15; p 25].

hollow-bearing trees.⁶⁰⁰ The forest age and type in the coupes the subject of this allegation means it was unlikely to have actual or potential hollow-bearing trees.

464. For the above reasons this aspect of the claim must be dismissed.

E. SIGNIFICANT IMPACT

E.1. The construction of “significant impact” within the meaning of s 18 of the EPBC Act

465. Section 18 of the EPBC Act operates on an action that has, or will have, or is likely to have a significant impact on a listed threatened species. In this case, it is the undertaking of the forestry operation that is the relevant action.

466. Because of the connection between forestry operations (for the purposes of the s 38 analysis) and actions (for the purposes of the s 18 analysis), and in particular with respect to the allegation that forestry operations in each of, some of, or all of the coupes the subject of the proceeding will have a significant impact, it is necessary to briefly outline the applicant’s pleaded case.

E.1.1. The applicant’s pleaded case as to “significant impact”

E.1.1.1. Greater Glider

467. Paragraphs 9 and 10 of the 3FASOC⁶⁰¹ list the coupes the subject of this proceeding under headings which were referred to in the course of the trial as “coupe groups”.

468. At paragraphs 32 to 39D of the 3FASOC, the applicant alleges that forestry operations in each of a number of named Logged Coupes have had, are having or are likely to have, a significant impact on the Greater Glider. In respect of the Mount Despair coupes, the Ada Tree coupes and the Cambarville coupes, it is pleaded that forestry operations in one or both coupes have had, are having or are likely to have a significant impact.⁶⁰² The different terminology in this plea is explained by the fact that each coupe group comprises two individual coupes.

⁶⁰⁰ CH FMP [CB 6.15; p 26].

⁶⁰¹ [CB 11.A].

⁶⁰² Paragraphs 32, 35 and 39A of the 3FASOC [CB 11.A].

469. Nevertheless, the allegations in these paragraphs are coupe specific, and therefore require the Court to consider the question of significant impact on the Greater Glider in respect of forestry operations in each individual coupe the subject of that allegation.
470. At paragraph 40 of the 3FASOC, the applicant alleges that forestry operations in some or all of Logged Coupes 9.5, 9.6, 9.12, 9.13, 9.17, 9.20, 9.26, 9.30, 9.32, 9.33, 9.35 and 9.36 (defined as the **Logged Glider Coupes**) have had, are having or are likely to have, a significant impact on the Greater Glider.
471. This allegation requires the Court to consider the question of significant impact on the Greater Glider in respect of forestry operations in some or all of the Logged Glider Coupes. However, in order to assess whether a forestry operation is in fact having a significant impact on some or all Logged Coupes, the Court is required to conduct a coupe by coupe analysis. This is the same task the Court is required to undertake with respect to the allegations in paragraphs 32 to 39D.
472. In relation to the Scheduled Coupes, the applicant alleges at paragraphs 73 to 104 of the 3FASOC that forestry operations in each of Scheduled Coupes 10.1 to 10.36 and 10.38 to 10.40 are likely to have a significant impact on the Greater Glider. These allegations are made at an individual coupe level.
473. By paragraph 105, the applicant alleges that forestry operations in some or all of the Scheduled Coupes are likely to have a significant impact on the Greater Glider. This allegation is repeated in paragraph 105D. Again, this requires the Court to consider the forestry operation on a coupe-by-coupe basis, because to determine whether the forestry operations in some or all of the coupes will have a significant impact, it is necessary to consider all of them.
474. The particulars of the alleged significant impact on the Greater Glider are contained in paragraphs 32, 73 and 105D. The particulars of the alleged significant impact are as follows:

There is a real chance that forestry operations ...have had, are or are likely to

(a) lead to a long-term decrease in the size of an important population of Greater Glider;

- (b) reduce the area of occupancy of an important population of Greater Glider;
- (c) fragment an important population of Greater Glider into two or more populations;
- (d) adversely affect habitat critical to the survival of the Greater Glider;
- (e) disrupt the breeding cycle of an important population of Greater Gliders;
- (f) modify, destroy, remove, isolate, or decrease the availability or quality of habitat to the extent that the Greater Glider is likely to decline;
- (g) interfere substantially with the recovery of the Greater Glider; have an impact that is important, notable or of consequence for the Greater Glider, having regard to its context and intensity, and the sensitivity, value and quality of the environment being impacted.

475. These particulars mirror the significant impact criteria in respect of vulnerable species set out in the Guidelines.⁶⁰³ The status of this document is addressed below.

E.1.1.2. Leadbeater's Possum

476. At paragraphs 22 to 23, 26, 28 and 29A to 29B of the 3FASOC,⁶⁰⁴ the applicant alleges that forestry operations in Logged Coupes 9.12, 9.16 to 9.21, 9.25, 9.31, 9.35, 9.36 and 9.37 to 9.40 have had, are having or are likely to have a significant impact on the Leadbeater's Possum.

477. At paragraph 24, the applicant alleges that forestry operations in one or both of Logged Coupes 9.17 and 9.18 have had, are having or are likely to have a significant impact on the Leadbeater's Possum.

478. At paragraphs 25 and 29C, the applicant alleges that forestry operations in each of the Starlings Gap Logged Coupes and the Rubicon Logged Coupes have had, are having or are likely to have a significant impact on the Leadbeater's Possum.

479. In paragraph 30 of the 3FASOC, the applicant alleges that forestry operations in some or all of Logged Coupes 9.12, 9.16 to 9.21, 9.25, 9.31, 9.35, 9.36 and 9.37 to 9.40 (defined as the **Logged Leadbeater's Possum Coupes**) have had, are having, or are likely

⁶⁰³ [CB 4.2.2.14].

⁶⁰⁴ [CB 11.A].

to have a significant impact on the Leadbeater's Possum. The allegation is repeated in paragraph 105B.

480. Insofar as the Scheduled Coupes are concerned, the applicant alleges at paragraphs 42 to 52 and 59 to 70B that forestry operations in each of Scheduled Coupes 10.1 to 10.8, 10.11 to 10.13, 10.22 to 10.31, 10.34 and 10.32A are likely to have a significant impact on the Leadbeater's Possum. This is an individual coupe allegation of the type discussed above.
481. At paragraph 71 of the 3FASOC, the applicant alleges that forestry operations in some or all of the Scheduled Coupes 10.1 to 10.8, 10.11 to 10.16, 10.8 to 10.20, 10.22 to 10.31, 10.34 and 10.32A (defined as the **Scheduled Leadbeater's Possum Coupes**) are likely to have a significant impact on the Leadbeater's Possum. This allegation is repeated at paragraph 105B. This is a global allegation of the type discussed above.
482. The particulars of the alleged significant impact (in respect of the Logged Leadbeater's Possum Coupes, the Scheduled Leadbeater's Possum Coupes and in respect of the coupes individually and cumulatively) are set out in paragraphs 22, 42, 71 and 105B. The particulars of the alleged significant impact are:

There is a real chance that forestry operations ...have had, are or are likely to:

- (a) lead to a long-term decrease in the size of the population of the Leadbeater's Possum;
- (b) reduce the area of occupancy of the Leadbeater's Possum;
- (c) fragment an existing population of Leadbeater's Possum into two or more populations;
- (d) adversely affect habitat critical to the survival of the Leadbeater's Possum;
- (e) disrupt the breeding cycle of Leadbeater's Possums;
- (f) modify, destroy, remove, isolate, or decrease the availability or quality of habitat to the extent that the Leadbeater's Possum is likely to decline;
- (g) interfere with the recovery of the Leadbeater's Possum;
- (h) have an impact that is important, notable or of consequence for the Leadbeater's Possum having regard to its context and intensity, and the sensitivity, value and quality of the environment being impacted.

483. These particulars mirror the significant impact criteria in respect of critically endangered and endangered species set out in the Guidelines.

E.1.1.3. “Coupe groups”

484. One issue that emerged in the running of the trial was the question of “coupe groups” and whether the concept of an action applies to forestry operations in a group of coupes and,⁶⁰⁵ consequently, whether the question of significant impact can be addressed at “coupe group” level.⁶⁰⁶ Because of the manner in which this issue emerged during the course of the trial and the fact that the applicant has not clearly articulated its position, VicForests will substantively respond to this issue in its reply submissions. However, it makes the following observations.

485. The concept of “coupe group” is amorphous and fluid on the pleadings, in the sense that there are no particulars provided of which group or combination of coupe groups are to be assessed. This is particularly so with respect to the Scheduled Coupes where the allegations in paragraphs 73 to 104 are made at an individual coupe level. The concept of “coupe group” was said to be encompassed by the phrase “some or all coupes”.⁶⁰⁷

486. The lack of clear articulation and particularisation of what is described as the “coupe group” level is unsatisfactory because the concept of “coupe groups” only emerged during the running of the trial. It is not known by VicForests (or this Court) which coupes form part of a particular coupe group at any point in time, and therefore whether the concept of an action for the purposes of s 18 of the EPBC Act applies to forestry operations in a coupe group. There are any number of combinations of coupes that could constitute a “coupe group” and the question of significant impact would have to be assessed by reference to an equally great number of combinations of lay and expert evidence. As was made clear recently by the Full Court in *Oztech Pty Ltd v Public Trustee of Queensland*:⁶⁰⁸

[29] The sole objective of a pleading is to clearly identify matters in dispute and difference by and between the parties to the dispute. This objective necessarily involves expressing the factual basis of each claim or defence. It is necessary that the legal elements

⁶⁰⁵ T. 797:14-33 (Howe address).

⁶⁰⁶ T. 804: 1-17 (Howe address).

⁶⁰⁷ T. 73: 13-18 (Delany address); T. 747:3-15 (Watson address).

⁶⁰⁸ [2019] FCAFC 102, at [29] to [32] (Middleton, Perram and Anastassiou JJ).

of each cause of action or defence are expressed by reference to allegations of fact required to establish each element. It is not necessary to plead the legal conclusions that follow from the facts, but it is often convenient to do so. These are trite propositions but nevertheless vital to ensuring that the pleading serves its purpose.

[30] There should be no doubt about whether any particular cause of action is relied upon. At a minimum, the pleading should be pellucidly clear about the causes of action, or claims, relied upon by the applicant, including any claims made upon an alternative hypothesis. The explicit clarity with which a claim is expressed should ensure that there be no need for the opposite party to closely scrutinise the pleading in a process of textual construction to determine whether a particular fact is relied upon, or the purpose for which it is alleged, much less to decide whether a particular cause of action is raised. The same basic requirement applies to any defence raised in answer to a claim.

[31] Clarity in pleading is by no means an unattainable objective, even in the most complex litigation. Often the elements of a cause of action require careful and precise identification to ensure that the relevant integer is properly characterised having regard to the context in which the claim arose. The pleading should always be a bespoke articulation of the dispute between the parties, even though the warp and the weft of its fabric may be the same as other claims based upon the same, or a similar, cause of action.

[32] There are occasions when such definition can be difficult and may require reference to technical or scientific material, including cases where the material requires specialist explanation by reference to expert evidence to be given at trial. In some instances, the contended facts may be asserted based upon inferences to be distilled from a web of other facts. In other instances it may be necessary to define an implicit representation drawn from the contextual background against which express statements were made or from the failure to make an express statement contrary to the apparent common assumption of the parties. While the limits of text may in some cases impose linguistic limitations beyond a certain level, such linguistic limitations would not generally present any obstacle to expressing the substantive causes of action with sufficient clarity to ensure that the parties are able to reach a shared understanding of the issues in the dispute.

E.1.2. The proper construction of “impact” and “significant impact”

487. Part 3 of the EPBC Act prohibits “actions” that have, or are likely to have, a significant impact on a matter of national environmental significance, unless the person taking the relevant action has obtained an approval or is otherwise exempted from obtaining such an approval. Although the term “matters of national environmental significance” is not defined in the EPBC Act, matters of national environmental significance presently are: World Heritage properties, National Heritage properties, Ramsar wetlands of international importance, nationally threatened species and communities, migratory

species protected under international agreements, nuclear actions and the Commonwealth marine area.⁶⁰⁹ New matters of national environmental significance are able to be prescribed by regulation under s 25 of the EPBC Act.

488. Sections 18 and 18AA of the EPBC Act are located in Subdivision C of Part 3 and relate to actions with significant impact on nationally listed threatened species.

489. Relevantly for the Greater Glider, s 18(4) provides:

Vulnerable species

- (4) A person must not take an action that:
- (a) has or will have a significant impact on a listed threatened species included in the vulnerable category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the vulnerable category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

490. For the Leadbeater's Possum, section 18(2) provides:

Critically endangered species

- (2) A person must not take an action that:
- (a) has or will have a significant impact on a listed threatened species included in the critically endangered category; or
 - (b) is likely to have a significant impact on a listed threatened species included in the critically endangered category.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

⁶⁰⁹ EPBC Act, Part 3, Subdivision C.

491. The identification of the relevant “action” is a separate and anterior stage to the assessment of significant impact.
492. The term “action” is defined in part in s 523(1) of the EPBC Act to include *inter alia* a project, a development, an undertaking, and an activity or series of activities.
493. For the purpose of the s 18 analysis, the applicant relies on cl (c) of the definition of “forestry operations” in the CH RFA, being the harvesting of Forest Products. In respect of the Scheduled Coupes, this is a different “forestry operation” which is alleged to have led to the loss of exemption under s 38(1). For the reasons explained above, on a proper construction of ss 18 and 38(1), any loss of exemption must be limited to the conduct of the particular forestry operation (the action) which is not in accordance with an RFA.
494. Sections 18 and s 38(1) are coextensive; the ambit of the enquiry at the significant impact stage is only so wide as that permitted by reason of the loss of exemption pursuant to s 38(1). VicForests’ admission that forestry operations in each of, and in some or all of, the Logged Coupes and the Scheduled Coupes are an “action”,⁶¹⁰ must be seen in that context. That is, it is no more than an admission that a forestry operation(s) in each individual Logged Coupe or Scheduled Coupes, or some of the individual coupes, or all of the individual coupes is an individual action for the purposes of the EPBC Act.
495. As noted above in respect of the Scheduled Coupes, it is difficult to identify the requisite “forestry operation” in respect of each of the Scheduled Coupes and, consequently, it is difficult to identify the relevant “action” in each of the Scheduled Coupes against which any significant impact is to be assessed.
496. Although the issue does not squarely arise because the applicant does not rely on the preparation and publication of the TRP in respect of any breach of s 18 of the EPBC Act, it is to be doubted that such conduct constitutes an “action” within the meaning of s 523 having regard to the broader context of the EPBC Act.
497. The preparation, approval and publication of the TRP under Part 5 of the SFT Act is in the nature of government decision making regarding the 2–3 year rolling availability for harvesting and selling of timber resources vested in VicForests, together with associated

⁶¹⁰ Paragraphs 17, 17A, 41 and 41A of the defence to the 2FASOC [CB 1.14].

management activities.⁶¹¹ It is in the nature of a designation of the coupes which may (or may not) be harvested within the period that the TRP is operational, subject to the provisions of Part 5 of the SFT Act. The TRP, by identifying a silvicultural method and nominated period of harvest adjusts the use to which those coupes can be put.

498. The report of the Senate Committee which considered the EPBC Bill⁶¹² noted that whilst the definition in cl 523 (later, s 523) was not exclusive, it provided a clear indication of what was meant by the term. Like the rezoning proposal in *Esposito v Commonwealth*,⁶¹³ and the proposed designation and implementation of conditions in *Secretary, Department of Primary Industries, Parks, Water and Environment v Tasmanian Aboriginal Centre Inc*,⁶¹⁴ the preparation, approval and publication of the TRP is a regulatory function or government decision and not an action within the meaning of s 523 of the EPBC Act.

E.1.2.1. The impact of the forestry operations in some or all of the Logged Coupes and Scheduled Coupes

499. The term “impact” is defined in s 527E of the EPBC Act:

527E Meaning of *impact*

- (1) For the purposes of this Act, an event or circumstance is an impact of an action taken by a person if:
 - (a) the event or circumstance is a direct consequence of the action; or
 - (b) for an event or circumstance that is an indirect consequence of the action—subject to subsection (2), the action is a substantial cause of that event or circumstance.
- (2) For the purposes of paragraph (1)(b), if:
 - (a) a person (the primary person) takes an action (the primary action); and

⁶¹¹ TRP [CB 6.8A; p 3].

⁶¹² Report on Environment Protection and Biodiversity Conservation Bill 1998 and Environment Reform (Consequential Provisions) Bill 1998, at [6.48] available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communication/Completed_inquiries/1999-02/bio/report/contents (accessed 22 July 2019).

⁶¹³ (2015) 235 FCR 1.

⁶¹⁴ (2016) 244 FCR 21.

- (b) as a consequence of the primary action, another person (the secondary person) takes another action (the secondary action); and
- (c) the secondary action is not taken at the direction or request of the primary person; and
- (d) an event or circumstance is a consequence of the secondary action;

then that event or circumstance is an impact of the primary action only if:

- (e) the primary action facilitates, to a major extent, the secondary action; and
- (f) the secondary action is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the primary action; and
- (g) the event or circumstance is:
 - (i) within the contemplation of the primary person; or
 - (ii) a reasonably foreseeable consequence of the secondary action.

500. It is clear from the text of the section that only an “event” or “circumstance” may be an impact of an “action”. The event or circumstance that might be an impact is divided into two kinds: direct and indirect consequences of an action. In this case, the question becomes what are the direct and indirect consequences (by way of events or circumstances) that follow from the “action” of an RFA forestry operation in the Logged Coupes and the Scheduled Coupes?

501. Whilst it is not apparent from the 3FASOC whether it is alleged that the pleaded impacts are direct or indirect consequences, the authorities suggest that for an event or circumstance to be an indirect consequence of an action, it must be demonstrated that the action is a “substantial cause” of that event or circumstance (s 528E(1)(b)) *and* the criteria prescribed by s 527E(2)).⁶¹⁵ In these circumstances, the applicant must be taken

⁶¹⁵ *Tarkine National Coalition Incorporated v Minister for the Environment* (2014) 202 LGERA 244, at [86] (Tracey J); *Tarkine National Coalition Inc v Minister for the Environment* (2015) 233 FCR 254, at [36] to [43] (Jessup J, with whom Kenny and Middleton JJ agreed); *Australian Conservation Foundation Incorporated v Minister for the Environment* (2016) 251 FCR 308, at [157] (Griffiths J)

to allege that the pleaded impacts in paragraphs 22, 42, 71 and 105B (for Leadbeater’s Possum) and 32, 73 and 105D (for Greater Glider) are direct impacts. That is because, as alleged, there is no intermediate or interposed conduct or activity occurring between the forestry operations as a whole and the alleged event or circumstances constituting the impact.⁶¹⁶ The applicant must therefore establish that the pleaded impacts in paragraphs 22, 42, 71 and 105B (for Leadbeater’s Possum) and 32, 73 and 105D (for Greater Glider) are each a direct consequence of the forestry operations in each of the Logged Glider Coupes, the Logged Leadbeater’s Possum Coupes, the Scheduled Leadbeater’s Possum Coupes and the Scheduled Coupes.

502. On balance, it would appear that a series of separate forestry operations (within the meaning of cl (c) of the definition in the CH RFA) may constitute an action for the purpose of s 523, those forestry operation(s) constituting an undertaking or a series of activities within the meaning of s 523 (c) or (d).⁶¹⁷

E.1.3. Impact must be “significant” and operate on the listed threatened species as whole

503. The term “significant” is not defined in the EPBC Act. The authorities suggest that it should be interpreted as meaning “important, notable, or of consequence having regard to its context or intensity”.⁶¹⁸ The word “significant” operates as a limitation to exclude impacts which are minor or unlikely on a listed threatened species.⁶¹⁹ In *Northern Inland Council for the Environment Inc v Minister for the Environment*, Cowdroy J accepted

(appeal and application for review dismissed in *Australian Conservation Foundation Incorporated v Minister for the Environment and Energy* (2017) 251 FCR 359).

⁶¹⁶ See *Tasmanian Aboriginal Centre Incorporated v Secretary, Department of Primary Industries, Parks, Water and Environment (No 2)* (2016) 215 LGERA 1, at [230] (Mortimer J). Her Honour’s characterisation of the direct and indirect impacts was not disrupted on appeal: *Secretary, Department of Primary Industries, Parks, Water and Environment v Tasmanian Aboriginal Centre Incorporated* (2016) 244 FCR 21.

⁶¹⁷ *Brown v Forestry Tasmania (No 4)* (2006) 157 FCR 1, [163] (Marshall J).

⁶¹⁸ *Booth v Bosworth* (2001) 114 FCR 39, [99] (Branson J); *Minister for the Environment & Heritage v Greentree (No 2)* (2004) 138 FCR 198, [191]–[198] (Sackville J); *Krajniw v Brisbane City Council (No 2)* [2011] FCA 563, [10] (Dowsett J); *Northern Inland Council for the Environment Inc v Minister for the Environment* (2013) 218 FCR 491, [91]–[92] (Cowdroy J); *Buzzacott v Minister for Sustainability, Environment, Water, Population and Communities* (2013) 215 FCR 301, [215] (Gilmour, Foster and Barker JJ).

⁶¹⁹ *Krajniw v Brisbane City Council (No 2)* [2011] FCA 563, [10] (Dowsett J); *Northern Inland Council for the Environment Inc v Minister for the Environment* (2013) 218 FCR 491, [91]–[92], [118] (Cowdroy J); *Tasmanian Aboriginal Centre Incorporated v Secretary, Department of Primary Industries, Parks, Water and Environment (No 2)* (2016) 215 LGERA 1, [240].

the parties' construction of "likely" as meaning "a real or not remote chance or possibility".⁶²⁰

504. The extent of the evidence required in considering significant impact on species will depend upon the circumstances of each case,⁶²¹ including the characteristics and circumstances surrounding a specific action, site or species.⁶²²
505. The question of significant impact is ultimately a question of fact as to whether any past or future proposed action has had or will have a significant impact on the listed threatened species included in the vulnerable category or critically endangered category.⁶²³ The outcome of that enquiry in part turns on what is meant by "listed threatened species included in the vulnerable category or critically endangered category".
506. Part 13, Division 1, Subdivision A of the EPBC Act sets out the process of listing threatened species. Section 178(1) of the EPBC Act provides that the Minister must, by legislative instrument, establish a list of threatened species divided into categories which include critically endangered and vulnerable. A native species is eligible to be included in the critically endangered category at a particular time if, at that time, it is facing an extremely high risk of extinction in the wild in the immediate future, as determined in accordance with the prescribed criteria.⁶²⁴ A native species⁶²⁵ is eligible to be included in the vulnerable category at a particular time if, at that time, it is not critically endangered or endangered and it is facing a high risk of extinction in the wild in the medium-term future, as determined in accordance with the prescribed criteria.⁶²⁶

⁶²⁰ (2013) 218 FCR 491, [91].

⁶²¹ *Northern Inland Council for the Environment Inc v Minister for the Environment* (2013) 218 FCR 491, [119] (Cowdroy J).

⁶²² Report on Environment Protection and Biodiversity Conservation Bill 1998 and Environment Reform (Consequential Provisions) Bill 1998, [6.56] available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communication/s/Completed_inquiries/1999-02/bio/report/contents (accessed 23 July 2019).

⁶²³ *Minister for the Environment & Heritage v Greentree (No 2)* 138 FCR 198, [192] (Sackville J).

⁶²⁴ Section 179(3).

⁶²⁵ The term "native species" is defined in s 528 of the EPBC Act as a species that is indigenous to Australia or an external Territory, indigenous to the seabed of the coastal sea of Australia or an external Territory, indigenous to the continental shelf, indigenous to the exclusive economic zone, or were present in Australia or an external territory before 1400. The definition also includes members of species which periodically or occasionally visit Australia or an external territory.

⁶²⁶ Section 179(5).

507. Each of the species *Petauroides Volans* (Greater Glider) and *Gymnobelideus leadbeateri* (Leadbeater's Possum) are native species that are listed threatened species. The listing of the *Petauroides Volans* (Greater Glider) and *Gymnobelideus leadbeateri* (Leadbeater's Possum) as threatened species triggers, amongst other matters, the operation of Part 3 of the EPBC Act (of which s 18 forms part), which relate to matters of national environmental significance. It is the listed threatened species to which s 18 is directed.
508. The Explanatory Memorandum to the *Environment Protection and Biodiversity Conservation Bill 1999*,⁶²⁷ made clear that s 18 was not intended to regulate all actions affecting members of a species or community.

60 Not all actions affecting a nationally threatened species or community will have, or are likely to have, a significant impact on that species or community. For example, approval will not be required for some actions which, if carried out on Commonwealth land, would require a permit under Chapter 5 of this Act – injury or death to one member of a species will, except in the case of the most endangered species, not have a significant impact on the species. This clause therefore does not regulate all actions affecting members of a species or community. In order to discharge Australia's international responsibilities, including obligations under the Convention on Biological Diversity, this clause regulates those activities that will, or are likely to, have a significant impact on nationally threatened species or communities.

...

62 In determining whether an action will have a significant impact on a species or community it is necessary to take into account the environment in which the action is to be taken, including other threats or pressures on the species. However, an action carried out by an individual which is not likely to have a significant impact on a threatened species or community will not require approval, even if the overall impact of a large number of individuals independently carrying out actions of the same kind may have a significant impact on the species or community. The cumulative impact of independent action by different persons, all of which are below the significant impact threshold, are primarily to be addressed through State planning and land management legislation, and recovery plans. Such actions will not require approval under this Act (although they may be addressed in bilateral agreements).

509. In *Northern Inland Council for the Environment Inc v Minister for the Environment*, Cowdroy J accepted that in proving significant impact, it was necessary for the

⁶²⁷ Which is the version that took into account amendments made by the Senate to the Bill as introduced.

significant impact to be on the species as a whole and it was not sufficient to show the likelihood of a significant impact on plants of that species in one location or area (unless the species is only in one location or area).⁶²⁸

510. In support of that proposition, his Honour considered the decision of Branson J in *Booth v Boswell*,⁶²⁹ and, in particular Branson J's consideration of the phrase "significant impact" and the evidence relied on by the parties in that case.
511. *Booth v Boswell* concerned injuries to, and deaths of, large numbers of Spectacled Flying Foxes, due to the installation and operation of an electric grid protecting a crop of lychees on a farm. The question before Branson J was whether the operation of the grid constituted a significant impact on the world heritage values of a declared World Heritage property under s 12 of the EPBC Act.⁶³⁰ The farm was in the vicinity of the Wet Tropics Heritage Area, which was a property included in the World Heritage List, and was a declared World Heritage property pursuant to s 13 of the EPBC Act. In that case the applicant claimed that the Spectacled Flying Foxes were resident in, and contributed in part to, the biodiversity of, the Wet Tropics World Heritage Area,⁶³¹ and their injury and death due to the operation of the grid constituted a significant impact on that area.
512. Branson J found that the continued operation of the grid was likely to have a significant impact on the world heritage values of the Wet Tropics World Heritage area.⁶³² In doing so, her Honour considered the impact of the deaths of the Spectacled Flying Fox from the grid had on the population of the Spectacled Flying Fox in Australia as a whole.⁶³³ Her Honour found that that it was more likely than not that the total number of Spectacled Flying Foxes killed as a result of the grid during the 2000-2001 lychee season

⁶²⁸ (2013) 218 FCR 491, [113], [119]. That case concerned the meaning of the phrase "significant impact" as it occurs in s 139 of the EPBC Act. Section 139 relates to approvals for the taking of an action for the purpose of ss 18 and 18A of the EPBC Act. Here, the question of approval for the taking of an action does not arise, however, it is submitted His Honour's comments are apposite given this case concerns the meaning of the term "significant impact" in the context of ss 18 and 18A of the EPBC Act. Such was acknowledged by Cowdrey J: [118].

⁶²⁹ (2001) 114 FCR 39.

⁶³⁰ That section is in the same form as was considered by her Honour in 2001, with the exception that the word "section" in s 12(4), read "Act" in the version considered in that case: see *Environment and Heritage Legislation Amendment Act (No. 1) 2003*.

⁶³¹ (2001) 114 FCR 39, [18]–[19].

⁶³² (2001) 114 FCR 39, [106]–[107].

⁶³³ (2001) 114 FCR 39, p 51 ff.

was 18,000; with the number of female Spectacled Flying Foxes killed during that same period in the range of 9,900 to 10,800 due to the particular birth and lactation season and breeding cycle for the species.⁶³⁴ This assessment was based on evidence regarding the approximate number of deaths of the Spectacled Flying Fox on each night during the lychee season, and the approximate length of the lychee season.⁶³⁵ Her Honour had regard to what was described as the “vacuum effect”,⁶³⁶ or “source-sink dispersal”, where the grid created a vacant area as Spectacled Flying Foxes were killed off, which would be filled by more Spectacled Flying Foxes as they continued to discover the orchard and move into it. Her Honour considered this issue was relevant to the question of the impact of the grid on the population of Spectacled Flying Fox.⁶³⁷

513. Her Honour considered the evidence relating to the range of the Spectacled Flying Fox and concluded that the specimens killed by the grid resided in the Wet Tropics World Heritage Area,⁶³⁸ and that the majority of the national population inhabited the Wet Tropics World Heritage Area.⁶³⁹ Her Honour considered it more likely than not that the total Australian population of Spectacled Flying Foxes as at early November 2000 did not exceed 100,000,⁶⁴⁰ with the total population of adult female Spectacled Flying Foxes being approximately 50,000.⁶⁴¹ Her Honour concluded, in light of her findings regarding the impact of the grid, that roughly 20 percent of that female population was killed by the grid in the 2000-2001 season.⁶⁴² Evidence as to the impact of other threats to the Spectacled Flying Fox was described as “sparse in the extreme”.⁶⁴³

514. It was in the context of this evidence that her Honour concluded:⁶⁴⁴

In my view the finding that the operation of the Grid during the 2000-2001 lychee season had the consequence that approximately 20% of the population of adult female Spectacled Flying Foxes were killed leads inevitably to the conclusion that the operation of the Grid had a significant impact on the population of Spectacled Flying Foxes. Further I find, on the balance of probabilities, that the

⁶³⁴ (2001) 114 FCR 39, [48]–[49], [86].

⁶³⁵ (2001) 114 FCR 39, [47]–[48].

⁶³⁶ (2001) 114 FCR 39, [83]–[85].

⁶³⁷ (2001) 114 FCR 39, [85].

⁶³⁸ (2001) 114 FCR 39, [52]–[53].

⁶³⁹ (2001) 114 FCR 39, [52]–[53].

⁶⁴⁰ (2001) 114 FCR 39, [81].

⁶⁴¹ (2001) 114 FCR 39, [88].

⁶⁴² (2001) 114 FCR 39, [89].

⁶⁴³ (2001) 114 FCR 39, [90].

⁶⁴⁴ (2001) 114 FCR 39, [104]–[105].

probable impact of the operation of the Grid, if allowed to continue on an annual basis during future lychee seasons, **will be an ongoing dramatic decline in the Spectacled Flying Fox population leading to a halving of the population of Spectacled Flying Foxes in less than five years.** The paper by Garnett, Whybird and Spencer indicates that under IUCN criteria a species may be listed as endangered if it has “undergone an observed, estimated, inferred or suspected decline of at least 50%... over the last 10 years or 3 generations whichever is longer”. A “generation” for the IUCN criteria is relevantly four years. I therefore conclude on the balance of probabilities that the probable impact of the operation of the Grid, if allowed to continue in the manner mentioned, will be to render the Spectacled Flying Fox an endangered species in the Wet Tropics World Heritage Area and in Australia in less than five years.

...

I note that outside of Australia the Spectacled Flying Fox is found only in Papua New Guinea and there only from less than 10 locations ... In this context, the loss of the Spectacled Flying Fox from the Wet Tropics World Heritage Area and from Australia would, in my view, be a matter of considerable consequence (our emphasis).

515. The decision of *Northern Inland Council for the Environment Inc v Minister for the Environment* concerned the presence of the species *Tylophora linearis* and the impact of the construction and operation of an open cut coal mine and associated infrastructure (known as the “Maules Creek Coal Mine Project”).⁶⁴⁵ The only evidence that the *Tylophora linearis* actually existed in the area of the Maules Creek Coal Mine Project was contained in a submission which was the subject of a direction under s 136 of the *Evidence Act 1995* (Cth), that it not be used to prove the truth of the facts or opinions asserted in the submission.⁶⁴⁶ His Honour considered this *prima facie* fatal to the submission of the applicant that it was likely that the Maules Creek Coal Mine Project would have a significant impact on the *Tylophora linearis* because that document contained the only information that could suggest that the *Tylophora linearis* actually existed in the area of the project (the other information doing no more than suggesting a possibility that *Tylophora linearis* existed, or could exist, in the area.⁶⁴⁷
516. Nevertheless, his Honour found that even if the s 136 direction had not been made, the applicant had not shown that the Maules Creek Coal Mine Project would be likely to

⁶⁴⁵ (2013) 218 FCR 491, [93]–[100].

⁶⁴⁶ (2013) 218 FCR 491, [110].

⁶⁴⁷ (2013) 218 FCR 491, [110].

have a significant impact on the *Tylophora linearis*. It was in that context that his Honour observed that it was not sufficient to show the likelihood of significant impact on plants of that species in one location or area (provided that the species does not exist elsewhere); the impact must be on the species *Tylophora linearis*.⁶⁴⁸

517. The decision of Dowsett J in *Krajniw v Brisbane City Council (No 2)*,⁶⁴⁹—which was considered with approval by Cowdroy J in *Northern Inland Council for the Environment Inc v Minister for the Environment*—concerned the construction of a bike path. The applicant contended that its construction would cause significant harm to a listed threatened species in contravention of s 18 of the EPBC Act. After referring to the meaning of “significance” by reference to *Booth v Bosworth*, his Honour observed:⁶⁵⁰

In my view the word is used to limit the operation of the Act. That purpose would not be achieved if any possibly adverse effect upon a species, however minor and however unlikely, was sufficient to engage either of ss 18 and 18A. Moreover, those sections are concerned with impact upon a relevant species. An adverse effect upon an individual member of the species, or even a number of individual members may not be sufficient to engage those sections. The applicant must demonstrate a risk of significant adverse impact upon the species as a whole.

518. In this case, for the reasons explained below, the evidence does not permit a finding that VicForests’ forestry operations in the Logged Coupes or the Scheduled Coupes, did have, or will have, or are likely to have, a significant impact on the listed threatened species *Petauroides Volans* (Greater Glider) or the *Gymnobelideus leadbeateri* (Leadbeater’s Possum) as a whole.

E.1.4. The Guidelines

519. The Explanatory Memorandum to the EPBC Bill flagged the issuance of administrative guidelines to provide guidance on determining whether an action has, will have or is likely to have a significant impact on a nationally threatened species or community.⁶⁵¹ The report of the Senate Committee on the EPBC Bill had accepted that there would be

⁶⁴⁸ (2013) 218 FCR 491, [113].

⁶⁴⁹ [2011] FCA 563.

⁶⁵⁰ [2011] FCA 563, [10].

⁶⁵¹ [Legislation & Authorities folder; item 19].

a need to provide guidance on the meaning of significant impact, but that detailed definitions were not practicable and noted:⁶⁵²

The Committee also recognises the need to allow such guidance to be adjusted over time in a flexible manner, as the methodologies, practices and knowledge relevant to environmental impact assessment evolve. The inclusion of detailed provisions defining a ‘significant impact’ in the Bill could impose an unwarranted constraint on the effective operation of the Act.

520. The administrative guidelines were to reflect the fact that, in determining whether an action will have a significant impact on a species, it was necessary to have regard to factors including, amongst other factors, the effect on important populations of the species or community and the impact on the geographical distribution of the species.⁶⁵³
521. The EPBC Act as passed included a provision referring to matters which were prescribed by the regulations as required to be considered in assessing whether an impact was significant,⁶⁵⁴ but it was removed by the *Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001*. The provision was replaced with s 25A of the EPBC Act which enables regulations to be made identifying actions (or classes of actions) that are taken to have a significant impact on matters of environmental significance.⁶⁵⁵ The regulations do not contain any provisions that are relevant to the questions of significant impact that arise in this case.
522. From time to time, the relevant Commonwealth Department has published guidelines entitled “Matters of National Environmental Significance Significant Impact Guidelines”. The current version is dated 2013.⁶⁵⁶ They provide general guidance to the public.⁶⁵⁷

⁶⁵² Report on Environment Protection and Biodiversity Conservation Bill 1998 and Environment Reform (Consequential Provisions) Bill 1998, at [6.60] available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communication/s/Completed_inquiries/1999-02/bio/report/contents (accessed 23 July 2019).

⁶⁵³ [6.61].

⁶⁵⁴ Section 524B.

⁶⁵⁵ Explanatory Memorandum to the *Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Bill 2001*, item 83.

⁶⁵⁶ [CB 4.2.2.14].

⁶⁵⁷ *Krajniw v Brisbane City Council (No 2)* [2011] FCA 563, [10]. In *Humane Society International v Minister for the Environment & Heritage* [2003] FCA 64, the Minister submitted that the Guidelines fulfilled the function that was envisaged by s 524B, but Kiefel J (as she then was) did not need to determine the matter and observed the submission in passing, [12].

523. The purpose of the Guidelines is described as follows:⁶⁵⁸

The purpose of these guidelines is to assist any person who proposed to take an action to decide whether or not they should submit a referral to the Australian Government Department of the Environment (the Department) for a decision by the Australian Government Environment Minister (the minister) on whether assessment and approval is required under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Under the EPBC Act an action will require approval from the minister of the action has, will have, or is likely to have, a significant impact on a matter of national environmental significance.

These guidelines outline a ‘self-assessment’ process, including detailed criteria, to assist persons in deciding whether or not referral may be required. Important terms and phrases are explained in the shaded boxes. The appendix to the guidelines provides further assistance for specific industry sections.

The guidelines may also assist members of the public or interest groups who wish to comment on actions which have been referred under the EPBC Act.

524. The purpose of the Guidelines is therefore to assist a person to decide whether or not they should submit a referral to the Australian Government Department of the Environment for a decision by the Australian Government Environment Minister on whether assessment and approval is required under the EPBC Act. Division 1 of Part 7 contains provisions concerning referral of proposals to take such an action. Section 68(1), which is in the Division, provides for a referral by a person proposing to take an action. It provides:

68 Referral by person proposing to take action

- (1) A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Minister’s decision whether or not the action is a controlled action.

525. A “controlled action” is defined in s 67. Section 67A prohibits the taking of a controlled action without approval.

⁶⁵⁸ [CB 4.2.2.14; p 4].

526. If the person does not think the proposed action is a controlled action, they can nevertheless refer the proposal to the Minister. Section 68(2) provides:

- (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.

527. It is to be observed that a person proposing action must form an opinion. A combination of s 68(1), the definition of "controlled action", and the provisions of Part 3 requires the person to consider the impact that their action will have or is likely to have on the listed species in question.⁶⁵⁹ The function of the Guidelines is to assist the person in forming that opinion, and once the opinion is formed, that person may decide to refer the proposal to the Minister, given the prohibition on taking a controlled action without approval.

528. If the person does form the opinion to refer the proposal to the Minister, s 75 of the EPBC Act provides that the Minister is required to consider whether it requires approval. Section 75(2), together with the definition of "controlled action" and Part 3, therefore require the Minister to consider whether the proposed action will have or is likely to have a significant impact on the species.⁶⁶⁰ In considering the impacts under s 75(2), the Minister must not consider any adverse impacts of any RFA forestry operation to which, under Division 4 of Part 4, Part 3 does not apply.⁶⁶¹ Before coming to a conclusion on the question, the Minister is obliged to seek out information and comment.

529. If the person does not form the opinion to refer the proposal to the Minister, and the impact is such as to attract the prohibition in s 18(2) or s 18(4), then the person is subject to penalties, injunctions and prosecution. Given their stated purpose, it is to be thought that the Guidelines have been drafted with a risk-averse approach to the interpretation of the EPBC Act, given that s 74AA of the EPBC Act makes it an offence to take an action before a decision is made in relation to a referral.

⁶⁵⁹ *Humane Society International Inc v Minister for the Environment & Heritage* (2003) 126 FCR 205, [12] (Kiefel J).

⁶⁶⁰ *Humane Society International Inc v Minister for the Environment & Heritage* (2003) 126 FCR 205, [15] (Kiefel J).

⁶⁶¹ EPBC Act, s 75(2B).

530. The Guidelines set out “significant impact criteria”. The purpose of the criteria is described in the Guidelines as follows:⁶⁶²

The ‘significant impact criteria’, set out on the following pages, for each matter of national environmental significance, are intended to assist you in determining whether the impacts of your proposed action on any matter of national environmental significance are likely to be significant impacts.

The criteria are intended to provide general guidance on the types of actions that will require approval and the types of actions that will not require approval. They are not intended to be exhaustive or definitive. If you are still unsure whether the action you propose to take is likely to have a significant impact on a matter of national environmental significance you should refer the action to the Department of the Environment, Water, Heritage and the Arts for a binding decision on whether approval is required.

The particular facts and circumstances of a proposed action will need to be taken into account in determining whether that action is likely to have a significant impact on a matter of national environmental significance. Remember that the general test for significance is whether an impact is ‘important, notable or of consequence, having regard to its context or intensity’.

531. In respect of threatened species listed in the vulnerable category (such as the Greater Glider), the Guidelines provides:⁶⁶³

Significant impact criteria

An action is likely to have a significant impact on a vulnerable species if there is a real chance or possibility that it will:

- lead to a long-term decrease in the size of an important population of a species
- reduce the area of occupancy of an important population
- fragment an existing important population into two or more populations
- adversely affect habitat critical to the survival of a species

- disrupt the breeding cycle of an important population
- modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline
- result in invasive species that are harmful to a vulnerable species becoming established in the vulnerable species' habitat
- introduce disease that may cause the species to decline, or
- interfere substantially with the recovery of the species.

⁶⁶² [CB 4.2.2.14; p 10].

⁶⁶³ CB 4.2.2.14, 13.

532. The matters in the first to sixth dot points mirror the applicant's particulars as to significant impact on the Greater Glider in paragraphs 32, 73 and 105D of the 3FASOC, whilst the last dot point is incorporated into the last particular.

533. The Guidelines describe an important population of a species as follows:⁶⁶⁴

An 'important population' is a population that is necessary for a species' long-term survival and recovery. This may include populations identified as such in recovery plans, and/or that are:

- key source populations either for breeding or dispersal
- populations that are necessary for maintaining genetic diversity, and/or
- populations that are near the limit of the species range.

534. In respect of species listed in the critically endangered category (such as Leadbeater's Possum), the Guidelines provide:

Significant impact criteria

An action is likely to have a significant impact on a critically endangered or endangered species if there is a real chance or possibility that it will:

- lead to a long-term decrease in the size of a population
- reduce the area of occupancy of the species
- fragment an existing population into two or more populations
- adversely affect habitat critical to the survival of a species
- disrupt the breeding cycle of a population
- modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline
- result in invasive species that are harmful to a critically endangered or endangered species becoming established in the endangered or critically endangered species' habitat
- introduce disease that may cause the species to decline, or
- interfere with the recovery of the species

⁶⁶⁴ [CB 4.2.2.14; p 13].

535. These significant impact criteria are picked up in paragraphs 22, 42 and 105B of the 3FASOC. The Guidelines describe a population of a species by reference to the definition in s 528, being an occurrence of the species or community in a particular area. The Guidelines add that in respect of critically endangered and vulnerable threatened species, occurrences include but are not limited to:⁶⁶⁵
- (a) a geographically distinct regional population, or collection of local populations;
or
 - (b) a population, or collection of local populations, that occurs within a particular bioregion.
536. The Guidelines do not have legislative force and none of the provisions of the EPBC Act converts the Guidelines into delegated legislation which apply of their own force.⁶⁶⁶ The Guidelines make clear that the significant impact criteria for each matter of national environmental significance are not exhaustive or definitive and provide general guidance to a person in order to assist that person in making an assessment as to significant impact such that that person may form a requisite opinion about referring a proposal to the Minister as envisaged by Chapter 4, Part 7.
537. Whether the significant impact criteria are met or not is not determinative of whether an action will have a significant impact on a listed threatened species. It will always be a question of fact whether a particular action or actions has had, or will have, or are likely to have, a significant impact on the whole of the listed threatened species, *Gymnobelideus leadbeateri* (Leadbeater's Possum) and *Petauroides Volans* (Greater Glider).⁶⁶⁷ The extent of that evidence depends on the particular circumstances of the case.⁶⁶⁸

⁶⁶⁵ [CB 4.2.2.14; p 12].

⁶⁶⁶ See the discussion of Leeming JA in *Ali v AAI Limited* [2016] NSWCA 110, [75]–[99].

⁶⁶⁷ *Minister for the Environment & Heritage v Greentree (No 2)* (2004) 138 FCR 198, [192] (Sackville J).

⁶⁶⁸ *Northern Inland Council for the Environment Inc v Minister for the Environment* (2013) 218 FCR 491, [119] (Cowdroy J).

E.2. No significant impact on Greater Glider in Scheduled Coupes

538. Significant impact on Greater Glider in the Scheduled Coupes is alleged in paragraphs 116BB, 116BD, 119B of the 3FASOC. For the same reasons as set out in section C.2.1 above, it is not possible for the Court to assess whether, to the extent they occur, any forestry operations in any or all of the Scheduled Coupes will have a significant impact on Greater Glider within the meaning of the EPBC Act.
539. In the alternative to that submission, VicForests relies on Dr Davey's evidence that there will be a relatively limited impact on a local population of Greater Glider arising from VicForests' future forestry operations in the Scheduled Glider Coupes.⁶⁶⁹ VicForests relies on the fact that there is no evidence that VicForests' future forestry operations will:
- (a) have a significant impact on the species *Petauroides Volans* (Greater Glider) as a whole; and
 - (b) have a significant impact on a local population, or an important population of *Petauroides Volans* (Greater Glider), such that it would have a significant impact on the species *Petauroides Volans* (Greater Glider) as a whole.
540. In particular, VicForests relies on the following aspects of Dr Davey's evidence (and makes the following observations on the evidence of Dr Smith).
541. *First*, Dr Davey undertook an assessment of the impact of future forestry operations on each of the coupes listed in paragraph 10 of the 3FASOC, on Greater Glider or Greater Glider habitat in those coupes.⁶⁷⁰ This was an assessment of the impact on local populations of Greater Gliders.⁶⁷¹ Three coupes were classed as having moderate impact severity.⁶⁷² 11 were classed as having minor impact severity and 29 coupes classed as limited impact severity.⁶⁷³ Farm Spur Gum (coupe 10.20A) was rated as having minor

⁶⁶⁹ First Davey Report [CB 5.1.1; p 168 [288] and table 16]].

⁶⁷⁰ First Davey Report [CB 5.1.1; p 168 [288] and table 16]].

⁶⁷¹ First Davey Report [CB 5.1.1; p 168 [288] and table 16]].

⁶⁷² White House (10.17); Bhebe (10.20) and Jakob (10.33).

⁶⁷³ First Davey Report [CB 5.1.1; p 168 [288] and table 17]].

impact severity. Dr Davey's opinion is that Farm Spur Gum could be rated as moderate impact severity if the local population was actually more restricted in distribution.⁶⁷⁴

542. Dr Davey took the local population impact assessment and assessed whether that would have an impact on an important regional population of Greater Glider.⁶⁷⁵ Dr Davey assumed that the Greater Gliders in the Central Highlands constitute an important population.⁶⁷⁶ "Population of a species" is defined in s 528 of the EPBC Act as an occurrence of a species or ecological community in a particular area. The Guidelines provide that "occurrences" include, but are not limited to, a geographically distinct regional population, or collection of local populations, or a population, or collection of populations, that occurs within a particular bioregion.⁶⁷⁷
543. Dr Davey's opinion is that the combined impacts of harvesting in the Scheduled Coupes is unlikely to have a significant impact on a regional population of Greater Glider.⁶⁷⁸ As outlined above, the concept of "important population" is one that is introduced through the Guidelines. VicForests refers to but does not repeat the matters set out above regarding the status of the Guidelines, except to observe that it will always be a question of fact whether a particular action or actions has had, or will have, or are likely to have, a significant impact on the listed threatened species as a whole. Self-evidently, however, if forestry operations are unlikely to have a significant impact on an important regional population, it cannot be said that there will be a significant impact on the species as a whole.
544. *Second*, Dr Davey's opinion is that the proposed forestry operations in the Scheduled Coupes would not lead to a long-term decrease in the size of an important population, or reduce or fragment available habitat for Greater Glider or result in a long-term decline in a population.⁶⁷⁹ Dr Davey's evidence is that planning and carrying out of forestry operations in the Scheduled Coupes will be appropriate for a recently listed vulnerable

⁶⁷⁴ First Davey Report [CB 5.1.1; p 168 [288] and table 17]].

⁶⁷⁵ First Davey Report [CB 5.1.1; p 112-113 [249]].

⁶⁷⁶ First Davey Report [CB 5.1.1; p 168 [289(i)]].

⁶⁷⁷ [CB 4.2.2.14; p 12].

⁶⁷⁸ First Davey Report [CB 5.1.1; p 175 [302]].

⁶⁷⁹ See significant impact criteria [CB 4.2.2.1; p 13]; paragraph [32], 3FASOC.

species such as the Greater Glider in planning and implementation of those operations in coupes classed as moderate impact severity.⁶⁸⁰

545. Dr Davey's opinion is that there will be satisfactory retention of forest through the Code and other management systems to provide suitable habitat for Greater Gliders currently and into the future in those coupes where proposed forestry operations were identified as having limited and minor impact severity.⁶⁸¹ His evidence is that future suitable habitat, within the harvest area of those coupes, will become available for recolonization and foraging for the species where suitable numbers of habitat trees are retained in and scattered in the Scheduled Coupes.⁶⁸² In respect of coupes where proposed forestry operations were identified by him as having limited or minor impact severity, his opinion is that whilst local populations may be impacted by forestry operations being carried out in the Scheduled Coupes, that would not result in a decrease in the size of an important population.⁶⁸³ This opinion is supported by the inferences VicForests' submits may permissibly be drawn from Tables A-C to these submissions as to the manner and method in which future forestry operations in the Scheduled Coupes will occur (if they occur at all), namely:

- (a) any future forestry operations in the Scheduled Coupes will occur in areas flanked by substantial areas of reservation by way of formal reserve (for example, National or State Parks and reserves) or informal reserves such as SPZ;
- (b) the net harvest area will comprise a small or relatively smaller portion of the coupe. Dr Smith's evidence was it was relevant to have regard to the difference between the gross area and the net area of the coupes,⁶⁸⁴ and
- (c) there is a real possibility that the silvicultural system used will be less intensive than that described on the TRP.

546. Dr Davey's approach is to be contrasted with that of Dr Smith —whose analysis was coupe-focussed and limited to the impact occurring at coupe level. It was clear from Dr

⁶⁸⁰ First Davey Report [CB 5.1.1; p 175 [302]].

⁶⁸¹ First Davey Report [CB 5.1.1; p 169 [289(i)]].

⁶⁸² First Davey Report [CB 5.1.1; p 169 [289(i)]].

⁶⁸³ First Davey Report [CB 5.1.1; p 169 [289(i)]].

⁶⁸⁴ T. 444. 37-41 (Smith XXN).

Smith's cross examination that he assessed impact by reference to the area within the coupe that would be lost through harvesting, and its impact on the Greater Gliders resident in those coupes.⁶⁸⁵ Dr Smith failed to take into account populations of Greater Glider in New South Wales, Queensland, and Victoria,⁶⁸⁶ and did not offer any opinion on the impact, or likely impact, of VicForests' future forestry operations on the Greater Glider species as a whole.⁶⁸⁷ In any event, as noted in section C.2.3.9 above, Dr Smith's coupe impact assessment should not be relied on because he accepted the fundamental limitations in his approach, including lack of sufficient data and a great deal of uncertainty as to the extent, manner and configuration of any future forestry operations (if any) in the Scheduled Coupes.⁶⁸⁸

547. *Third*, in respect of coupes where proposed forestry operations were identified as having limited or minor impact severity, it was Dr Davey's opinion that VicForests' future forestry operations will not reduce or fragment habitat for Greater Glider.⁶⁸⁹
548. *Fourth*, Dr Davey's opinion is that VicForests' future forestry operations will not reduce the area of occupancy of the Greater Glider due to extant configuration of National Parks and SPZ, retention of forest in the coupe and the retention of habitat trees in a coupe after harvest.⁶⁹⁰
549. *Fifth*, Dr Davey's opinion is that linear SPZ and the connectivity of retained forest will not fragment an existing regional population of Greater Glider.⁶⁹¹
550. *Sixth*, unlike Dr Smith, Dr Davey did not conflate the concept of "suitable habitat" and "critical habitat" and therefore his opinion is that the suitable habitat was unlikely to be habitat critical to the survival to the Greater Glider in the Central Highlands.⁶⁹² This is to be contrasted with Dr Smith's approach which was (wrongly) to treat suitable

⁶⁸⁵ T. 431: 24-34 (Dr Smith XXN).

⁶⁸⁶ T. 399:40-43; T. 432: 34 (Dr Smith XXN).

⁶⁸⁷ T. 431:36-47 (Dr Smith XXN).

⁶⁸⁸ See section C.2.3.9 above.

⁶⁸⁹ First Davey Report [CB 5.1.1; p 169-170 [289(i)]].

⁶⁹⁰ See significant impact criteria [CB 4.2.2.1; p 13]; paragraph [32], 3FASOC; First Davey Report First Davey Report [CB 5.1.1; p 170 [289(ii)]]].

⁶⁹¹ See significant impact criteria [CB 4.2.2.1; p 13]; paragraph [32], 3FASOC; First Davey Report First Davey Report [CB 5.1.1; p 170 [289(iii)]]].

⁶⁹² See significant impact criteria [CB 4.2.2.1; p 13]; paragraph [32], 3FASOC; First Davey Report First Davey Report [CB 5.1.1; p 170 [289(iv)]]]. Cf. T. 429: 40-41 (Dr Smith XXN).

habitat as a proxy for critical habitat, with the resultant limitations which must be placed on his impact assessment set out in section C.2.3.9 above.

551. *Seventh*, Dr Davey's opinion is that the forestry operations in the Scheduled Coupes would not displace, reduce or substantially limit the movement or dispersal of populations of Greater Glider given the linear SPZs, THEZs and connectivity of retained forest resulting from buffering of streams and corridors.⁶⁹³
552. *Eighth*, it is Dr Davey's opinion that while forestry operations in certain Scheduled Coupes will likely impact on individual Greater Glider, it is not likely that operations will result in a long-term decrease in or threat to the viability of a population of Greater Glider.⁶⁹⁴
553. *Ninth*, satisfactory policy and planning systems implemented in the Central Highlands have meant that forestry operations to be undertaken in the Scheduled Coupes would not interfere with the recovery of Greater Glider regionally or nationally.⁶⁹⁵
554. *Tenth*, Dr Davey's evidence is that Greater Gliders:
- (a) use riparian systems and associated buffer exclusions in coupes within 15 years of harvesting where adequate habitat trees are available;⁶⁹⁶
 - (b) recolonize coupes subject to clearfell, seed tree or retention harvesting, with scattered retained habitat trees, beginning within 25 years, with the average return rate being after 40 years;⁶⁹⁷

⁶⁹³ See significant impact criteria [CB 4.2.2.1; p 13]; paragraph [32], 3FASOC; First Davey Report First Davey Report [CB 5.1.1; p 170 [289(v)]]].

⁶⁹⁴ See significant impact criteria [CB 4.2.2.1; p 13]; paragraph [32], 3FASOC; First Davey Report First Davey Report [CB 5.1.1; p 170 [289(vi)]]].

⁶⁹⁵ See significant impact criteria [CB 4.2.2.1; p 13]; paragraph [32], 3FASOC; First Davey Report First Davey Report [CB 5.1.1; p 170 [289(vii)]]].

⁶⁹⁶ First Davey Report, [CB 5.1.1; p 113 [250]].

⁶⁹⁷ First Davey Report, [CB 5.1.1; p 113 [251]]; Second Davey Report, [CB 5.4.1; p 68 [203]].

- (c) use coupes subject to clearfell, seed tree or retention harvesting stems, with nil retention of suitable habitat trees, within 30 years, with colonisation resuming more than 80 years post-harvesting;⁶⁹⁸ and
- (d) populations recover from wildfire after a decade or decades.⁶⁹⁹

555. *Eleventh*, insofar as the Greater Glider regional population is concerned:⁷⁰⁰

- (a) planning informed by detailed fauna and habitat surveys of coupes and forests surrounding the coupes found in map series 4 and 12 would be required to minimise any adverse impacts on the regional population of Greater Glider, assuming collective harvesting of those coupes;⁷⁰¹ and
- (b) the combined impacts of harvesting of the Logged Coupes and Scheduled Coupes in the other two groupings of coupes analysed (map series 13 and 19; and map series 16, 18 and 25 and the Logged Coupes at map series 24) are unlikely to have a significant impact on a regional population.⁷⁰²

556. *Twelfth*, Dr Smith accepted in cross examination that the extent of any impact in the Scheduled Coupes was uncertain given the limitations on the information available to him and the uncertainties surrounding the extent, manner and configuration the Scheduled Coupes will be logged (if they are logged at all).⁷⁰³ He described long term impacts as “uncertain”,⁷⁰⁴ whilst short term impacts were localised at a coupe level.⁷⁰⁵

557. VicForests otherwise refers to and relies on the matters set out in section C.2.3 above concerning no threat of serious or irreversible harm.

⁶⁹⁸ First Davey Report, [CB 5.1.1; pp 113-114 [253]; Second Davey Report, [CB 5.4.1; p 68 [203]].

⁶⁹⁹ First Davey Report, [CB 5.1.1; p 175 [302]].

⁷⁰⁰ First Davey Report, [CB 5.1.1; p 174 [297]].

⁷⁰¹ First Davey Report, [CB 5.1.1; p 174 [300]].

⁷⁰² First Davey Report, [CB 5.1.1; p 175 [302]].

⁷⁰³ T. 450:18-27 (Dr Smith XXN).

⁷⁰⁴ T. 449:6-16 (Dr Smith XXN).

⁷⁰⁵ T. 449:6-16 (Dr Smith XXN).

E.3. No significant impact on Greater Glider in Logged Glider Coupes

558. In paragraphs 31–40, 105D, 115AB, 115AD, 115AF, 115BB, 115CB, 115DB, 115DD and 119B of the 3FASOC the applicant alleges significant impact on Greater Glider in the Logged Glider Coupes.
559. Dr Davey’s evidence is that the combined harvest impacts in the Logged Glider Coupes are unlikely to have had a significant impact on the regional population of Greater Glider.⁷⁰⁶ It follows that VicForests’ forestry operations in the Logged Glider Coupes cannot be said to have had, or were likely to have had, a significant impact on the Greater Glider species as a whole.
560. Dr Smith offered no opinion on the significant impact of forestry operations in Ginger Cat (coupe 9.17) and Blue Vein (coupe 9.18) Logged Coupes.⁷⁰⁷ In any event, Dr Davey’s evidence is that the impact of VicForests’ forestry operations in those coupes on local populations of Greater Glider was limited.⁷⁰⁸ The allegations in paragraph 35 of the 3FASOC should be dismissed.
561. VicForests otherwise refers to the matters set out in sections C.2.3 and E.2 above concerning no threat of serious or irreversible harm and no significant impact to the Greater Glider in the Scheduled Coupes and the information set out in Table A to these submissions.

E.4. No significant impact on Leadbeater’s Possum in Scheduled Coupes

562. The question of whether any forestry operations in the Scheduled Coupes will have a significant impact on Leadbeater’s Possum only arises if:
- (a) contrary to VicForests’ submissions in section C above, the Court is satisfied that that any timber harvesting operations to be conducted in the Scheduled Coupes will be contrary to cl 2.2.2.2 of the Code (the allegations of which relate to Greater Glider only); and

⁷⁰⁶ First Davey Report, [CB 5.1.1; p 175 [302] and table 15].

⁷⁰⁷ T. 443:15-18 (Dr Smith XXN).

⁷⁰⁸ First Davey Report, [CB 5.1.1; table 15].

- (b) contrary to VicForests' submissions in section B above, the Court is satisfied that, notwithstanding that the impugned conduct alleged to mean the forestry operations in the Scheduled Coupes will not be in accordance with the CH RFA concern Greater Glider only, that the scope of exemption lost under s 38(1) is sufficiently wide to cover actions concerning an unrelated value (here, Leadbeater's Possum).

563. Importantly, insofar as Leadbeater's Possum is concerned, there is no allegation:

- (a) that timber harvesting operations in the Scheduled Coupes will not be in accordance with the accredited substituted regime; relevantly, the Code, the Management Standards and Procedures, and the Planning Standards; and
- (b) of the nature particularised under paragraph 113A of the 3FASOC (repeated under paragraph 113H of the 3FASOC).⁷

564. The following submissions, therefore, arise only in the curious circumstance that the Court is satisfied that, notwithstanding that the forestry operations in the Scheduled Coupes insofar as Leadbeater's Possum are concerned will not be in breach of any part of the accredited regime, those operations are nonetheless not exempt from federal scrutiny under s 38(1) of the EPBC Act.

E.4.1. No sufficiently advanced plans to analyse an impact on Leadbeater's Possum

565. For the reasons set out in section C.2.1 above, in the absence of sufficiently advanced plans as to how any forestry operations are to be conducted in the Scheduled Coupes, it is not possible to analyse the question of whether any forestry operations in the Scheduled Coupes will pose a significant impact to Leadbeater's Possum.

E.4.2. Alternatively, the objective state of the evidence indicates no significant impact

566. As at the time of the publication of the Leadbeater's Possum Advisory Group (LBPAAG) Technical Report:⁷⁰⁹

⁷⁰⁹ 23 January 2014, [CB 11.96].

- (a) 34% of the area of potential habitat (i.e. ash forests or Snow Gum woodlands) within the range of Leadbeater's Possum in the Central Highlands was located in formal national parks and conservation reserves;⁷¹⁰
- (b) however a total of 69% of the area of potential habitat within the range of Leadbeater's Possum in the Central Highlands was in areas excluded from timber harvesting when, in addition to formal parks and conservation reserves, SPZ (including the Leadbeater's Possum Reserve of 30,500 ha of high quality habitat) or areas excluded from harvesting due to biodiversity and regulatory reasons were taken into account;⁷¹¹
- (c) approximately 63,000 ha of ash forest within the range of Leadbeater's Possum (31% of potential habitat) is available to be harvested and then actively regenerated over the length of harvesting rotation (around 80 years);⁷¹²
- (d) it was estimated that after two years of intensive surveys, including by government and environmental groups, that up to 280 new colonies within the available timber resource may be located;⁷¹³ and
- (e) the Advisory Group's recommended package of actions was based on establishing a 200 m radius exclusion zone around existing and future records (THEZs) that was estimated to impact, after two years of intensive surveying, up to 2,572 hectares of available resource.⁷¹⁴

567. The Victorian Government accepted all of the LBPAG recommendations.⁷¹⁵

568. As a result of the LBPAG recommendations, a moratorium on timber harvesting within 14,800 ha of forest anticipated to have a more than 0.65 probability of being occupied by Leadbeater's Possum remains in place.⁷¹⁶

⁷¹⁰ [CB 11.96], 16. See also T 539:19.

⁷¹¹ [CB 11.96], 6. See also Table 1, 23.

⁷¹² [CB 11.96], 8.

⁷¹³ [CB 11.96], 81.

⁷¹⁴ [CB 11.96], 81.

⁷¹⁵ DELWP Review of Leadbeater's Possum Colony exclusion dated July 2017 [CB 3.4.29], 17.

⁷¹⁶ See subparagraph 136(c) of the Second Paul Affidavit [CB 3.4].

569. The Code gave effect to several of the actions recommended from the LBPAG in that, since the publication of the Code in 2014:

- (a) the Planning Standards have specified as zoning management actions:
- (b) the protection of 30% of Ash forest from timber harvesting operations in each LMU;⁷¹⁷
- (c) the establishment and maintenance of SPZs of 200 m radius centred on each verified Leadbeater's Possum colony found since 1998 that is not located within forest areas severely impacted by the 2009 wildfire;⁷¹⁸ and
- (d) the establishment of SPZs over areas of Zone 1A habitat where there are more than 10 hollow bearing trees per 3 ha in patches greater than 3 ha (amended from more than 12 hollow bearing trees);⁷¹⁹ and
- (e) the Management Standards and Procedures have required, within the Leadbeater's Possum range, a 100 m buffer around all stands of modelled Ash old growth forest depicted in the Department's old growth spatial layer (MOG2009.shp) and verified during field assessment by VicForests or the Department to be Ash type forest.⁷²⁰

570. As at 30 January 2017:⁷²¹

- (a) an additional 4,046 hectares of State forest had been reserved in SPZ by reason of implementation of THEZs around verified Leadbeater Possum colonies;⁷²²

⁷¹⁷ Leadbeater's Possum Management Unit; [CB 6.11], 21–22. See recommended action 4.7 in [CB 11.96], 91.

⁷¹⁸ [CB 6.11], 21–22; 39. See recommended action 4.1 in [CB 11.96], 84.

⁷¹⁹ [CB 6.11], 39. See recommended action 4.6 in [CB 11.96], 90.

⁷²⁰ [CB 6.10], 37, cl 4.4.4.1.

⁷²¹ Although the DELWP Review of Leadbeater's Possum Colony exclusion is dated Jul 2017, p 17 explains that all verified records of Leadbeater's Possum up to 30 January 2017 were included in the review.

⁷²² DELWP Review of Leadbeater's Possum Colony exclusion dated July 2017 [CB 3.4.29], 10. See also section 2.1.6, p 27.

- (b) the establishment of the THEZs had resulted in the formal reserve system for Leadbeater's Possum increasing from 30,520 ha to 34,566 ha (an increase of ~13% in terms of area);⁷²³
- (c) the clustering of THEZs has created potential 'neighbourhoods' of possum colonies, likely to increase the resilience and long-term viability of these sub-populations;⁷²⁴
- (d) the THEZs have been relatively effective in reducing the extinction risk of Leadbeater's Possum with modelling estimating a reduction of approximately 34% for populations within the Leadbeater's Possum reserve system.⁷²⁵

571. As at October 2018:

- (a) there have been approximately 657 Leadbeater's Possum colonies identified across State Forests, Parks and Reserve Lands in Victoria;⁷²⁶ and
- (b) 555 of the Leadbeater's Possum colony sites are within GMZ (with 96 identified prior to 2014) and 459 colony sites protected under the LBPAG recommendations.⁷²⁷

572. Evidence concerning the reserve system more generally has otherwise been set out in section C.2.3.6 above.

573. Evidence concerning pre-harvest surveys has been set out in section C.2.1.2 above. Insofar as Leadbeater's Possum is concerned, the following additional matters are noted:

- (a) Leadbeater's Possum and Leadbeater's Possum habitat, are both listed as key targets for the Department Survey Program;
- (b) the Department's suggested survey technique and approach for Leadbeater's Possum is with remote cameras in trees and call playback with thermal cameras

⁷²³ DELWP Review of Leadbeater's Possum Colony exclusion dated July 2017 [CB 3.4.29], 10–11.

⁷²⁴ DELWP Review of Leadbeater's Possum Colony exclusion dated July 2017 [CB 3.4.29], 11.

⁷²⁵ DELWP Review of Leadbeater's Possum Colony exclusion dated July 2017 [CB 3.4.29], 82.

⁷²⁶ [CB 11.20], 18.

⁷²⁷ [CB 11.20], 18.

in all coupes containing Ash forest in the Central Highlands and mixed species coupes nearby ash to help determine extent of usage of drier habitats;⁷²⁸

- (c) VicForests has its own detailed instructions for Leadbeater's Possum surveys developed in conjunction with the Arthur Rylah Institute for Environmental Research and advice from the Department.⁷²⁹

574. The Threatened Species Scientific Committee considers the population size of Leadbeater's Possum to be between 2,500 and 10,000.⁷³⁰
575. The Threatened Species Scientific Committee estimates that, in the period 2018 to 2036, the overall harvest of existing potential habitat for Leadbeater's Possum would be 9,296 ha or approximately 4.9% of existing potential habitat.⁷³¹ This estimate is not confined to the Scheduled Coupes, obviously, but rather *all* timber harvesting within the existing potential habitat over the period 2018 to 2036: it can be safely assumed that the Scheduled Coupes represent just a fraction of this amount.
576. Given the significant amounts of Leadbeater's possum habitat that are excluded from timber harvesting, the small areas of harvesting involved in the Scheduled Coupes, the fact that there is a sophisticated surveying regime for Leadbeater's Possum in the Central highlands together with detailed prescriptions based on actual presence of Leadbeater Possum or presence of habitat, the Court cannot be satisfied that any forestry operations in the Scheduled Coupes would pose a significant impact on Leadbeater's Possum.
577. Consistent with the above conclusion, but for additional reasons, is the expert evidence of Professor Baker.
578. Professor Baker and Professor Woinarski shared substantial ground about many aspects of the ecology and conservation of the Leadbeater's Possum.⁷³² The following matters do not appear in dispute:

⁷²⁸ [CB 12.3], 27.

⁷²⁹ See paragraphs 214–232 of the Second Paul Affidavit [CB 3.4].

⁷³⁰ [CB 11.103], 19–20.

⁷³¹ [CB 11.103], 13.

⁷³² Third Woinarski Report [CB 4.11.1], 11 [26].

- (a) Leadbeater’s Possum requires the joint presence of both hollow-bearing trees and a dense lower-storey dominated by *Acacia*;⁷³³
- (b) formation of hollows suitable for nesting by Leadbeater’s Possum has been estimated to take about 100 to 150 years, with hollows starting to form at about 80 to 100 years;⁷³⁴
- (c) *Acacia* is a short-lived species that reduces from 50–80 years after disturbance when it dies;⁷³⁵
- (d) the *Acacia* understorey component of Leadbeater’s Possum habitat requires disturbance —typically fire, or timber harvesting— to regenerate;⁷³⁶
- (e) physical characteristics of the understorey necessary for critical habitat of Leadbeater’s Possum may be increasing in at least some areas because of the dense interconnected characteristics of regrowth vegetation that develops in the decades (10–60 years) after fire or timber harvesting;⁷³⁷
- (f) densities of Leadbeater’s Possum are highest in young (e.g. 20–40 years old stands of forest supporting high stem density; ⁷³⁸ and
- (g) there are many records of Leadbeater’s possum in young regrowth forest (e.g. five to ten years post-fire or logging).⁷³⁹

579. Given that disturbance of the forest is necessary for the regeneration of at least one of the critical aspects of Leadbeater’s Possum habitat (the *Acacia* understory), assuming that there are sufficient numbers of hollow-bearing trees within or adjacent to a harvested area, timber harvesting can actually be helping create the necessary conditions for potential Leadbeater’s Possum habitat. Professor Woinarksi accepted that assuming that there are sufficient old, hollow-bearing trees within the area of harvest, after five to

⁷³³ First Baker Report [CB 5.2.1], [11]; First Woinarski Report [CB 4.7.1], [80]; T 532:32.

⁷³⁴ First Baker Report [CB 5.2.1], [13]; T 532:37.

⁷³⁵ First Baker Report [CB 5.2.1], [13]; First Woinarski Report [CB 4.7.1], [5(f)]; T 533:13.

⁷³⁶ First Woinarski Report [CB 4.7.1], [84]; T 533:34.

⁷³⁷ First Woinarksi Report [CB 4.7.1], [84].

⁷³⁸ Conservation Advice for Leadbeater’s Possum [CB 6.23].

⁷³⁹ Second Woinarksi Report [CB 4.9.1], 27 [68(b)]; DELWP Review of Leadbeater’s Possum Colony exclusion dated July 2017 [CB 3.4.29], Table 7, 30.

seven years the harvested area is potential habitat for Leadbeater's Possum.⁷⁴⁰ So much is consistent with the many records of Leadbeater's Possum in young regrowth forest.

580. Conversely, the Threatened Species Scientific Committee prediction as to the decline in the number of large old trees in Ash forest in the Central Highlands shows that the question of whether harvesting occurs or not will make little material difference.⁷⁴¹ This prediction is a further reason to doubt that timber harvesting operations will have a significant negative impact on Leadbeater's Possum.
581. Turning more specifically to the Scheduled Coupes themselves, Professor Baker's overarching view was that the Scheduled Coupes did not contain habitat suitable for Leadbeater's Possum in the first place. Professor Woinarski accepted as a general proposition that harvesting in low-quality habitat should have a lesser impact on Leadbeater's Possum than harvesting in high-quality habitat.⁷⁴²
582. Professor Baker's opinion was that:
- (a) using a conservative estimate for Leadbeater's Possum Zone 1A habitat,⁷⁴³ of the Scheduled Coupes only Infant (~10% of coupe area); Jakop (~3% of coupe area) and Smyth Creek (<3% of coupe area) indicated any presence of Zone 1A Leadbeater's Possum habitat;⁷⁴⁴
 - (b) no coupes (either Scheduled or Logged) had three or more hectares of Zone 1A Leadbeater's Possum habitat *and* three or more hectares of habitat suitability index (**HIS**) > 0.5;⁷⁴⁵
 - (c) in the 65 coupes assessed, (2,310 hectares) only 20 hectares was assessed to be Zone 1A Leadbeater's Possum habitat;

⁷⁴⁰ T 542:46 (Woinarski XXN).

⁷⁴¹ See Figure 1 in the 2019 Conservation Advice for Leadbeater's Possum [CB 11.103], 10.

⁷⁴² T 541:16 (Woinarski XXN).

⁷⁴³ Third Baker Report [CB 5.5], [15].

⁷⁴⁴ First Baker Report [CB 5.2], [24].

⁷⁴⁵ First Baker Report [CB 5.2], [24].

- (d) 55/65 (or 84.5%) contained forest structure not considered high-quality habitat for Leadbeater's Possum;⁷⁴⁶ and
- (e) timber harvesting was modelled to have no discernible impact on total habitat hectares for most coupes, and where it did have an impact it was typically minor and transient.⁷⁴⁷

583. In paragraph 55 of his third report, Professor Woinarski noted that there is some agreement between Professor Baker's habitat modelling (indicating high quality habitat) and recorded presence of Leadbeater's Possum in and adjacent to Professor Xavier coupe. Professor Woinarski went on to say that there are records of Leadbeater's Possum from areas that Professor Baker's habitat modelling indicated poor habitat quality, citing Blue Cat and Smyth Creek coupes.⁷⁴⁸ But as the cross examination revealed:

- (a) the detections of Leadbeater's Possum in, or adjacent to Blue Vein coupe,⁷⁴⁹ were all well within the Leadbeater's Possum home range of an area modelled to have a greater than 0.5 HSI;⁷⁵⁰
- (b) the detections of Leadbeater's Possum in, or adjacent to, Smyth Creek coupe, were either in, or very near, to an area modelled to have a greater than 0.5 HSI.⁷⁵¹

584. As Professor Baker explained in his Third Report:⁷⁵²

If one acknowledges the ability of Leadbeater's Possum to move within the forest, then in nearly every case the modelled HSI values that indicated high-quality habitat are consistent with the recorded observations ... In every instance in which we compared recorded observations of Leadbeater's Possum in the various Agreed Maps, they were either found within areas of high-quality habitat (as indicated by HSI>0.5) or within much less than 600 m of an area of high-quality habitat. Contrary to Prof Woinarski's assertion, the strong concordance between our mapped habitat suitability index and the recorded observations of Leadbeater's Possum suggest that our modelling approach is robust.

⁷⁴⁶ First Baker Report at [CB 5.2], [26]. The figure of 62 coupes appears to be an error.

⁷⁴⁷ Second Baker Report, [10].

⁷⁴⁸ [CB 4.11.1], [55].

⁷⁴⁹ See the map [7.6.3h].

⁷⁵⁰ T 547:22–T 548:12.

⁷⁵¹ T 548:17–T549.

⁷⁵² [CB 5.5], [21].

585. Professor Woinarski accepted under cross-examination that:
- (a) “for the coupes I looked at” all the coupes (excepting Utopia) had recorded detections of Leadbeater’s Possum within 600 metres of $>.05$ HSI;⁷⁵³ and
 - (b) therefore those detections were within the home range of the Leadbeater’s Possum.⁷⁵⁴
586. The position with Utopia is different because although the agreed maps indicate a detection of Leadbeater’s Possum outside the south-west boundary of the coupe,⁷⁵⁵ it was not possible to tell from the modelling presented in Professor Baker’s report whether there was >0.5 HSI within 600 m of that detection because the map did not continue far enough in that direction to be satisfied one way or another.⁷⁵⁶ But that possible exception aside, the modelling was robust.
587. There was no opposing expert on the modelling (despite a lengthy and exploratory cross examination of Professor Baker), and in light of the objective correlation between known records of Leadbeater’s Possum modelled suitable habitat within their home range, the modelling is reliable evidence. Given that, there is no basis to depart from Professor Baker’s conclusion that timber harvesting was modelled to have no discernible impact on total habitat hectares for most coupes, and where it did have an impact it was typically minor and transient.
588. Separately, of the 24 Scheduled Coupes in which proposed forestry operations are alleged to have a significant impact on Leadbeater’s Possum, Professor Woinarski gave direct evidence concerning only 11.⁷⁵⁷
589. The inferences VicForests’ submits may permissibly be drawn from Tables A-C to these submissions as to the manner and method in which future forestry operations in the Scheduled Coupes will occur (if they occur at all), namely:

⁷⁵³ T 551:35.

⁷⁵⁴ T 551:45.

⁷⁵⁵ See map [CB 7.25.3h].

⁷⁵⁶ [CB 5.2.1], 72.

⁷⁵⁷ See the First Woinarski Report [CB 4.7.1] paragraphs 72–75.

- (a) any future forestry operations in the Scheduled Coupes will occur in areas flanked by substantial areas of reservation by way of formal reserve (for example, National or State Parks and reserves) or informal reserves such as SPZ;
- (b) the net harvest area will comprise a small or relatively smaller portion of the coupe; and
- (c) there is a real possibility that the silvicultural system used will be less intensive than that described on the TRP

support a conclusion that the weight of the evidence does not support a finding on the balance of probabilities that any forestry operations in the Scheduled Coupes will have a significant impact on Leadbeater's Possum as alleged.

E.5. No significant impact on Leadbeater's Possum in Logged Coupes

590. For all of the reasons set out in section E.4.2 above, the evidence does not demonstrate that forestry operations in the 15 Logged Leadbeater's Possum Coupes have had a significant impact on Leadbeater's Possum, as alleged. Separately, Professor Woinarski gave direct evidence in support of 11 of the 15 alleged coupes, but did not give direct evidence concerning Guitar Solo, Ginger Cat, Swing High, or Skerry's Reach coupes.

F. RELIEF

F.1. Relief under the EPBC Act

591. Under s 475 of the EPBC Act, the Federal Court has the power to grant an injunction restraining conduct constituting an offence or a contravention of the Act.
592. Sub-sections 475(1), (2) and (3) of the EPBC Act provide:

Applications for injunctions

- (1) If a person has engaged, engages or proposes to engage in conduct consisting of an act or omission that constitutes an offence or other contravention of this Act or the regulations:
 - (a) the Minister; or

- (b) an interested person (other than an unincorporated organisation); or
- (c) a person acting on behalf of an unincorporated organisation that is an interested person;

may apply to the Federal Court for an injunction.

Prohibitory injunctions

- (2) If a person has engaged, is engaging or is proposing to engage in conduct constituting an offence or other contravention of this Act or the regulations, the Court may grant an injunction restraining the person from engaging in the conduct.

Additional orders with prohibitory injunctions

- (3) If the court grants an injunction restraining a person from engaging in conduct and in the Court's opinion it is desirable to do so, the Court may make an order requiring the person to do something (including repair or mitigate damage to the environment).

593. The Court's power to grant a prohibitory injunction pursuant to s 475(2) is only enlivened if at least one of the following three facts (which may be characterised as jurisdictional facts) exists:

- (a) a person *has engaged in conduct* constituting an offence or other contravention of this Act or the regulations;
- (b) a person *is engaging in conduct* constituting an offence or other contravention of this Act or the regulations; or
- (c) a person *is proposing to engage in conduct* constituting an offence or other contravention of this Act or the regulations.

594. In this proceeding the applicant seeks prohibitory injunctive relief in respect of the Scheduled Coupes.⁷⁵⁸

595. Although not expressly pleaded in its 3FASOC, the applicant appears to seek such relief on the basis that VicForests:

⁷⁵⁸ 3FASOC, paragraph 120(1).

- (a) has engaged in conduct constituting a contravention of the EPBC Act by reason of its forestry operations in each, some, or all of the Logged Coupes;⁷⁵⁹ and
- (b) is proposing to engage in conduct constituting a contravention of the EPBC Act by reason of its proposed forestry operations in each, some, or all of the Scheduled Coupes.⁷⁶⁰

F.1.1. Prohibitory injunctive relief based on past conduct

596. Insofar as the applicant seeks prohibitory injunctive relief in respect of the Scheduled Coupes on the basis that VicForests has engaged in contravening conduct in each, some or all of the Logged Coupes, the applicant faces a number of hurdles.
597. First, the applicant must establish that VicForests has engaged in conduct constituting a contravention of the EPBC Act by reason of its forestry operations in each, some or all of the Logged Coupes.
598. This in turn requires the applicant to establish that VicForests' relevant forestry operations in the Logged Coupes are not covered by the exemption under s 38 because they were not undertaken in accordance with the CH RFA.⁷⁶¹
599. If the exemption does not apply, the applicant must then establish that VicForests' relevant forestry operations in the Logged Coupes contravened s 18 of the EPBC Act.⁷⁶²
600. If the applicant cannot establish that the s 38 exemption does not apply in respect of VicForests' relevant forestry operations in the Logged Coupes or (even if the s 38 exemption does not apply) that such forestry operations contravened s 18 of the EPBC Act, then it will not be entitled to prohibitory injunctive relief in respect of the Scheduled Coupes on this basis.

⁷⁵⁹ 3FASOC, paragraphs 115AA-115EB under the heading "Past logging is a contravention of the EPBC Act".

⁷⁶⁰ 3FASOC, paragraphs 116BA-116BD under the heading "Proposed logging is a contravention of the EPBC Act" and paragraphs 119A-119B under the heading "Past and proposed logging is a breach of the EPBC Act".

⁷⁶¹ See Section B above.

⁷⁶² See Section E above.

601. For the reasons set out in detail above, VicForests submits that the applicant has failed to establish any of these matters.
602. Secondly, even if the applicant could establish that the s 38 exemption does not apply in respect of VicForests' relevant forestry operations in the Logged Coupes and that such forestry operations contravened s 18 of the EBPC Act, the Court is only empowered to grant an injunction restraining VicForests from engaging in the conduct that was found to have contravened s 18 of the EBPC Act.
603. Section 475(2) only empowers the Court to grant an injunction restraining the person from engaging in *the conduct*. The word 'the' is a determiner which modifies the noun 'conduct' —the injunction cannot restrain *any* conduct, only *the* conduct. The effect of the combined phrase 'the conduct' is thus a referent which points back to the relevant fact which enlivened the jurisdiction under s 475. In this case, 'the conduct' refers to the conduct which was engaged in consisting of an act or omission constituting a contravention of the EPBC Act.
604. The applicant would therefore have to establish that the conduct to be restrained (namely, VicForests' proposed forestry operations in each, some or all of the Scheduled Coupes) is the same conduct that has been found to have contravened s 18 of the EPBC Act.⁷⁶³
605. Having regard to the lack of precision surrounding the extent, manner, timing and configuration of any forestry operations that might be undertaken in each, some or all of the Scheduled Coupes,⁷⁶⁴the applicant has failed to demonstrate that the conduct sought to be restrained constitutes the same conduct previously engaged in in respect of the Logged Coupes. There is, therefore, no proper basis on which prohibitory injunctive relief in respect of the Scheduled Coupes could be granted on this basis.
606. The applicant does not plead that VicForests *has engaged* in contravening conduct in respect of each, some or all of the Scheduled Coupes. In particular, the applicant does not plead that the listing of the Scheduled Coupes on the TRP amounted to conduct

⁷⁶³ See also *Australian Securities and Investments Commission v Cassimatis (No 9)* [2018] FCA 385, [117]–[124] (Dowsett J) in relation to the scope of the injunction power under s 1324(1) of the *Corporations Act 2001* (Cth).

⁷⁶⁴ See Section C.2.1 above.

constituting an offence or other contravention of the Act. Nor does the applicant plead that the listing of the Scheduled Coupes on the TRP constituted a forestry operation undertaken otherwise than in accordance with the CH RFA.⁷⁶⁵

607. In any event, even if the applicant had pleaded and could establish that the listing of the Scheduled Coupes on the TRP amounted to conduct constituting an offence or other contravention of the Act, that conduct is not the same conduct which the applicant now seeks to restrain.⁷⁶⁶ Accordingly, there is no proper basis on which prohibitory injunctive relief in respect of the Scheduled Coupes could be granted on this basis.

F.1.2. Prohibitory injunctive relief based on proposed conduct

608. Insofar as the applicant seeks prohibitory injunctive relief in respect of the Scheduled Coupes on the basis that VicForests is proposing to engage in contravening conduct in each, some, or all of the Scheduled Coupes, the applicant also faces significant difficulties.

609. First, the applicant must identify the proposed conduct of VicForests constituting a contravention of the EPBC Act.

610. Again, the applicant must establish that VicForests' relevant forestry operations in the Scheduled Coupes are not covered by the exemption under s 38 because they would not be undertaken in accordance with the CH RFA.

611. If the exemption does not apply, the applicant must then establish that VicForests' relevant forestry operations in the Scheduled Coupes would contravene s 18 of the EPBC Act.

612. In the circumstances, the applicant will not be entitled to prohibitory injunctive relief in respect of the Scheduled Coupes on this basis if:

⁷⁶⁵ As suggested for the first time in the applicant's oral submissions at T 736:43-47 (Watson address).

⁷⁶⁶ The applicant seeks in paragraph 120(1) of its 3FASOC an injunction to restrain VicForests from undertaking or authorising forestry operations in the Scheduled Coupes. Having regard to paragraphs 116BA – 119B of the 3FASOC and the headings to those paragraphs which refer to “proposed logging”, the forestry operations in the Scheduled Coupes sought to be restrained must refer to the harvesting (ie. logging) of Forest Products.

- (a) the applicant cannot establish that the s 38 exemption does not apply in respect of VicForests relevant forestry operations in the Scheduled Coupes; or
 - (b) even if the s 38 exemption does not apply in respect of VicForests relevant forestry operations in the Scheduled Coupes, the applicant cannot establish that such forestry operations would contravene s18 of the EPBC Act.
613. For the reasons set out in detail above, VicForests submits that the applicant has failed to establish any of these matters.
614. Moreover, the preparation or publication of the TRP could not be characterised as *proposed* conduct. Nor has the applicant established that such conduct was not undertaken in accordance with the CH RFA or that it constitutes an offence or other contravention of the EPBC.
615. Insofar as the applicant relies on any timber harvesting that might be undertaken in each, some or all of the Scheduled Coupes, the applicant must first establish with precision the nature and extent of the proposed conduct it relies on. The proposed conduct must be of a kind that enables the Court to assess and determine whether it would not be undertaken in accordance with the CH RFA such that the s 38 exemption does not apply. That is not possible in respect of incomplete, undeveloped or hypothetical plans.
616. Further, the proposed conduct must be of a kind that enables the Court to assess and determine whether it consists of acts or omissions constituting a contravention of the EPBC Act. Again, that is not possible in respect of incomplete, undeveloped or hypothetical plans.
617. If, as is the case in respect of the Scheduled Coupes, the constituent elements of the proposed conduct, being the acts or omissions, cannot be ascertained with sufficient certainty in order to make a finding that those acts or omissions constitute a contravention of the EPBC Act, the Court cannot be satisfied on the balance of probabilities that the proposed conduct does consist of acts or omissions which constitute a contravention of the EPBC Act. Accordingly, the relevant jurisdictional fact does not exist and the Court has no jurisdiction to grant an injunction on this basis.

F.1.3. Additional orders with prohibitory injunctions

618. The applicant also seeks orders pursuant to section 475(3) requiring that VicForests set aside areas of forest that are protected from forestry operations in order to mitigate the significant impact on the Leadbeater's Possum and the Greater Glider caused by its alleged contraventions of s 18 of the EPBC Act.
619. Orders under s 475(3) may only be made if the Court grants a prohibitory injunction under s 475(2) and in the Court's opinion it is desirable to do so.
620. Since the applicant cannot establish that it is entitled to a prohibitory injunction under s 475(2) it cannot obtain any additional orders pursuant to section 475(3).

F.2. Relief under the Federal Court of Australia Act

621. By its latest pleading amendment, the applicant now also seeks a declaration of right pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that:
- (a) VicForests has breached s 18(2) of the EPBC Act by reason of its forestry operations in the Logged Leadbeater's Possum Coupes; and
 - (b) VicForests has breached s 18(4) of the EPBC Act by reason of its forestry operations in the Logged Glider Coupes.
622. For the reasons set out earlier in these submissions, VicForests has not breached s 18(2) of the EPBC Act by reason of its forestry operations in the Logged Leadbeater's Possum Coupes or s 18(4) of the EPBC Act by reason of its forestry operations in the Logged Glider Coupes. Accordingly, the declarations sought by the applicant ought not be made.
623. In *Ainsworth v Criminal Justice Commission*⁷⁶⁷ the High Court said:

It is now accepted that superior courts have inherent power to grant declaratory relief. It is a discretionary power which it is neither possible nor desirable to fetter... by laying down rules as to the manner of its exercise. However, it is confined by the considerations which mark the boundaries of judicial power. Hence, declaratory relief must be directed to the determination of legal controversies

⁷⁶⁷ (1992) 175 CLR 564, 581.

and not to answering abstract or hypothetical questions. The person seeking relief must have a real interest and relief will not be granted if the question is purely hypothetical, if relief is claimed in relation to circumstances that have not occurred and may never happen, or the courts declaration will produce no foreseeable consequence for the parties.

624. Further, in so far as the declarations sought by the applicant relate to the lawfulness of conduct that has already occurred, such a declaration will produce no foreseeable consequences for the parties. To make a declaration of what the legal position was in the past is of no relevance to the rights and duties of these parties as they now stand.⁷⁶⁸
625. As foreshadowed during its closing oral closing address,⁷⁶⁹ VicForests reserves the right to make such further submissions as may be necessary in respect of relief following the Court's delivery of its reasons.

I G WALLER

H L REDD

R V HOWE

Counsel for VicForests

7 August 2019

⁷⁶⁸ *Direct Share Purchasing Corporation Pty Ltd v LM Investment Management Ltd* [2011] FCA 165, [40].

⁷⁶⁹ T. 670-671.

Schedule 1 — Relevant Greater Glider facts

“First Davey Report” means the report of Dr Davey dated 25 January 2019 at [CB 5.1.1]

“Second Davey Report” means the report of Dr Davey dated 18 April 2019 at [CB 5.4.1]

Fact	Report reference	Davey XXN reference
Characteristics of Glider		
Adult male and female Greater Gliders daily range is between greater than 100 and greater than 300 metres within its home range.	First Davey Report [252]	
LBP and GG have different dietary and habitat requirements		T.470:7-11
Greater Glider feeds on primarily eucalyptus and Corymbia (but also some other species)		T.494:35-39
Whilst they can move through the canopy, gliding is the main form of locomotion		T.494-495
There is scientific evidence that Greater Gliders can actually survive and move out of their home range (Tindale Biscoe third paper)		Davey ReXN T.524:1-33
The more eucalyptus foliage you have in the middle and upper storeys the higher the density of Greater Gliders	First Davey Report [254]	
Greater Gliders are found in forests where maximum mean monthly temperatures can exceed 20°C. Temperature is an important determinant of the activity and detectability of Greater Glider with the limits in temperature being dependent on humidity levels. Detectability for Greater Gliders falls below 50% probability in non-humid conditions once temperature is over 30°C	Second Davey Report [54]	

Greater Glider activity in non-humid conditions appears to cease once temperature reaches 30°C because of physiological reasons		
The Greater Glider is a very agile glider with the reported glide angle of between 31° and 40°. Such glide angles enable gliders to safely traverse logging roads relatively easily where surrounding tree heights are more than 25m	Second Davey Report [175]	
Glider habitat preferences		
There is 3,521,284 hectares of modelled habitat for Greater Gliders in Victoria distributed across parks and reserves (920,638 ha, 26%), Special Protection Zones (SPZ, 489,740 ha, 14%) Special Management Zones (SMZ, 117,155 ha, 3%), the General Management Zone (GMZ, 1,410,172 ha, 40%) and other tenures (583,580 ha, 17%). Hence the formal and informal component of the CAR Reserve system across the five Victorian RFAs contains 40% of the modelled habitat for Greater Gliders, and together the SMZ and GMZ contain 43%. The formal and informal component of the CAR Reserve system contains 34% of Class 1 Habitat, whilst the SMZ and GMZ together contain 59% of Class 1 Habitat found in Victoria.	First Davey Report [231]	
SPZs provide connectivity between various populations of GG and SPZ contain suitable habitat for GG.		T.480:19-21 (Davey XXN) T480:32-33 (Davey XXN)
Ten habitat trees within a particular coupe is indicative of suitable habitat not critical habitat Would be used for breeding, roosting, foraging and dispersal		T.484:15-19 (Davey XXN) T.484:21-24
Critical habitat is the minimum subset of habitat, or resources and conditions, needed to ensure species persistence over the long term.	Second Davey Report [39]	T.484:32-42 (Davey XXN)
Whether or not high quality or very high quality habitat depends on the extent of the habitat.		T.485:4-8 (Davey XXN) T.485:19-21 (Davey XXN)

A high bar is adopted for critical habitat		
Presence of habitat trees is not the sole indicator of critical habitat for GG. There are a range of factors that must be taken into account including the productivity of the site, the habitat trees that are available, the presence of biomass to support GG populations, geographic location and whether the site acts as a refuge area in fire events.		T.486:5-22 (Davey XXN)
It is not known what constitutes critical habitat for the GG and where it occurs in the Central Highlands.	.	T.486:33 (Davey XXN) T.484:5-8
The extent and quality of critical habitat in the Central Highlands for Greater Gliders is an unknown as there is insufficient information available to describe the location and extent of Critical Habitat for Greater Gliders accurately. Use of suitable habitat for Greater Gliders as a description is not a substitute for accurately describing Critical Habitat for Greater Glider	Second Davey Report [45]	
Key habitat attributes constitute important habitat and not Critical Habitat. Important and optimum habitat is not Critical Habitat.	Second Davey Report [47]	
An open structure suitable for the movement of gliding is not a habitat requirement	Second Davey Report [52]	
Scarcity of young regrowth in the understorey is not a suitable attribute as a habitat requirement as young mixed-aged stands form suitable habitat for Greater Gliders	Second Davey Report [52]	A dense understorey (eg rainforest understorey) hindered movement between trees (T.495:31-36)
Intensive owl predation is generally temporary and should not be considered a habitat attribute of Greater Glider habitat.	Second Davey Report [57]	
Greater Gliders prefer tall, productive mature <i>Eucalyptus</i> and <i>Corymbia</i> forests with an overstorey of trees that provide hollows suitable for den sites. Maximum population densities of Greater Gliders occurred during mid succession (stand ages of between 140 and 220 years of age)	Second Davey Report [58] - [59]	

<p>Late succession “old growth forests” contain Greater Gliders at lower densities than mature forests. Irregular aged forest (mixed-aged and multi-aged forest) were found to provide generally good habitat for Greater Gliders. Optimum habitat (including sub-optimum habitat) was found generally to occur after 90 years stand age in even-aged dominated forest with irregular-aged forest generally being in the optimum habitat category (including sub-optimum habitat). Forest less than 90 years stand age in even-aged dominated forest and forests associated with the heath sequence were found to be marginal habitat</p> <p>These figures apply to forests in Victoria.</p>		
<p>Scattered emergent living and dead hollow bearing trees are widespread in regrowth Ash Forests and some intensively burnt regrowth Mixed Species forests in the Central Highlands. Greater Gliders are likely to use hollows in such trees where the regrowth forest is over about 35 years of age and the number of trees with hollows exceeds 1/ha. Where scattered trees with hollows are living they are likely to be of great importance for providing hollows for dispersing as well as resident Greater Gliders over the long term.</p>	<p>Second Davey Report [91]</p>	
<p>The distribution and abundance of Greater Gliders in National Parks of the Central Highlands is largely unknown and that these parks support a wide range of vegetation types including many that are not suitable for Greater Gliders.</p>	<p>Second Davey Report [186]</p>	
<p>Habitats most preferred by Greater Gliders are high elevation mature and old growth Mountain Ash and Mixed Forests. Greater Gliders are found in the other Ash forest types and low elevation Mixed Forest. All these forests are well represented in the CAR reserve system in the Central Highlands with variations in representation at individual Ecological Vegetation Class.</p> <p>Ash and Mixed Species forest provide suitable habitat for Greater Gliders</p>	<p>Second Davey Report [186]</p>	
<p>Habitat trees are an important habitat resource for Greater Gliders. At least 4 habitat trees per hectare is sufficient to support Greater Gliders in suitable habitat</p>	<p>Second Davey Report [333]</p>	
<p>Habitat trees should be scattered across the net area harvested to promote future colonisation of the harvest area by Greater Gliders.</p>	<p>Second Davey Report [334]</p>	

Glider use of harvested and other areas		
Greater Glider will use riparian systems and associated buffer exclusions in the coupes within 15 years of harvesting if adequate habitat trees are available.	First Davey Report at [250]	T468-469 T.468:44-T.469:5 (Davey XXN)
Greater Glider will resume using coupes subject to clearfell, seed tree or retention harvesting systems with scattered habitat trees within 25 years, with average return being after 40 years.	First Davey Report [251] Second Davey Report [203]	T469:7-11 T.468:11 (Davey XXN).
Greater Glider will resume using coupes subject to clearfell, seed tree or retention harvesting systems with no retained habitat trees within 30 years, with colonisation resuming more than 80 years post-harvesting.	First Davey Report [253]	
Harvested areas in coupes that have been intensively harvested (clearfell, seedtree and retention harvest systems) and have not had habitat trees retained will be used by Greater Glider within 30 years but not recolonised by Greater Glider until after a rotation (greater than 80 years) depending upon the availability of hollows formed in seed trees that were retained in the harvest area.	First Davey Report [253]	
Greater Gliders will use clearfelled areas within 30 years of harvesting even where sufficient hollow bearing trees are not retained for Greater Gliders to colonise those areas.	First Davey Report [252]	
In forests selectively harvested with stand basal area reduced by up to 60% Greater Gliders remain in these harvested forests although at much lower densities.	Second Davey Report [56]	
After initial clearfelling local populations of Greater Glider are not likely to recover until the forest reaches about 40 years of age in Ash and about 60-80 years of age in Mixed Species (when trees first reach 40 cm diameter), and then only if forests are managed on long rotations (80 -180 years) and there are nearby protected refuge habitats to provide source populations for re-	Second Davey Report [102]	

colonization. This would also apply to the re-colonisation by Greater Gliders in the scheduled coupes depending on the provision of habitat trees.		
Where there has been clearfelling and clearfelling with seed tree and habitat tree retention (alternate coupe harvesting), and heavy selection logging there may be some mortality of Greater Gliders while others move into retained forests. The narrowness, shape, condition of forest canopy and forest types found in narrow retained strips does determine the likelihood of Greater Gliders to persist in narrow strips in the years following an intensive harvest event.	Second Davey Report [105]	
The use of high intensity timber harvesting in all Mixed Species and Ash forests will not eventually permanently eliminate Greater Gliders from all harvested parts of timber production forests in the Central Highlands and that clearfell harvesting methods in Mixed Species forests throughout Victoria is not improper and ecologically unsustainable and is not one of the primary reasons for the Greater Gliders apparent decline and greatest threat to its survival	Second Davey Report [106]	
The permanent logging road network (local and two-wheel drive roads) is not a permanent impediment to glider dispersal and movement	Second Davey Report [175]	
Reserves, Special Protection Zones, mapped code prescriptions and other retained forests should provide a source of Greater Gliders for recolonization of logged forest	Second Davey Report [179]	
Glider population		
The distribution of the Greater Glider and its population size is not well known or understood.	Second Davey Report [88]	T.469:47 (Davey XXN)
The distribution and abundance of particular populations of Greater Glider is not known in the National Parks areas.		T.472:16 (Davey XXN)
Knowledge of the current distribution and population size of Greater Glider is not known in most areas and refuge areas are an important habitat category to be identified across the species range.	Second Davey Report [44]	

The Central Highlands has not been well surveyed for Greater Gliders. There is a lack of evidence that shows National Parks located in the Central Highlands have been comprehensively and systematically surveyed for possums and gliders.	Second Davey Report [70]	
It is difficult to provide a reliable population estimate of Greater Gliders in the Central Highlands.	Second Davey Report [78]	
There is insufficient information on the current distribution and populations of Greater Glider in the Central Highlands.	Second Davey Report [192] Second Davey Report [196]	
There is insufficient information on the current distribution, genetics and dispersal of Greater Gliders to confidently identify wholly or partially isolated populations or metapopulations.	Second Davey Report [197]	
There has been no robust population viability analysis undertaken for Greater Gliders in the Central Highlands.	Second Davey Report [201]	
Glider — fire		
Greater Glider populations do recover from wildfire and reach after a decade or decades similar densities to that found prior to the fire depending on the scale and severity of the fire.	First Davey Report [299]	
Recolonization by Greater Gliders of forests with burnt crowns takes between 10 and 20 years depending on the extent and severity of the fire.	Second Davey Report [55]	
The quality and extent of Greater Glider habitat that was burnt in 2009 would be improving and therefore habitat for Greater Glider in the Central Highlands is likely stable or increasing rather than declining, with improvements in habitat in burnt forests offsetting any current losses caused by timber harvesting. Recent Greater Glider records have been found in forest burnt in 2009.	Second Davey Report [67]	

Schedule 2 — Relevant Leadbeater’s Possum facts

Agreed Facts

1. The CH RFA Area is the home to, among other species of fauna, populations of Leadbeater’s Possum.⁷⁷⁰
2. On 11 July 2000, the Minister for the Environment and Heritage declared Leadbeater’s Possum to be listed as a threatened species in the endangered category by declaration under s 178 of the EPBC Act.⁷⁷¹
3. On 22 April 2015, the Minister for the Environment approved a conservation advice and transferred the Leadbeater’s Possum to the critically endangered category under the EPBC Act, with effect from 2 May 2015.⁷⁷²
4. In consequence of the listing of the Leadbeater’s Possum as a threatened species in the endangered, and critically endangered, categories under the EPBC Act, the taking of an action that is likely to have a significant impact on the Leadbeater’s Possum is prohibited by s 18(2)(b) of the EPBC Act unless:
 - (a) there is an approval in place for that action under Part 9 of the EPBC Act: s 19 of the EPBC Act; or
 - (b) the action is a Regional Forest Agreement forestry operation undertaken in accordance with an RFA: s 38(1) of the EPBC Act and s 6(4) of the RFA Act.⁷⁷³
5. Leadbeater’s Possum were detected at each location marked by a cross on the maps at Annexures JRM-3⁷⁷⁴ and JRM-7⁷⁷⁵ to the First McKenzie Affidavit.⁷⁷⁶

⁷⁷⁰ Paragraph 11 of the 3FASOC; paragraph 11 of the defence.

⁷⁷¹ Paragraph 12 of the 3FASOC; paragraph 12 of the defence.

⁷⁷² Paragraph 13 of the 3FASOC; paragraph 13 of the defence.

⁷⁷³ Paragraph 15 of the 3FASOC; paragraph 15 of the defence.

⁷⁷⁴ [CB 2.3.3].

⁷⁷⁵ [CB 2.3.7].

⁷⁷⁶ [CB 2.3]. See paragraph 6 of the notice to admit [CB 1.9]; notice of dispute [CB 1.10].

6. Leadbeater’s Possum was detected on 20 February 2017 within Blue Vein coupe at the location marked by a white cross numbered “834” on the maps at Annexure JRM 7⁷⁷⁷ to the First McKenzie affidavit.⁷⁷⁸
7. Leadbeater’s Possum was detected on 2 August 2016 within Hairy Hyde coupe at the location marked by a white cross numbered “567” on the maps at Annexure BTN-5⁷⁷⁹ to the affidavit of Blake Nisbet affirmed on 17 September 2018.⁷⁸⁰
8. Leadbeater’s Possum were detected at each location marked by a blue circle on the Agreed Maps.⁷⁸¹

Habitat requirements of Leadbeater’s Possum

9. Leadbeater’s possum requires the joint presence of both hollow-bearing trees and a dense lower-storey dominated by *Acacia*.⁷⁸²
10. Formation of hollows suitable for nesting by Leadbeater’s Possum has been estimated to take about 100 to 150 years, with hollows starting to form at about 80 to 100 years.⁷⁸³
11. *Acacia* is a short-lived species that reduces from 50–80 years after disturbance when it dies.⁷⁸⁴
12. The *Acacia* understorey component of Leadbeater’s Possum habitat requires disturbance—typically fire, or timber harvesting—to regenerate.⁷⁸⁵
13. Physical characteristics of the understorey necessary for critical habitat of Leadbeater’s Possum may be increasing in at least some areas because of the dense interconnected

⁷⁷⁷ [CB 2.3.7].

⁷⁷⁸ [CB 2.3]. See paragraph 7 of the notice to admit [CB 1.9]; notice of dispute [CB 1.10].

⁷⁷⁹ [CB 2.4.5].

⁷⁸⁰ [CB 2.4]. See paragraph 8 of the notice to admit [CB 1.9]; notice of dispute [CB 1.10].

⁷⁸¹ See paragraph 11 of the notice to admit [CB 1.9]; notice of dispute [CB 1.10]. The Agreed Maps are at Volume 7 of the Court Book.

⁷⁸² First Baker Report [CB 5.2.1], [11]; First Woinarski Report [CB 4.7.1], [80]; T 532:32.

⁷⁸³ First Baker Report [CB 5.2.1], [13]; T 532:37.

⁷⁸⁴ First Baker Report [CB 5.2.1], [13]; First Woinarski Report [CB 4.7.1], [5(f)]; T 533:13.

⁷⁸⁵ First Woinarski Report [CB 4.7.1], [84]; T 533:34.

characteristics of regrowth vegetation that develops in the decades (10–60 years) after fire or timber harvesting.⁷⁸⁶

14. Densities of Leadbeater’s Possum are highest in young (e.g. 20–40 years old stands of forest supporting high stem density).⁷⁸⁷
15. There are many records of Leadbeater’s possum in young regrowth forest (e.g. five to ten years post-fire or logging).⁷⁸⁸

Population of Leadbeater’s Possum

16. Professor Lindenmayer’s long-term study was not designed to estimate the population size of Leadbeater’s Possum.⁷⁸⁹
17. The population size of Leadbeater’s Possum is unknown, representing a notable gap in knowledge in relation to the species.⁷⁹⁰
18. There are relatively few surveys for Leadbeater’s Possum in national parks compared to the overall forest.⁷⁹¹
19. The Threatened Species Scientific Committee considers the population size of Leadbeater’s Possum to be between 2,500 and 10,000.⁷⁹²

Protection of Leadbeater’s Possum habitat

20. As at the time of the publication of the Leadbeater’s Possum Advisory Group (LBPAAG) Technical Report:⁷⁹³

⁷⁸⁶ First Woinarski Report [CB 4.7.1], [84].

⁷⁸⁷ Conservation Advice for Leadbeater’s Possum [CB 6.23].

⁷⁸⁸ Second Woinarski Report [CB 4.9.1], 27 [68(b)]; DELWP Review of Leadbeater’s Possum Colony exclusion dated July 2017 [CB 3.4.29], Table 7, 30.

⁷⁸⁹ Third Woinarski Report [CB 4.11.1], [27].

⁷⁹⁰ First Woinarski Report [CB 4.7.1], [4], [16]: T 538:27.

⁷⁹¹ T 539:14.

⁷⁹² [CB 6.23A], pp 19–20.

⁷⁹³ 23 January 2014, [CB 11.96].

- (a) 34 percent of the area of potential habitat (i.e. ash forests or Snow Gum woodlands) within the range of Leadbeater’s Possum in the Central Highlands was located in formal national parks and conservation reserves;⁷⁹⁴
- (b) however a total of 69 per cent of the area of potential habitat within the range of Leadbeater’s Possum in the Central Highlands was in areas excluded from timber harvesting when, in addition to formal parks and conservation reserves, SPZ (including the Leadbeater’s Possum Reserve of 30,500 hectares of high quality habitat) or areas excluded from harvesting due to biodiversity and regulatory reasons were taken into account;⁷⁹⁵
- (c) approximately 63,000 hectares of ash forest within the range of Leadbeater’s Possum (31 per cent of potential habitat) is available to be harvested and then actively regenerated over the length of harvesting rotation (around 80 years);⁷⁹⁶
- (d) it was estimated that after two years of intensive surveys, including by government and environmental groups, that up to 280 new colonies within the available timber resource may be located;⁷⁹⁷ and
- (e) the Advisory Group’s recommended package of actions was based on establishing a 200 m radius exclusion zone around existing and future records that was estimated to impact, after two years of intensive surveying, up to 2,572 hectares of available resource.⁷⁹⁸

21. The Victorian Government accepted all of the LBPAG recommendations.⁷⁹⁹

22. The Code gave effect to several of the actions recommended from the LBPAG in that, since the publication of the Code in 2014:

- (a) the Planning Standards have specified as zoning management actions:

⁷⁹⁴ [CB 11.96], 16. See also T 539:19.

⁷⁹⁵ [CB 11.96], 6. See also Table 1, 23.

⁷⁹⁶ [CB 11.96], 8.

⁷⁹⁷ [CB 11.96], 81.

⁷⁹⁸ [CB 11.96], 81.

⁷⁹⁹ DELWP Review of Leadbeater’s Possum Colony exclusion dated July 2017 [CB 3.4.29], 17.

- (i) the protection of 30% of Ash forest from timber harvesting operations in each LMU;⁸⁰⁰
 - (ii) the establishment and maintenance of SPZs of 200 m radius centred on each verified Leadbeater's Possum colony found since 1998 that is not located within forest areas severely impacted by the 2009 Black Saturday bushfire;⁸⁰¹ and
 - (iii) the establishment of SPZs over areas of Zone 1A habitat where there are more than 10 hollow bearing trees per 3 ha in patches greater than 3 ha (amended from more than 12 hollow bearing trees);⁸⁰² and
- (b) the Management Standards and Procedures have required, within the Leadbeater's Possum range, a 100 m buffer around all stands of modelled Ash old growth forest depicted in the Department's old growth spatial layer (MOG2009.shp) and verified during field assessment by VicForests or the Department to be Ash type forest.⁸⁰³

23. As at 30 January 2017:⁸⁰⁴

- (a) an additional 4,046 hectares of State forest had been reserved in SPZ by reason of implementation of THEZs around verified Leadbeater Possum colonies;⁸⁰⁵
- (b) the establishment of the THEZs had resulted in the formal reserve system for Leadbeater's Possum increasing from 30,520 ha to 34,566 ha (an increase of ~13% in terms of area); and⁸⁰⁶

⁸⁰⁰ Leadbeater's Possum Management Unit; [CB 6.11], 21–22. See recommended action 4.7 in [CB 11.96], 91.

⁸⁰¹ [CB 6.11], 21–22; 39. See recommended action 4.1 in [CB 11.96], 84.

⁸⁰² [CB 6.11], 39. See recommended action 4.6 in [CB 11.96], 90.

⁸⁰³ [CB 6.10], 37, clause 4.4.4.1.

⁸⁰⁴ Although the DELWP Review of Leadbeater's Possum Colony exclusion is dated Jul 2017, p 17 explains that all verified records of Leadbeater's Possum up to 30 January 2017 were included in the review.

⁸⁰⁵ DELWP Review of Leadbeater's Possum Colony exclusion dated July 2017 [CB 3.4.29], 10. See also section 2.1.6, p 27.

⁸⁰⁶ DELWP Review of Leadbeater's Possum Colony exclusion dated July 2017 [CB 3.4.29], 10–11.

- (c) the clustering of THEZs has created potential ‘neighbourhoods’ of possum colonies, likely to increase the resilience and long-term viability of these sub-populations.⁸⁰⁷
24. As at October 2018:
- (a) there have been approximately 657 Leadbeater’s Possum colonies identified across State Forests, Parks and Reserve Lands in Victoria;⁸⁰⁸ and
- (b) 555 of the Leadbeater’s Possum colony sites are within GMZ (with 96 identified prior to 2014) and 459 colony sites protected under the LBPAG recommendations.⁸⁰⁹
25. The Threatened Species Scientific Committee estimates that, in the period 2018 to 2036, the overall harvest of existing potential habitat for Leadbeater’s Possum would be 9,296 ha or approximately 4.9 percent of existing potential habitat.⁸¹⁰

⁸⁰⁷ DELWP Review of Leadbeater’s Possum Colony exclusion dated July 2017 [CB 3.4.29], 11.

⁸⁰⁸ [CB 11.20], 18.

⁸⁰⁹ [CB 11.20], 18.

⁸¹⁰ [CB 6.23A], 13.

Table A — Analysis of Logged Coupes (including Logged Glider coupes)

“GG” means Greater Glider

“LBP” means Leadbeater’s Possum

“Code” means the *Code of practice for timber production 2014*

“SPZ” means Special Protection Zone

“SMZ” means Special Management Zone

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
9.5	Glenview 298-516-0001	40.92	26.25	30.01	STR	STR	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁸¹⁴ • pre-harvest habitat survey completed prior to harvesting⁸¹⁵ • approx. 10 ha retained habitat comprised of habitat exclusion on south border of coupe and hydrological buffer around entire border of coupe⁸¹⁶ 	<ul style="list-style-type: none"> • Code exclusions (slope > 30 degrees or stream side buffer) (Code exclusions) in and around coupe⁸²¹ • area of SPZ to north west of coupe⁸²² • neither the Operations Map or Context Map show SMZ zone in or adjacent to coupe⁸²³ • no green ash to be harvested within SMZ. SMZ for green ash protection (2009 wildfire) within

⁸¹¹ See the table at paragraph [161] of the Second Paul Affidavit [CB 3.4].

⁸¹² Ibid.

⁸¹³ [CB 6.6].

⁸¹⁴ Second Paul Affidavit [CB 3.4; [213]].

⁸¹⁵ Second Paul Affidavit [CB 3.4; [294]].

⁸¹⁶ [CB 8.14A]; Second Paul Affidavit [CB 3.4; [300(b)]].

⁸²¹ [CB 7.16.3h].

⁸²² [CB 7.16D; CB 7.1D].

⁸²³ [CB 8.14 p 15].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> • habitat protection in the vicinity of GG detections⁸¹⁷ • 5 of the 9 GG detections occurred in an area excluded from harvesting; the balance occurred in area harvested⁸¹⁸ • neither the Operations Map or Context Map show SMZ zone in or adjacent to coupe⁸¹⁹ • no green Ash to be harvested within SMZ. SMZ for green Ash protection (2009 wildfire) within coupe boundary and within 500m of boundary⁸²⁰ 	coupe boundary and within 500m of boundary ⁸²⁴
9.6	Flicka 298-519-0003	37.75	27.78	19.86	RRH	CFE	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁸²⁵ • large area of coupe not harvested⁸²⁶ • area of SPZ runs up the centre of the coupe which was excluded from the coupe boundary and the area surrounding the SPZ within the 	<ul style="list-style-type: none"> • SPZ and Code exclusion zone in centre and eastern edge of coupe⁸³⁰ • area of SPZ and Murrindindi River natural features and scenic reserve in vicinity⁸³¹ • no SMZ within and adjacent to coupe⁸³²

⁸¹⁷ Second Paul Affidavit [CB 3.4; [300(b)]]].

⁸¹⁸ [CB 2.3.14; CB2.3.17]].

⁸¹⁹ [CB 8.14; p 15].

⁸²⁰ [CB 8.14; p 15].

⁸²⁴ [CB 8.14 p 15].

⁸²⁵ Second Paul Affidavit [CB 3.4; [213]].

⁸²⁶ [CB 8.15A].

⁸³⁰ [CB 7.16.3h].

⁸³¹ [CB 7.1A].

⁸³² [CB 7.16.3h]; [CB 8.15].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> coupe was excluded from timber harvesting⁸²⁷ no SMZ within and adjacent to coupe⁸²⁸ SMA (2009 fire salvage) adjacent to coupe, north side of Horseyard Creek Yard. No operations to occur in SMA⁸²⁹ 	<ul style="list-style-type: none"> SMA (2009 fire salvage) adjacent to coupe, north side of Horseyard Creek Yard. No operations to occur in SMA⁸³³
9.12	Guitar Solo 307-505-0011	33.86	24.85	15.76	RRH	STR	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁸³⁴ pre-harvest habitat survey undertaken⁸³⁵ three 200 m THEZ overlay and are adjacent to north west side of coupe⁸³⁶ 2 GG detected in (or on the border of) areas excluded from harvesting⁸³⁷ 	<ul style="list-style-type: none"> coupe immediately to the west of a large plantation area⁸⁴⁴ Yarra Ranges National Park in the vicinity of coupe⁸⁴⁵ areas of SPZ and SMZ surround coupe⁸⁴⁶ large SMZ within and surrounding coupe (all sides)⁸⁴⁷ harvest and roading activities within SMZ to be in accordance with SMZ Plan - SMZ plan requirement of no more than 90 ha (net area) to be harvested within a

⁸²⁷ [CB 8.15A]; Second Paul Affidavit [CB 3.4; [306]].

⁸²⁸ [CB 7.16.3h]; [CB 8.15].

⁸²⁹ [CB 8.14; p 16].

⁸³³ [CB 8.14; p 16].

⁸³⁴ Second Paul Affidavit [CB 3.4; [213]].

⁸³⁵ Second Paul Affidavit [CB 3.4; [310]].

⁸³⁶ [CB 8.11A].

⁸³⁷ [CB 8.11A]; [CB 3.4.58].

⁸⁴⁴ [CB 7.12.3h; CB 7.1A].

⁸⁴⁵ [CB 7.12.3h].

⁸⁴⁶ [CB 7.12C].

⁸⁴⁷ [CB 8.11; p 24, 25]; [CB 7.12.3h].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> • visual buffers on south and northeast borders of coupe⁸³⁸ • 5 m retained around standing tree geebungs⁸³⁹ • three of the GG detections were within the coupe that was already harvested prior to detection and one was on the edge of the harvested area and the 200 m THEZ⁸⁴⁰ • two detections of GG in the area south of the retained habitat and another two detections occurred within areas of retained vegetation⁸⁴¹ • large SMZ within and surrounding coupe (all sides)⁸⁴² • harvest and roading activities within SMZ to be in accordance with SMZ Plan - SMZ plan requirement of no more than 90ha (net area) to be harvested within a 12-month period and a maximum size area of 30ha in single area⁸⁴³ 	12-month period and a maximum size area of 30 ha in single area ⁸⁴⁸

⁸³⁸ [CB 8.11A].

⁸³⁹ [CB 8.11A].

⁸⁴⁰ Second Paul Affidavit [CB 3.4; [314(c)]]].

⁸⁴¹ Second Paul Affidavit [CB 3.4; [314](c)(v)].

⁸⁴² [CB 8.11; pp 24-25]; [CB 7.12.3h].

⁸⁴³ [CB 8.11; p 17].

⁸⁴⁸ [CB 8.11; p 17].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
9.13	Mont Blanc 309-507-0001	20.06	12.98	13.57	STR	STR	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁸⁴⁹ • area to north east of coupe does not appear to have been harvested (although is not excluded)⁸⁵⁰ • coupe diary entry states: “advice from Tim McBride ‘<i>recommend retaining the largest diameter hollow bearing trees near to location where gliders have been observed(refer supplied map also). Younger trees adjacent to these HBT should be also retained for a food source for gliders as they are exclusively leaf eaters</i>’”⁸⁵¹ • GG detections bar one in harvested area⁸⁵² • no SMZ in coupe and strip of SMZ east of coupe along Acheron Way⁸⁵³ • SMZ not within or adjacent to coupe boundary and will not be 	<ul style="list-style-type: none"> • area of SPZ to north and south of coupe⁸⁵⁵ • Yarra Ranges National Park in vicinity⁸⁵⁶ • no SMZ in coup and of SMZ east of coupe along Acheron Way⁸⁵⁷ • SMZ not within or adjacent to coupe boundary and will not be affected by harvesting and SMZ is located within 340 m of coupe boundary⁸⁵⁸

⁸⁴⁹ Second Paul Affidavit [CB 3.4; [213]].

⁸⁵⁰ [CB 8.1A].

⁸⁵¹ Second Paul Affidavit [CB 3.4; [321]].

⁸⁵² [CB 3.4.61].

⁸⁵³ [CB 8.1; p 21, 22]; [CB 7.4.3h].

⁸⁵⁵ [CB 7.4.3h] [CB 7.1A].

⁸⁵⁶ [CB 7.1A].

⁸⁵⁷ [CB 8.2; p 20, 21]; [CB 7.4.3h]

⁸⁵⁸ [CB 8.1; p; 14].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							affected by harvesting and SMZ is located within 340 m of coupe boundary ⁸⁵⁴	
9.14	Kenya 309-507-0003	28.81	13.33	13.4	RRH	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁸⁵⁹ coupe diary entry states: “advice from Tim McBride <i>‘recommend retaining the largest diameter hollow bearing trees near to location where gliders have been observed(refer supplied map also). Younger trees adjacent to these HBT should be also retained for a food source for gliders as they are exclusively leaf eaters’</i>”⁸⁶⁰ SPZ and Code exclusion in north area of coupe⁸⁶¹ hydrological buffer along south and south west border of coupe⁸⁶² 	<ul style="list-style-type: none"> SPZ and Code exclusion in north area of coupe⁸⁶⁵ Code exclusion along south and south west border of coupe⁸⁶⁶ area of SPZ to north of coupe extending in a line out east and west⁸⁶⁷ Yarra Ranges National Park in vicinity⁸⁶⁸ no SMZ in coupe and strip of SMZ east of coupe along Acheron Way⁸⁶⁹

⁸⁵⁴ [CB 8.1; p 14].

⁸⁵⁹ Second Paul Affidavit [CB 3.4; [213]].

⁸⁶⁰ Second Paul Affidavit [CB 3.4; [321]].

⁸⁶¹ Second Paul Affidavit [CB 3.4; [323(d)]]; [CB 8.2A].

⁸⁶² [CB 8.2A].

⁸⁶⁵ [CB 7.4.3h].

⁸⁶⁶ [CB 7.4.3h].

⁸⁶⁷ [CB 7.4.3h].

⁸⁶⁸ [CB 7.1A].

⁸⁶⁹ [CB 8.1 pp 21-22]; [CB 7.4.3h].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> • GG detections occurred on or adjacent to north eastern border of coupe in area that was harvested⁸⁶³ • no SMZ in coupe and strip of SMZ east of coupe along Acheron Way⁸⁶⁴ 	
9.15	The Eiger 309-507-0004	31.38	22.78	28.78	STR	CFE	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁸⁷⁰ • no SMZ in coupe and strip of SMZ east of coupe along Acheron Way⁸⁷¹ 	<ul style="list-style-type: none"> • Yarra Ranges National Park in vicinity⁸⁷² • no SMZ in coupe and strip of SMZ east of coupe along Acheron Way⁸⁷³
9.16	Professor Xavier 317-508-0008	29.76	16.7	15.3	RRH	CFE	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁸⁷⁴ • three 200m THEZ across large areas of coupe⁸⁷⁵ 	<ul style="list-style-type: none"> • coupe immediately bordered by Yarra Ranges National Park⁸⁸⁰ • SMZ within coupe and on south-west/east border⁸⁸¹ • SMZ Plan in place⁸⁸²

⁸⁶³ [CB 3.4.61].

⁸⁶⁴ [CB 8.1; pp21-22]; [CB 7.4.3h].

⁸⁷⁰ Second Paul Affidavit [CB 3.4; [213]].

⁸⁷¹ [CB 8.1 pp 16-17]; [CB 7.4.3h].

⁸⁷² [CB 7.1A].

⁸⁷³ [CB 8.1; pp 16, 17]; [CB 7.4.3h].

⁸⁷⁴ Second Paul Affidavit [CB 3.4; [213]].

⁸⁷⁵ Second Paul Affidavit [CB 3.4; [324]]; [CB 8.26A].

⁸⁸⁰ [CB 7.14.3h].

⁸⁸¹ [CB 8.26; p 27].

⁸⁸² Fifth Paul Affidavit [CB 3.8; [20], [21]]; [CB 3.8.3].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> rainforest buffer area on north west border of coupe, extending east of the THEZ⁸⁷⁶ strip of retained vegetation on south eastern boundary⁸⁷⁷ SMZ within coupe and on south-west/east border⁸⁷⁸ SMZ Plan in place⁸⁷⁹ 	
9.17	Ginger Cat 344-509-0009	11.83	5.02	4.28	RRH	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁸⁸³ large exclusion area running around entire perimeter of coupe and intruding to centre of coupe⁸⁸⁴ four 200 m THEZ surrounding coupe⁸⁸⁵ six 200m THEZ in proximity to the coupe⁸⁸⁶ 	<ul style="list-style-type: none"> Code exclusion in north east, north west and south of coupe⁸⁸⁹ large area of SPZ located immediately south of coupe⁸⁹⁰ coupe in vicinity of Yarra Ranges National Park and series of patches of SPZ leading from coupe area to Yarra Ranges National Park⁸⁹¹ SMZ located south-east of coupe and no SMZ within coupe or immediately adjacent to coupe⁸⁹²

⁸⁷⁶ Second Paul Affidavit [CB 3.4; [324]]; [CB 8.26A].

⁸⁷⁷ Second Paul Affidavit [CB 3.4; [324]]; [CB 8.26A].

⁸⁷⁸ [CB 8.26; p 27].

⁸⁷⁹ Fifth Paul Affidavit [CB 3.8; [20], [21]]; [CB 3.8.3].

⁸⁸³ Second Paul Affidavit [CB 3.4; [213]].

⁸⁸⁴ [CB 8.5A].

⁸⁸⁵ Second Paul Affidavit [CB 3.4; [326]]; [CB 8.5A].

⁸⁸⁶ Second Paul Affidavit [CB 3.4; [326]].

⁸⁸⁹ [CB 7.6.3h].

⁸⁹⁰ [CB 7.6.3h].

⁸⁹¹ [CB 7.3C].

⁸⁹² [CB 7.6.3h].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> SMZ located South-East of coupe AND SMZ within coupe or immediately adjacent to coupe⁸⁸⁷ No harvesting within SMA and SMA within 500m radius —SMA boundary to be confirmed and marked (SMP65 and SMP69)⁸⁸⁸ 	<ul style="list-style-type: none"> no harvesting within SMA and SMA within 500m radius - SMA boundary to be confirmed and marked (SMP65 and SMP 69)⁸⁹³
9.18	Blue Vein 348-506-0003	19.97	9.79	2.52	RRH	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁸⁹⁴ a series of surveys and/or investigations for both Leadbeater's Possum and Leadbeater's Possum habitat undertaken prior to the commencement of timber harvesting⁸⁹⁵ two directions given under s 70 of the SFT Act⁸⁹⁶ Department investigation confirmed no Zone 1A or Zone 1B habitat or any breach of the Code⁸⁹⁷ 	<ul style="list-style-type: none"> large area of SPZ surrounding entire coupe and SPZ connected to other corridors of SPZ⁹⁰⁵ SMZ located south-east of coupe and no SMZ within coupe or immediately adjacent to coupe⁹⁰⁶ no harvesting within SMA and SMA within 500m radius - SMA boundary to be confirmed and marked (SMP65 and SMP69)⁹⁰⁷

⁸⁸⁷ [CB 7.6.3h].

⁸⁸⁸ [CB 8.5; p 16].

⁸⁹³ [CB 8.5; p 16].

⁸⁹⁴ Second Paul Affidavit [CB 3.4; [213]].

⁸⁹⁵ Second Paul Affidavit [CB 3.4; [331]-[345], [350]-[353]].

⁸⁹⁶ Second Paul Affidavit [CB 3.4; [356]-[360]]; [CB 3.4.71]; [CB 3.4.72].

⁸⁹⁷ Second Paul Affidavit [CB 3.4; [369]]; Fourth Paul Affidavit [CB 3.6 [115]].

⁹⁰⁵ [CB 7.6.3h].

⁹⁰⁶ [CB 7.6.3h].

⁹⁰⁷ [CB 8.6; p 17].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> • large areas in coupe excluded from harvesting due to multiple 200 m THEZ overlapping coupe boundary⁸⁹⁸ • area of Zone 1A habitat in west of coupe excluded⁸⁹⁹ • LBP detection in southern portion of coupe occurred after harvesting was commenced and the 200 m THEZ overlaps with the portion of the coupe harvested by a small margin⁹⁰⁰ • GG detections occurred in area in which harvesting did not occur⁹⁰¹ • VicForests would have to consider the viability of conducting any future timber harvesting operations in coupe given the substantial reserved areas within and around coupe⁹⁰² • SMZ located south-east of coupe and no SMZ within coupe or immediately adjacent to coupe⁹⁰³ • no harvesting within SMA and SMA within 500m radius —SMA 	

⁸⁹⁸ [CB 8.6A].

⁸⁹⁹ Second Paul Affidavit [CB 3.4; [370]].

⁹⁰⁰ Second Paul Affidavit [CB 3.4; [370 (b)]]].

⁹⁰¹ [CB 2.3.36].

⁹⁰² Second Paul Affidavit [CB 3.4; [370 (f)]]].

⁹⁰³ [CB 7.6.3h].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							boundary to be confirmed and marked (SMP65 and SMP69) ⁹⁰⁴	
9.19	Bullseye 345-503-0005	30.45	13.29	8.90	RRH	RRH	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁹⁰⁸ • two small patches of coupe have been harvested, with the remainder of coupe excluded from timber harvesting by significant areas of SPZ, rainforest, Zone 1A habitat and buffer⁹⁰⁹ • SPZ extends from north east boundary of coupe to north east of coupe⁹¹⁰ • no SMZ within or adjacent to coupe⁹¹¹ 	<ul style="list-style-type: none"> • coupe in vicinity of conservation reserves, extensive SPZ and multiple 200 m THEZ⁹¹² • no SMZ within or adjacent to coupe⁹¹³
9.20	Hairy Hyde 345-505-0006	46.28	33.99	2.58	STR	CFE	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁹¹⁴ • 200 m THEZ in centre of coupe⁹¹⁵ 	<ul style="list-style-type: none"> • a series of Code exclusions extend to the north west of the coupe and interlock with an SPZ around north of the coupe⁹²⁰

⁹⁰⁴ [CB 8.6; p 17].

⁹⁰⁸ Second Paul Affidavit [CB 3.4; [213]].

⁹⁰⁹ [CB 8.23A].

⁹¹⁰ [CB 8.23A].

⁹¹¹ [CB 7.24.3h]; [CB 8.23; p 26-27].

⁹¹² [CB 7.24.3h].

⁹¹³ [CB 7.24.3h]; [CB 8.23; pp 26-27].

⁹¹⁴ Second Paul Affidavit [CB 3.4; [213]].

⁹¹⁵ [CB 8.24A].

⁹²⁰ [CB 7.24.3h]

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> • three further 200 m THEZ overlapping coupe⁹¹⁶ • only 2.58 ha in south corner of coupe has been harvested⁹¹⁷ • area partially harvested overlaps 200 m THEZ (but was harvested prior to detection)⁹¹⁸ • no SMZ within or adjacent to coupe⁹¹⁹ 	<ul style="list-style-type: none"> • in vicinity of Yarra Ranges National Park⁹²¹ • patches of SPZ to east of coupe⁹²² • Bunyip State Park approximately 20 km south of coupe⁹²³ • no SMZ within or adjacent to coupe⁹²⁴
9.21	Opposite Fitzies 345-506-0004	34.30	23.18	6.06	STR	CFE	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁹²⁵ • pre-harvest survey for LBP undertaken between 18 December 2015 and 8 February 2016, LBP detected and a 200 m THEZ created around the detection⁹²⁶ 	<ul style="list-style-type: none"> • coupe surrounded by interconnecting SPZ⁹³⁵ • coupe in vicinity of Yarra Ranges National Park⁹³⁶ • Bunyip State Park approximately 20 km south of coupe⁹³⁷

⁹¹⁶ [CB 8.24A].

⁹¹⁷ Second Paul Affidavit [CB 3.4; [385(b)]; [CB 8.24A].

⁹¹⁸ Second Paul Affidavit [CB 3.4; [384]].

⁹¹⁹ [CB 7.24.3h]; [CB 8.24; pp 16, 22, 24].

⁹²¹ [CB 7.3A].

⁹²² [CB 7.3A].

⁹²³ [CB 7.3A].

⁹²⁴ [CB 7.24.3h]; [CB 8.24; pp 16, 22, 24].

⁹²⁵ Second Paul Affidavit [CB 3.4; [213]].

⁹²⁶ Second Paul Affidavit [CB 3.4; [389]].

⁹³⁵ [CB 7.24.3h].

⁹³⁶ [CB 7.3A].

⁹³⁷ [CB 7.3A].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> only an area in south east of coupe has been harvested⁹²⁷ 200 m THEZ in centre of coupe⁹²⁸ due to location of 200 m THEZ, post-harvest map states “unable to access [northern half of coupe] due to LBP Buffer”⁹²⁹ area of reserve surrounding harvested area in south west corner of coupe⁹³⁰ further 200 m THEZ overlaps the northern border of the coupe from which harvesting was excluded⁹³¹ another LBP SPZ adjacent to south east corner of coupe⁹³² which covers two GG detections (in 1995 and 1997)⁹³³ SMA VFSMP65 within 500 m of coupe; not within or immediately adjacent to coupe and will not be affected by harvesting⁹³⁴ 	
9.25	Greendale 348-515-0004	26.97	17.78	18.36	CFE	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance 	<ul style="list-style-type: none"> Large area of SPZ to north/north west of coupe; area extends to west

⁹²⁷ [CB 8.25A].

⁹²⁸ [CB 8.25A].

⁹²⁹ [CB 8.25A].

⁹³⁰ [CB 8.25A].

⁹³¹ [CB 7.24C].

⁹³² [CB 7.24C].

⁹³³ [CB 7.24C].

⁹³⁴ [CB 8.25; p 16]; [CB 7.24.3h].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> and coupe marking prior to harvesting⁹³⁸ multiple 200 m THEZ overlapping or adjacent to southern boundary of coupe; area was harvested prior to creation of one 200 m THEZ⁹³⁹ hydrological buffer along west border of coupe excluded from harvesting⁹⁴⁰ no SMZ within or immediately adjacent to coupe⁹⁴¹ no action required on SMA; SMA not within or surrounding coupe⁹⁴² 	<ul style="list-style-type: none"> of coupe with series of SPZ exclusion corridors⁹⁴³ GG detections to the north of coupe entirely within SPZ area⁹⁴⁴ coupe in vicinity of Yarra Ranges National Park⁹⁴⁵ no SMZ within or immediately adjacent to coupe⁹⁴⁶ no action required on SMA; SMA not within or surrounding coupe⁹⁴⁷
9.26	Tarzan 348-517-0005	30.51	18.58	17.05	RRH	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁹⁴⁸ large area on north boundary of coupe excluded from harvesting⁹⁴⁹ 	<ul style="list-style-type: none"> GG detection (1998) in south of coupe border in 200 m THEZ⁹⁵⁶ area of SPZ along Ada River excluded⁹⁵⁷

⁹³⁸ Second Paul Affidavit [CB 3.4; [213]].

⁹³⁹ [CB 8.16A]].

⁹⁴⁰ [CB 8.16A]].

⁹⁴¹ [CB 7.17.3h]; [CB 8.16; pp 24-25].

⁹⁴² [CB 8.16 p 15].

⁹⁴³ [CB 7.17.3h]].

⁹⁴⁴ [CB 7.17C]].

⁹⁴⁵ [CB 7.3A].

⁹⁴⁶ [CB 7.17.3h]; [CB 8.16; pp 24-25].

⁹⁴⁷ [CB 8.16; p 15].

⁹⁴⁸ Second Paul Affidavit [CB 3.4; [213]].

⁹⁴⁹ [CB 8.4A]].

⁹⁵⁶ [CB 7.5C].

⁹⁵⁷ CB 7.5C].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> hydrological buffer on eastern and southern boundary⁹⁵⁰ 200 m THEZ southern boundary of coupe which overlaps the coupe boundary and that area is excluded from harvesting⁹⁵¹ SPZ corridor extending along western border of coupe to the north and south along Ada River⁹⁵² additional 200 m THEZ in vicinity of coupe⁹⁵³ a GG detection in the north corner of the coupe is covered by a modelled exclusion area⁹⁵⁴ no SMZ within or adjacent coupe⁹⁵⁵ 	<ul style="list-style-type: none"> coupe in vicinity of Yarra Ranges National Park⁹⁵⁸ Bunyip State Park approximately 20 km south of coupe⁹⁵⁹ no SMZ within or adjacent coupe⁹⁶⁰ small SMZ south of coupe⁹⁶¹
9.30	Estate 462-507-0008	34.53	24.25	18.66	STR	STR	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁹⁶² 	<ul style="list-style-type: none"> coupe in vicinity of Yarra Ranges National Park⁹⁷⁰

⁹⁵⁰ [CB 8.4A]].

⁹⁵¹ [CB 8.4A]].

⁹⁵² Second Paul Affidavit [CB 3.4; [393]]; [CB 8.4A]].

⁹⁵³ [CB 8.4A]].

⁹⁵⁴ [CB 7.5C]

⁹⁵⁵ [CB 8.4; pp 22-23].

⁹⁵⁸ [CB 7.3A].

⁹⁵⁹ [CB 7.3A].

⁹⁶⁰ [CB 8.4; pp 22-23].

⁹⁶¹ [CB 7.5.3h].

⁹⁶² Second Paul Affidavit [CB 3.4; [213]].

⁹⁷⁰ [CB 7.3A].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> harvesting effectively completed by the time the GG detections were received⁹⁶³ area of SPZ extends along river to north of coupe⁹⁶⁴ area to west of harvest area not harvested (but not marked as excluded)⁹⁶⁵ - this area retained in addition to stream buffer adjacent to western boundary⁹⁶⁶ GG detections in north east area of coupe appear to be in area which was not harvested⁹⁶⁷ modelled exclusion areas forming corridors to north east of coupe⁹⁶⁸ no SMZ within or adjacent to coupe⁹⁶⁹ 	<ul style="list-style-type: none"> Bunyip State Park approximately 20 km south of coupe⁹⁷¹ areas of SPZs covering rivers extending to north west of coupe⁹⁷² series of SPZ corridors to south west of coupe⁹⁷³ no SMZ within or adjacent to coupe⁹⁷⁴
9.31	De Valera 463-504-0009	33.744	15.46	17.97	RRH	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance 	<ul style="list-style-type: none"> Yarra Ranges National Park 4-5 km north east of coupe⁹⁸⁰

⁹⁶³ Second Paul Affidavit [CB 3.4; [395]].

⁹⁶⁴ [CB 8.12A].

⁹⁶⁵ [CB 8.12A].

⁹⁶⁶ [CB 8.12A].

⁹⁶⁷ [CB 7.13.3h].

⁹⁶⁸ [CB 7.13.3h]

⁹⁶⁹ [CB 7.13.3h]; [CB 8.12; p. 21-22].

⁹⁷¹ [CB 7.3A].

⁹⁷² [CB 7.3A].

⁹⁷³ [CB 7.3A].

⁹⁷⁴ [CB 7.13.3h]; [CB 8.12; p 21-22].

⁹⁸⁰ [CB 7.3A].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> and coupe marking prior to harvesting⁹⁷⁵ • three 200 m THEZ to west boundary of coupe, two of which overlap the coupe boundary and are excluded from harvesting⁹⁷⁶ • three hydrological buffer areas excluded from harvesting⁹⁷⁷ • area of SPZ along river to east of coupe⁹⁷⁸ • no SMZ within or adjacent to coupe⁹⁷⁹ 	<ul style="list-style-type: none"> • areas of SPZs covering rivers extending to north west of coupe⁹⁸¹ • series of SPZ corridors to north west of coupe⁹⁸² • area of plantation to west of coupe⁹⁸³ • no SMZ within or adjacent to coupe⁹⁸⁴
9.32	Rowles 483-505-0002	42.24	27.06	7.77	STR	STR	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁹⁸⁵ • area to north of coupe entirely SPZ⁹⁸⁶ 	<ul style="list-style-type: none"> • Baw Baw National Parks and Yarra Ranges National Park located north of coupe; series of SPZ corridors existing between coupe and National Parks⁹⁹³ • patches of SPZ to south east of coupe⁹⁹⁴

⁹⁷⁵ Second Paul Affidavit [CB 3.4; [213]].

⁹⁷⁶ [CB 8.22A].

⁹⁷⁷ [CB 8.22A].

⁹⁷⁸ [CB 8.22A]; [CB 7.21.3h].

⁹⁷⁹ [CB 8.22; pp 22-23]; [CB 7.21.3h].

⁹⁸¹ [CB 7.3A].

⁹⁸² [CB 7.3A].

⁹⁸³ [CB 7.3A].

⁹⁸⁴ [CB 8.22 pp 22-23]; [CB 7.21.3h].

⁹⁸⁵ Second Paul Affidavit [CB 3.4; [213]].

⁹⁸⁶ [CB 8.7A].

⁹⁹³ [CB 7.2A].

⁹⁹⁴ [CB 7.2A].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> only small section in south of coupe has been harvested⁹⁸⁷ 200 m THEZ adjacent to south east boundary⁹⁸⁸ GG detection (2017) in area which was not harvested⁹⁸⁹ large areas of SPZ and hydrological buffer exclusions to south west and south east of coupe⁹⁹⁰ harvesting operations in coupe will not be visible from the Scout Camp and in accordance with SMZ plan prescriptions and SMZ 483/05 plan located adjacent gross coupe boundary⁹⁹¹ SMZ in south of coupe, SMZ overlaps south, south-west and south-east boundaries of coupe⁹⁹² 	<ul style="list-style-type: none"> Moondarra State Park located south of coupe⁹⁹⁵ harvesting operations in coupe will not be visible from the Scout Camp and in accordance with SMZ plan prescriptions and SMZ 483/05 plan located adjacent gross coupe boundary⁹⁹⁶ SMZ in South of coupe, SMZ overlaps south, south-west and south-east boundaries of coupe⁹⁹⁷
9.33	Bromance 312-510-0007	34.47	18.35	18.64	STR	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting⁹⁹⁸ 	<ul style="list-style-type: none"> large areas of SPZ to north of coupe¹⁰⁰²

⁹⁸⁷ [CB 8.7A].

⁹⁸⁸ [CB 8.7A].

⁹⁸⁹ [CB 7.7.3].

⁹⁹⁰ [CB 7.7.3].

⁹⁹¹ [CB 8.7 p. 29, 30].

⁹⁹² [CB 7.7.3h].

⁹⁹⁵ [CB 7.2A].

⁹⁹⁶ [CB 8.7 p. 18].

⁹⁹⁷ [CB 7.7.3h].

⁹⁹⁸ Second Paul Affidavit [CB 3.4; [213]].

¹⁰⁰² [CB 7.1A].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> • large area on west boundary of coupe (extending into a strip along the south west boundary) excluded from harvesting⁹⁹⁹ • areas of stream buffer exclusion to south east of coupe¹⁰⁰⁰ • no SMZ within or adjacent to coupe¹⁰⁰¹ 	<ul style="list-style-type: none"> • Yarra Ranges National Park located south of coupe¹⁰⁰³ • no SMZ within or adjacent to coupe¹⁰⁰⁴
9.34	Lovers Lane 312-510-0009	34.64	21.07	11.61	STR	CFE	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting¹⁰⁰⁵ • half of coupe has been excluded from harvesting¹⁰⁰⁶ • GG detection in south corner of coupe is in harvested area¹⁰⁰⁷ • stream buffer excluded in north half of coupe extends beyond north boundary of coupe¹⁰⁰⁸ 	<ul style="list-style-type: none"> • large areas of SPZ to north of coupe¹⁰¹¹ • Yarra Ranges National Park located south of coupe¹⁰¹² • no SMZ within or adjacent to coupe¹⁰¹³

⁹⁹⁹ [CB 8.9A].

¹⁰⁰⁰ [CB 8.9A].

¹⁰⁰¹ [CB 8.9; pp 22-23]; [CB 7.10.3h].

¹⁰⁰³ [CB 7.1A].

¹⁰⁰⁴ [CB 8.9; pp 22-23]; [CB 7.10.3h].

¹⁰⁰⁵ Second Paul Affidavit [CB 3.4; [213]].

¹⁰⁰⁶ [CB 8.10A].

¹⁰⁰⁷ [CB 8.10A]; [CB 2.3.61].

¹⁰⁰⁸ [CB 8.10A].

¹⁰¹¹ [CB 7.1A].

¹⁰¹² [CB 7.1A].

¹⁰¹³ [CB 8.10; pp 23-24]; [CB 7.10.3h].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> two detections of GG appear to be in area excluded from harvesting in north of coupe; other three occur in southern portion of coupe which was harvested¹⁰⁰⁹ no SMZ within or adjacent to coupe¹⁰¹⁰ 	
9.35	Swing High 317-508-0010	23.43	9	3.07	RRH	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting¹⁰¹⁴ only small corner in south west of coupe was harvested¹⁰¹⁵ majority of coupe excluded from harvesting¹⁰¹⁶ LBP SPZ on east boundary of coupe overlaps into coupe; area of overlap excluded from harvesting¹⁰¹⁷ area of SPZ to north east of coupe, extending into coupe boundary¹⁰¹⁸ 	<ul style="list-style-type: none"> coupe abuts Yarra Ranges National Park¹⁰²³ large areas of SPZ to north of coupe¹⁰²⁴ harvest in accordance with SMZ 317/10; SMZ 317/10 is adjacent to coupe boundary and approved DELWP 9/11/2016¹⁰²⁵ SMZ which runs from the south-west of coupe through the south of coupe, and adjacent to the south-east boundary¹⁰²⁶

¹⁰⁰⁹ [CB 2.3.58].

¹⁰¹⁰ [CB 8.10; pp 23-24]; [CB 7.10.3h].

¹⁰¹⁴ Second Paul Affidavit [CB 3.4; [213]].

¹⁰¹⁵ [CB 8.13A].

¹⁰¹⁶ [CB 8.13A].

¹⁰¹⁷ [CB 8.13A].

¹⁰¹⁸ [CB 8.13A].

¹⁰²³ [CB 7.2A].

¹⁰²⁴ [CB 7.2A].

¹⁰²⁵ [CB 8.13 p. 16].

¹⁰²⁶ [CB 8.13 p. 29, 30]; [CB 7.14.3h].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> • patch of SPZ immediately to south of coupe¹⁰¹⁹ • GG detections and LBP detections in area excluded from timber harvesting¹⁰²⁰ • harvest in accordance with SMZ 317/10; SMZ 317/10 is adjacent to coupe boundary and approved DELWP 9/11/2016¹⁰²¹ • SMZ which runs from the south-west of coupe through the south of coupe, and adjacent to the south-east boundary¹⁰²² 	
9.36	Skerry's Reach 462-504-0004	33.8	21.66	13.12	CFE	CFE	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting¹⁰²⁷ • three 200 m THEZ areas overlay coupe¹⁰²⁸ • habitat reserve on east and west borders¹⁰²⁹ 	<ul style="list-style-type: none"> • coupe abuts Yarra Ranges National Park¹⁰³³ • Code exclusions along coupe boundary¹⁰³⁴ • in vicinity of plantation¹⁰³⁵ • no SMZ within or adjacent to coupe¹⁰³⁶

¹⁰¹⁹ [CB 8.13A].

¹⁰²⁰ [CB 2.3.65]; [CB 8.13A].

¹⁰²¹ [CB 8.13 p. 16].

¹⁰²² [CB 8.13 p. 29, 30]; [CB 7.14.3h].

¹⁰²⁷ Second Paul Affidavit [CB 3.4; [213]].

¹⁰²⁸ [CB 8.17A].

¹⁰²⁹ [CB 8.17A].

¹⁰³³ [CB 7.19.3h].

¹⁰³⁴ [CB 7.19.3h].

¹⁰³⁵ [CB 7.19.3h].

¹⁰³⁶ [CB 8.18 p. 22, 23]; [CB 7.19.3h].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> • area partially harvested overlaps 200m THEZ (but was harvested prior to detection)¹⁰³⁰ • Interim Strategy applied¹⁰³¹ • no SMZ within or adjacent to coupe¹⁰³² 	
9.37	Golden Snitch 288-516-0007	50.53	27.3	20.6	RRH	CFE	<ul style="list-style-type: none"> • coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting¹⁰³⁷ • buffer around entire coupe¹⁰³⁸ • significant areas of SPZ to east and west of coupe¹⁰³⁹ • stream buffers expanded around full extent of coupe protecting additional forest and LBP habitat¹⁰⁴⁰ • no SMZ within or adjacent to coupe¹⁰⁴¹ 	<ul style="list-style-type: none"> • large concentration of 200 m THEZ near coupe¹⁰⁴³ • SPZ on immediate borders¹⁰⁴⁴ • conservation reserves to north east and west of coupe, with connecting SPZ¹⁰⁴⁵ • no SMZ within or adjacent to coupe¹⁰⁴⁶ • SMZ for LBP Monitoring site within 500 m of coupe boundary; harvesting will not impact¹⁰⁴⁷

¹⁰³⁰ Second Paul Affidavit [CB 3.4 [431]]; [CB 8.17A].

¹⁰³¹ Second Paul Affidavit [CB 3.4 [430]].

¹⁰³² [CB 8.18 p. 22, 23]; [CB 7.19.3h].

¹⁰³⁷ Second Paul Affidavit [CB 3.4; [213]].

¹⁰³⁸ [CB 8.18A].

¹⁰³⁹ [CB 8.18A].

¹⁰⁴⁰ Second Paul Affidavit [CB 3.4; [432(b)]]].

¹⁰⁴¹ [CB 8.17; pp 26-27]; [CB 7.19.3h].

¹⁰⁴³ [CB 7.20C]; [CB 7.20D].

¹⁰⁴⁴ [CB 7.20C]; [CB 7.20D].

¹⁰⁴⁵ [CB 7.20C]; [CB 7.20D].

¹⁰⁴⁶ [CB 8.17 p. 26, 27]; [CB 7.19.3h].

¹⁰⁴⁷ [CB 8.18; p 15].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> SMZ for LBP Monitoring site within 500 m of coupe boundary; harvesting will not impact¹⁰⁴² 	
9.38	Hogsmeade 288-516-0006	52.24	16.0	16.6	RRH	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting¹⁰⁴⁸ majority of coupe exclude from harvesting¹⁰⁴⁹ significant areas of SPZ and 200 m THEZ adjacent to and abutting coupe¹⁰⁵⁰ no SMZ within or adjacent to coupe¹⁰⁵¹ 	<ul style="list-style-type: none"> large concentration of 200 m THEZ near coupe¹⁰⁵² SPZ on immediate borders¹⁰⁵³ conservation reserves to north east and west of coupe, with connecting SPZ¹⁰⁵⁴ no SMZ within or adjacent to coupe¹⁰⁵⁵
9.39	Houston 287-511-0006	18.23	12.3	16.15	CFE	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting¹⁰⁵⁶ 	<ul style="list-style-type: none"> Code exclusions on north and east borders, connecting to conservation reserve¹⁰⁶⁰ no SMZ within coupe; small SMZ west of coupe¹⁰⁶¹

¹⁰⁴² [CB 8.18; p 15].

¹⁰⁴⁸ Second Paul Affidavit [CB 3.4; [213]].

¹⁰⁴⁹ [CB 8.19A].

¹⁰⁵⁰ [CB 8.19A].

¹⁰⁵¹ [CB 11.104; pp 23, 25 and 27]; [CB 7.19.3h].

¹⁰⁵² [CB 7.20C]; [CB 7.20D].

¹⁰⁵³ [CB 7.20C]; [CB 7.20D].

¹⁰⁵⁴ [CB 7.20C]; [CB 7.20D].

¹⁰⁵⁵ [CB 11.104; pp 23, 25 and 27]; [CB 7.19.3h].

¹⁰⁵⁶ Second Paul Affidavit [CB 3.4; [213]].

¹⁰⁶⁰ [CB 7.20.3h].

¹⁰⁶¹ [CB 8.20; pp 22, 23].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<ul style="list-style-type: none"> hydrological buffer on border of coupe¹⁰⁵⁷ no SMZ within coupe; small SMZ west of coupe¹⁰⁵⁸ no SMZ on 3 ha modelled exclusions map¹⁰⁵⁹ 	<ul style="list-style-type: none"> no SMZ on 3 ha modelled exclusions map¹⁰⁶²
9.40	Rocketman 287.511.0009	54.13	30.2	37.17	RRH	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance and coupe marking prior to harvesting¹⁰⁶³ significant SPZ abutting coupe¹⁰⁶⁴ areas of habitat reserve and hydrological buffer excluded from harvesting¹⁰⁶⁵ no SMZ within or adjacent to coupe¹⁰⁶⁶ 	<ul style="list-style-type: none"> large concentration of 200 m THEZ south-east of coupe¹⁰⁶⁷ conservation reserves to north east and west of coupe, with connecting SPZ¹⁰⁶⁸ no SMZ within or adjacent to coupe¹⁰⁶⁹
9.41	Camberwell Junction 290-527- 0004	33.9	27.0	20.6	CFE	CFE	<ul style="list-style-type: none"> coupe underwent desktop assessment, coupe reconnaissance 	<ul style="list-style-type: none"> Code exclusions centre and north and south borders and SPZ to west of coupe¹⁰⁷⁴

¹⁰⁵⁷ [CB 8.20A].

¹⁰⁵⁸ [CB 8.20; pp 22-23].

¹⁰⁵⁹ [CB 7.20.3h].

¹⁰⁶² [CB 7.20.3h].

¹⁰⁶³ Second Paul Affidavit [CB 3.4; [213]].

¹⁰⁶⁴ [CB 8.21A].

¹⁰⁶⁵ [CB 8.21A].

¹⁰⁶⁶ [CB 8.21; pp 22-23]; [CB 7.20.3h].

¹⁰⁶⁷ [CB 7.20C]; [CB 7.20D].

¹⁰⁶⁸ [CB 7.20C]; [CB 7.20D].

¹⁰⁶⁹ [CB 8.21 p. 22, 23]; [CB 7.20.3h].

¹⁰⁷⁴ [CB 7.9.3h].

Coupe no.	Coupe name	Gross area	Net area	Harvested area ⁸¹¹	Actual Silvicultural system ⁸¹²	Silvicultural system (TRP) ⁸¹³	Local biodiversity protection measures	Landscape biodiversity protection measures
							<p>and coupe marking prior to harvesting¹⁰⁷⁰</p> <ul style="list-style-type: none"> • area to the north east of the coupe containing larger trees with hollows was retained for habitat value and suitability for arboreal mammals, including pre-1900s trees¹⁰⁷¹ • SPZ to west of coupe, and hydrological buffers surrounding north and south of coupe¹⁰⁷² • no SMZ within or adjacent to coupe¹⁰⁷³ 	<ul style="list-style-type: none"> • no SMZ within or adjacent to coupe¹⁰⁷⁵

¹⁰⁷⁰ Second Paul Affidavit [CB 3.4; [213]].

¹⁰⁷¹ Second Paul Affidavit [CB 3.4; [446]].

¹⁰⁷² [CB 8.8A].

¹⁰⁷³ [CB 8.8A p. 22, 23]; [CB 7.9.3h].

¹⁰⁷⁵ [CB 8.8A; pp 22-23]; [CB 7.9.3h].

Table B — Analysis of Scheduled Coupes

“GG” means Greater Glider

“LBP” means Leadbeater’s Possum

“Code” means the *Code of practice for timber production 2014*

“SPZ” means Special Protection Zone

“SMZ” means Special Management Zone

“MOG” means modelled old growth

“THEZ” means timber harvesting exclusion zone

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
10.1	Goliath 297-505-0001	43.1	21.5	N/A	CFE	<ul style="list-style-type: none"> • 4 GG sightings on south border; GG sightings to east outside coupe¹⁰⁷⁸ • SPZ area east of coupe, connected by exclusion zone¹⁰⁷⁹ • exclusion zone on south-west border of coupe which connect to LBP buffer south of coupe¹⁰⁸⁰ 	<ul style="list-style-type: none"> • SPZ area east of coupe, connected by exclusion zone; multiple SPZs east of coupe¹⁰⁸¹ • conservation reserve south-west of coupe, connected by exclusion zone¹⁰⁸² • large SPZ west and south-west of coupe, which includes THEZ; SPZ

¹⁰⁷⁶ See table in Second Paul Affidavit [CB 3.4; [176]]

¹⁰⁷⁷ See table in Second Paul Affidavit [CB 3.4; [176]]

¹⁰⁷⁸ [CB 7.18.3h; 7.18C; 7.18D]

¹⁰⁷⁹ [CB 7.18.3h]

¹⁰⁸⁰ [CB 7.18.3h]

¹⁰⁸¹ [CB 7.18.3h]

¹⁰⁸² [CB 7.18.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							north of coupe; SPZ far north of coupe ¹⁰⁸³ <ul style="list-style-type: none"> • THEZ south of coupe, connected by exclusion zone¹⁰⁸⁴
10.2	Shrek 297-509-0001	23.2	11	N/A	CFE	<ul style="list-style-type: none"> • 4 GG sightings on north border of coupe (border of Goliath and Shrek); GG sighting west of coupe (in Infant)¹⁰⁸⁵ • THEZ overlaying south-west border¹⁰⁸⁶ • exclusion zone on south, east and west borders which connects to conservation reserve south of coupe and on immediate east border¹⁰⁸⁷ • MOG in east of coupe¹⁰⁸⁸ 	<ul style="list-style-type: none"> • multiple SPZs east and south of coupe. SPZ far north of coupe • conservation reserve south-west of coupe, connected by exclusion zone¹⁰⁸⁹ • THEZ east of coupe, which overlays large SPZ¹⁰⁹⁰
10.3	Infant 297-509-0002	38.0	30.8	N/A	CFE	<ul style="list-style-type: none"> • GG sighting in west of coupe (2017)¹⁰⁹¹ • conservation reserve on immediate west border and SPZ on immediate north-east border; exclusion zone 	<ul style="list-style-type: none"> • multiple SPZs east and south of coupe and SPZ far north of coupe¹⁰⁹⁴ • GG sighting east (2017), north-east (1990) and south (1996) (1998) of coupe¹⁰⁹⁵

¹⁰⁸³ [CB 7.18.3h]

¹⁰⁸⁴ [CB 7.18.3h; 7.18C; 7.18D]

¹⁰⁸⁵ [CB 7.18.3h]

¹⁰⁸⁶ [CB 7.18.3h]

¹⁰⁸⁷ [CB 7.18.3h]

¹⁰⁸⁸ [CB 7.18.3h]

¹⁰⁸⁹ [CB 7.18.3h]

¹⁰⁹⁰ [CB 7.18.3h]

¹⁰⁹¹ [CB 7.18.3h]

¹⁰⁹⁴ [CB 7.18.3h]

¹⁰⁹⁵ [CB 7.18.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
						<ul style="list-style-type: none"> which connects conservation reserve and SPZ¹⁰⁹² exclusion zone on south, west and north border¹⁰⁹³ 	<ul style="list-style-type: none"> THEZ east of coupe, which overlays conservation reserve¹⁰⁹⁶
10.4	Junior 297-511-0002	32.1	18	N/A	CFE	<ul style="list-style-type: none"> large SPZ on immediate east border; SPZ on immediate north border¹⁰⁹⁷ exclusion zone in centre of coupe, which connects from south border¹⁰⁹⁸ 	<ul style="list-style-type: none"> GG sighting north (2017) (1990) and south (1996) (1998) of coupe¹⁰⁹⁹ large SPZ on immediate east border which extends to south of coupe; SPZ far north of coupe THEZ east of coupe, which overlays conservation reserve¹¹⁰⁰
10.5	Gun Barrel 297-526-0001	31.7	9.9	2.7 ¹¹⁰¹	CFE	<ul style="list-style-type: none"> undertaking VicForests gave in <i>My Environment</i>,¹¹⁰² not to harvest that coupe otherwise in accordance with the Gun Barrell Variable Retention Plan, using a variable retention harvesting system with islands of retained habitat, SPZ and pre-1900 	<ul style="list-style-type: none"> multiple THEZs north-east and east of coupe much of the area surrounding the coupe is SPZ¹¹⁰⁸ large, interconnected SPZs south, west, north and east of coupe¹¹⁰⁹ 9 GG sightings south of coupe; 5 GG sightings north-east of coupe¹¹¹⁰

¹⁰⁹² [CB 7.18.3h]

¹⁰⁹³ [CB 7.18.3h]

¹⁰⁹⁶ [CB 7.18.3h]

¹⁰⁹⁷ [CB 7.18.3h]

¹⁰⁹⁸ [CB 7.18.3h]

¹⁰⁹⁹ [CB 7.18.3h]

¹¹⁰⁰ [CB 7.18.3h]

¹¹⁰¹ Harvested using CFE, see Annexure WEP-21A to the Fourth Paul Affidavit [CB 3.6.21A].

¹¹⁰² *MyEnvironment*, at paragraphs [32]-[37]

¹¹⁰⁸ [CB 7.25.3h; 7.25C]

¹¹⁰⁹ [CB 7.25.3h]

¹¹¹⁰ [CB 7.25.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
						<ul style="list-style-type: none"> trees protected from timber harvesting¹¹⁰³ THEZ overlays north border¹¹⁰⁴ exclusion zone on north and south borders of coupe; exclusion zones connect to SPZ¹¹⁰⁵ large SPZ to immediate north-west border¹¹⁰⁶ MOG immediately to north of coupe (in SPZ) SMZ inside coupe and to immediate north border¹¹⁰⁷ 	<ul style="list-style-type: none"> historical LBP detections¹¹¹¹
10.6	Imperium 297-530-0001	44.5	34	N/A	CFE	<ul style="list-style-type: none"> 8 GG sightings on west and south borders of coupe with some appearing just outside border along SPZ¹¹¹² 3 THEZs overlaying south and north-west borders of coupe and further THEZs north and south¹¹¹³ extensive SPZs west, south and north-west of coupe¹¹¹⁴ 	<ul style="list-style-type: none"> much of the area surrounding the coupe is SPZ; large, interconnected SPZs south, west, north and east of coupe¹¹¹⁶ multiple THEZs north-east coupe¹¹¹⁷ historical LBP detections

¹¹⁰³ *MyEnvironment*, at paragraphs [32]-[37]

¹¹⁰⁴ [CB 7.25.3h]

¹¹⁰⁵ [CB 7.25.3h]

¹¹⁰⁶ [CB 7.25.3h]

¹¹⁰⁷ [CB 7.25.3h]

¹¹¹¹ [CB 7.25C]

¹¹¹² [CB 7.25.3h]

¹¹¹³ [CB 7.25.3h]

¹¹¹⁴ [CB 7.25.3h]

¹¹¹⁶ [CB 7.25.3h; 7.25C]

¹¹¹⁷ [CB 7.25.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
						<ul style="list-style-type: none"> exclusion zones on north-west, west and south-west borders¹¹¹⁵ 	
10.7	Utopia 297-530-0002	35.4	19	N/A	CFE	<ul style="list-style-type: none"> exclusion zones on north, west and portion of south borders¹¹¹⁸ THEZ which overlays west border of coupe and THEZs north and south¹¹¹⁹ GG sightings west and south of coupe¹¹²⁰ 	<ul style="list-style-type: none"> much of the area surrounding the coupe is SPZ¹¹²¹ multiple THEZs north-east coupe¹¹²² GG sightings north east of coupe mostly within THEZs and SPZ¹¹²³ historical LBP detections
10.8	Home & Away 297-538-0004	41.0	27.0	N/A	CFE	<ul style="list-style-type: none"> 3 THEZs on east border of coupe, each just outside coupe, overlaying east border¹¹²⁴ exclusion zone on south border, with branches trailing through coupe exclusion zone running through north of coupe¹¹²⁵ Historical GG detections on south border of coupe; other sightings south and north of coupe¹¹²⁶ 	<ul style="list-style-type: none"> Yarra Ranges National Park south-east of coupe¹¹²⁷ large SPZ to east, connected by various exclusion zones and MOG in north-east section of SPZ¹¹²⁸ GG detections east, north and south of coupe¹¹²⁹

¹¹¹⁵ [CB 7.25.3h]

¹¹¹⁸ [CB 7.25.3h]

¹¹¹⁹ [CB 7.25.3h]

¹¹²⁰ [CB 7.25.3h]

¹¹²¹ [CB 7.25.3h; 7.25C]

¹¹²² [CB 7.25.3h]

¹¹²³ [CB 7.25.3h]

¹¹²⁴ [CB 7.11.3h]

¹¹²⁵ [CB 7.11.3h]

¹¹²⁶ [CB 7.11.3h]

¹¹²⁷ [CB 7.25.3h]

¹¹²⁸ [CB 7.11.3h]

¹¹²⁹ [CB 7.11.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
10.9	Chest 298-502-0003	46.8	21.1	5 ¹¹³⁰	CFE	<ul style="list-style-type: none"> • exclusion zone on south, east and north borders¹¹³¹ • modelled LBP habitat on south-west area of coupe, overlaying into coupe to south¹¹³² 	<ul style="list-style-type: none"> • SPZ to north of coupe¹¹³³ • GG detection in adjacent coupe (Glenview)¹¹³⁴ • exclusions zones around coupe¹¹³⁵
10.10	Bridle 298-510-0003	38.6	28	N/A	STR	<ul style="list-style-type: none"> • SPZ strip on west border¹¹³⁶ 	<ul style="list-style-type: none"> • SPZ to north of coupe¹¹³⁷ • GG detection in adjacent coupe (Glenview)¹¹³⁸ • exclusions zones around coupe¹¹³⁹
10.11	South Col 298-509-0001	32.3	29.4	N/A	CFE	<ul style="list-style-type: none"> • coupe surrounded by THEZ¹¹⁴⁰ • large SPZ along north border¹¹⁴¹ • exclusion zone on north west border in vicinity of LBP detections and connecting to SPZ¹¹⁴² 	<ul style="list-style-type: none"> • coupe surrounded by THEZ¹¹⁴³ • large SPZ along north border¹¹⁴⁴ and large SPZ west of coupe, which connects to another large SPZ south of coupe¹¹⁴⁵

¹¹³⁰ Harvested using STR, see Annexure WEP-21A to the Fourth Paul Affidavit [CB 3.6.21A].

¹¹³¹ [CB 7.16.3h]

¹¹³² [CB 8.29]

¹¹³³ [CB 7.16.3h]

¹¹³⁴ [CB 7.16.3h]

¹¹³⁵ [CB 7.16.3h; 7.16C]

¹¹³⁶ [CB 7.16.3h]

¹¹³⁷ [CB 7.16.3h]

¹¹³⁸ [CB 7.16.3h]

¹¹³⁹ [CB 7.16.3h; 7.16C]

¹¹⁴⁰ [CB 7.25C; 7.25D]

¹¹⁴¹ [CB 7.25C; 7.25D]

¹¹⁴² [CB 7.25C; 7.25D; 7.25.3h]

¹¹⁴³ [CB 7.25C; 7.25D]

¹¹⁴⁴ [CB 7.25C; 7.25D]

¹¹⁴⁵ [CB 7.25C; 7.25D; 7.25.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							<ul style="list-style-type: none"> exclusion zones north and west of coupe and within coupe lead into SPZs, and are in vicinity of GG and LBP detections¹¹⁴⁶ old growth forest within SPZ south of coupe¹¹⁴⁷ small SMZ south, south west and north west of coupe¹¹⁴⁸
10.12	Waves 300-524-0002	43.3	20	N/A	CFE	<ul style="list-style-type: none"> almost entirety of coupe covered by THEZ¹¹⁴⁹ 	<ul style="list-style-type: none"> large SPZ east of coupe extending south¹¹⁵⁰ large SPZ west of coupe¹¹⁵¹ multiple THEZ zones surrounding coupe, including north, north east and south west of coupe¹¹⁵² large SMZ east of coupe connecting to SPZ¹¹⁵³ Yarra Ranges National Park south east of coupe¹¹⁵⁴ exclusion zones north of coupe extends into THEZ zones and SPZs¹¹⁵⁵

¹¹⁴⁶ [CB 7.25.3h]

¹¹⁴⁷ [CB 7.25.3h]

¹¹⁴⁸ [CB 7.25C; 7.25D; 7.25.3h]

¹¹⁴⁹ [CB 7.8C; 7.8D]

¹¹⁵⁰ [CB 7.8C; 7.8D]

¹¹⁵¹ [CB 7.8C; 7.8D]

¹¹⁵² [CB 7.8C; 7.8D]

¹¹⁵³ [CB 7.8C; 7.8D]

¹¹⁵⁴ [CB 7.8C; 7.8D]

¹¹⁵⁵ [CB 7.8.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
10.13	Surfing 300-539-0001	27.3	9.2	N/A	CFE	<ul style="list-style-type: none"> coupe surrounded by SPZ on its north and east borders¹¹⁵⁷ 	<ul style="list-style-type: none"> exclusion zones south of coupe extend into SPZs and into the Yarra Ranges National Park, as well as in the vicinity of the SMZ¹¹⁵⁶ large SPZ east of coupe extending south¹¹⁵⁸ large SPZ west of coupe¹¹⁵⁹ multiple THEZ zones surrounding coupe, including immediately north, further north, north east and south west of coupe¹¹⁶⁰ large SMZ east of coupe connecting to SPZ¹¹⁶¹ Yarra Ranges National Park south east of coupe¹¹⁶² exclusion zones north of coupe extends into THEZ zones and SPZs¹¹⁶³ exclusion zones south of coupe extend into SPZs and into the Yarra Ranges National Park, as well as in the vicinity of the SMZ¹¹⁶⁴

¹¹⁵⁶ [CB 7.8.3h]

¹¹⁵⁷ [CB 7.8.3h]

¹¹⁵⁸ [CB 7.8C; 7.8D]

¹¹⁵⁹ [CB 7.8C; 7.8D]

¹¹⁶⁰ [CB 7.8C; 7.8D]

¹¹⁶¹ [CB 7.8C; 7.8D]

¹¹⁶² [CB 7.8C; 7.8D]

¹¹⁶³ [CB 7.8.3h]

¹¹⁶⁴ [CB 7.8.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
10.14	Drum Circle 307-505-0001	35.5	14	N/A	CFE	<ul style="list-style-type: none"> most of coupe in SMZ, except for south portion¹¹⁶⁵ GG detections in SMZ¹¹⁶⁶ 	<ul style="list-style-type: none"> large SPZ on south east border¹¹⁶⁷ Yarra Ranges National Park south of coupe, connected to SPZ¹¹⁶⁸ coupe sits in SMZ which extends north of coupe¹¹⁶⁹ plantation north east of coupe¹¹⁷⁰ THEZ to west of coupe¹¹⁷¹ THEZ to north of coupe¹¹⁷²
10.15	Flute 307-505-0009	46.0	26	N/A	STR	<ul style="list-style-type: none"> SPZ on west border of coupe in vicinity of GG detections¹¹⁷³ exclusion zone along north and east border, connecting to SPZ in south west and SMZ to north of coupe¹¹⁷⁴ SMZ to north of coupe¹¹⁷⁵ 	<ul style="list-style-type: none"> large SPZ on east border¹¹⁷⁶ Yarra Ranges National Park south of coupe, connected to SPZ¹¹⁷⁷ SMZ in north part of coupe extends north of coupe¹¹⁷⁸ plantation north east of coupe¹¹⁷⁹ THEZ west of coupe¹¹⁸⁰

¹¹⁶⁵ [CB 7.12C; 7.12D]

¹¹⁶⁶ [CB 7.12.3h]

¹¹⁶⁷ [CB 7.12C; 7.12D]

¹¹⁶⁸ [CB 7.12C; 7.12D]

¹¹⁶⁹ [CB 7.12C; 7.12D]

¹¹⁷⁰ [CB 7.12C; 7.12D]

¹¹⁷¹ [CB 7.12C; 7.12D]

¹¹⁷² [CB 7.12C; 7.12D]

¹¹⁷³ [CB 7.12C; 7.12D]

¹¹⁷⁴ [CB 7.12.3h]

¹¹⁷⁵ [CB 7.12C; 7.12D]

¹¹⁷⁶ [CB 7.12C; 7.12D]

¹¹⁷⁷ [CB 7.12C; 7.12D]

¹¹⁷⁸ [CB 7.12C; 7.12D]

¹¹⁷⁹ [CB 7.12C; 7.12D]

¹¹⁸⁰ [CB 7.12C; 7.12D;]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
10.16	San Diego 307-505-0010	35.9	27 ¹¹⁸²	N/A	STR	<ul style="list-style-type: none"> • SPZ on south border in vicinity of GG detections¹¹⁸³ • exclusion zone in south east of coupe connecting to SPZ¹¹⁸⁴ • exclusion zone along west border of coupe¹¹⁸⁵ • entire coupe in SMZ¹¹⁸⁶ 	<ul style="list-style-type: none"> • THEZ north of coupe¹¹⁸¹ • large SPZ on south border¹¹⁸⁷ • Yarra Ranges National Park south of coupe, connected to SPZ¹¹⁸⁸ • coupe sits within large SMZ which extends north west of coupe¹¹⁸⁹ • plantation north east of coupe¹¹⁹⁰ • THEZ immediately west of coupe¹¹⁹¹ • THEZ north of coupe¹¹⁹² • exclusion zone along west border of coupe connects to the THEZ¹¹⁹³
10.17	White House 309-507-0007	43.60	32.26	0.31 ¹¹⁹⁴	CFE	<ul style="list-style-type: none"> • SPZ to west and north east borders of coupe¹¹⁹⁵ • SMZ and special management are to east border of coupe between coupe and SPZ; SMZ is for landscape buffer 	<ul style="list-style-type: none"> • exclusion zones to east, north and south of coupe¹¹⁹⁹

¹¹⁸¹ [CB 7.12C; 7.12D;]

¹¹⁸² Fourth Paul Affidavit [CB 3.6; [44]].

¹¹⁸³ [CB 7.12C; 7.12D;]

¹¹⁸⁴ [CB 7.12.3h]

¹¹⁸⁵ [CB 7.12.3h]

¹¹⁸⁶ [CB 7.12C; 7.12D;]

¹¹⁸⁷ [CB 7.12C; 7.12D;]

¹¹⁸⁸ [CB 7.12C; 7.12D;]

¹¹⁸⁹ [CB 7.12C; 7.12D;]

¹¹⁹⁰ [CB 7.12C; 7.12D;]

¹¹⁹¹ [CB 7.12C; 7.12D;]

¹¹⁹² [CB 7.12C; 7.12D;]

¹¹⁹³ [CB 7.12C; 7.12D; 7.12.3h]

¹¹⁹⁴ Harvested using STR, see Annexure WEP-21A to the Fourth Paul Affidavit [CB 3.6.21A].

¹¹⁹⁵ [CB 8.27; p 21]

¹¹⁹⁹ [CB 7.4.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
						<p>along Acheron Way, and will be confirmed and marked using GPS; no harvesting will occur in SMZ¹¹⁹⁶</p> <ul style="list-style-type: none"> • north east SPZ in the vicinity of GG detections¹¹⁹⁷ • exclusion zones within coupe near north west and south east borders¹¹⁹⁸ 	
10.18	Skupani 312-007-0014	46.80	33	N/A	CFE	<ul style="list-style-type: none"> • coupe surrounded by abundant SPZ¹²⁰⁰ • exclusion zones along north east and southern borders¹²⁰¹ • exclusion zone within south east area of coupe¹²⁰² 	<ul style="list-style-type: none"> • coupe surrounded by abundant SPZ¹²⁰³
10.19	Splinter 312-508-0002	16.8	13	N/A	CFE	<ul style="list-style-type: none"> • SPZ abuts border¹²⁰⁴ • coupe surrounded by abundant SPZ¹²⁰⁵ 	<ul style="list-style-type: none"> • coupe surrounded by abundant SPZ¹²⁰⁶
10.20	Bhebe 312-503-0002	37.70	20	N/A	CFE	<ul style="list-style-type: none"> • excluded zone along east, south and west borders in the vicinity of GG detections¹²⁰⁷ 	<ul style="list-style-type: none"> • Mount Bullfight Nature Conservation reserve to north west of coupe¹²⁰⁸ • large SPZ to south of coupe¹²⁰⁹

¹¹⁹⁶ [CB 8.27; p 21]

¹¹⁹⁷ [CB 7.4.3h]

¹¹⁹⁸ [CB 7.4.3h]

¹²⁰⁰ [CB 7.27.3b]

¹²⁰¹ [CB 7.27.3h]

¹²⁰² [CB 7.27.3h]

¹²⁰³ [CB 7.27C]

¹²⁰⁴ [CB 7.27C]

¹²⁰⁵ [CB 7.27C]

¹²⁰⁶ [CB 7.27C]

¹²⁰⁷ [CB 7.26.3h]

¹²⁰⁸ [CB 7.26.3h; 7.26C]

¹²⁰⁹ [CB 7.26.3h; 7.26C]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							<ul style="list-style-type: none"> • SPZ to south west of coupe including THEZ¹²¹⁰
10.20A	Farm Spur Gum 312-002-0006	25.5	20	N/A	STR	<ul style="list-style-type: none"> • exclusion zone immediately outside north border in the vicinity of GG detections¹²¹¹ 	<ul style="list-style-type: none"> • Mount Bullfight nature conservation reserve to north west of coupe¹²¹² • large SPZ to south of coupe¹²¹³ • SPZ to south west of coupe including THEZ¹²¹⁴
10.22	Blue Cat 344-509-0007	42.4	30	N/A	CFE	<ul style="list-style-type: none"> • coupe surrounded by THEZ extending into coupe¹²¹⁵ • coupe surrounded by other SPZ¹²¹⁶ 	<ul style="list-style-type: none"> • large SPZ to south of coupe including multiple THEZ¹²¹⁷ • large SPZ to north east of coupe¹²¹⁸ • multiple smaller SPZs to west of coupe¹²¹⁹ • Ada Tall Trees Reserve to south of coupe¹²²⁰ • Ada River Sawmills Historic & Cultural Features reserve to south west of coupe within SPZ¹²²¹

¹²¹⁰ [CB 7.26.3h; 7.26C]

¹²¹¹ [CB 7.26.3h]

¹²¹² [CB 7.26.3h; 7.26C]

¹²¹³ [CB 7.26.3h; 7.26C]

¹²¹⁴ [CB 7.26.3h; 7.26C]

¹²¹⁵ [CB 7.6.3h; 7.6C]

¹²¹⁶ [CB 7.6.3h; 7.6C]

¹²¹⁷ [CB 7.6C]

¹²¹⁸ [CB 7.6C; 7.6D]

¹²¹⁹ [CB 7.6C; 7.6D]

¹²²⁰ [CB 7.6C; 7.6D]

¹²²¹ [CB 7.6C; 7.6D]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
10.23	Smyth Creek 345-504-0003	47.6	31.45	N/A	STR	<ul style="list-style-type: none"> • THEZ extending into coupe¹²²² 	<ul style="list-style-type: none"> • large SPZ south east of coupe which stretches to north west of coupe¹²²³ • Ada River Sawmills Historic & Cultural Features reserve within large SPZ to south of coupe¹²²⁴ • cultural features reserve/conservation area to north west of coupe¹²²⁵ • exclusion zones throughout SPZs and linking SPZs to each other¹²²⁶
10.24	Starlings Gap 345-505-0005	39.9	16	N/A	STR	<ul style="list-style-type: none"> • coupe surrounded by THEZ extending into coupe¹²²⁷ • coupe surrounded by SPZ¹²²⁸ • any future harvesting will not include any area modelled by the LBPAG High Probability Occupancy Layer¹²²⁹ 	<ul style="list-style-type: none"> • large SPZ south east of coupe which stretches to north west of coupe¹²³⁰ • Ada River Sawmills Historic & Cultural Features reserve within large SPZ to south of coupe¹²³¹ • cultural features reserve/conservation area to north west of coupe¹²³² • exclusion zones throughout SPZs and linking SPZs to each other¹²³³

¹²²² [CB 7.24C]

¹²²³ [CB 7.24C]

¹²²⁴ [CB 7.24C]

¹²²⁵ [CB 7.24D]

¹²²⁶ [CB 7.24.3h]

¹²²⁷ [CB 7.24C]

¹²²⁸ [CB 7.24C]

¹²²⁹ Second Paul Affidavit [CB 3.4; [450]]

¹²³⁰ [CB 7.24C]

¹²³¹ [CB 7.24C]

¹²³² [CB 7.24D]

¹²³³ [CB 7.24.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
10.25	Hairy Hyde 345-505-0006	46.3	34	2.58 ¹²³⁴	CFE	<ul style="list-style-type: none"> • THEZ overlapping middle of coupe and 3 THEZ abut part of the coupe¹²³⁵ 	<ul style="list-style-type: none"> • large SPZ to south of coupe which stretches to west and north west of coupe¹²³⁶ • Ada River Sawmills Historic & Cultural Features reserve within large SPZ to north west of coupe¹²³⁷ • THEZ to east and north east of coupe¹²³⁸ • cultural features reserve/conservation area to north west of coupe¹²³⁹ • exclusion zones throughout SPZs and linking SPZs to each other¹²⁴⁰
10.26	Blacksands Road 345-505-0009	18.3	14	N/A	STR	<ul style="list-style-type: none"> • SPZ including THEZ zone on north border in vicinity of glider detections¹²⁴¹ • exclusion zones along north and east borders in the vicinity of glider and LBP detections¹²⁴² 	<ul style="list-style-type: none"> • large SPZ to south of coupe which stretches to west and north west of coupe¹²⁴³ • Ada River Sawmills Historic & Cultural Features reserve within large SPZ to north west of coupe¹²⁴⁴ • THEZ to east and north east of coupe¹²⁴⁵

¹²³⁴ Harvested using STR, see Annexure WEP-21A to the Fourth Paul Affidavit [CB 3.6.21A].

¹²³⁵ Second Paul Affidavit [CB 3.4; [385 (c)]; [7.24C]

¹²³⁶ [CB 7.24D]

¹²³⁷ [CB 7.24D]

¹²³⁸ [CB 7.24D]

¹²³⁹ [CB 7.24D]

¹²⁴⁰ [CB 7.24.3h]

¹²⁴¹ [CB 7.24D; 7.24C]

¹²⁴² [CB 7.24.3h]

¹²⁴³ [CB 7.24D]

¹²⁴⁴ [CB 7.24D]

¹²⁴⁵ [CB 7.24D]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							<ul style="list-style-type: none"> • cultural features reserve/conservation area to north west of coupe¹²⁴⁶ • exclusion zones throughout SPZs and linking SPZs to each other¹²⁴⁷
10.27	Louisiana 345-526-0003	29	16.41	N/A	CFE	<ul style="list-style-type: none"> • coupe surrounded by SPZ to south border, and 2 THEZ abut coupe¹²⁴⁸ • exclusion zones along south and east borders overlapping with SPZ¹²⁴⁹ • any future harvesting will not include any area modelled by the LBPAG High Probability Occupancy Layer¹²⁵⁰ 	<ul style="list-style-type: none"> • SMZ to north west of coupe¹²⁵¹ • large SPZ to south of coupe which stretches across to west of coupe¹²⁵² • multiple SPZs including THEZ zones to west and north west of coupe¹²⁵³ • exclusion zones through SPZ to south of coupe¹²⁵⁴ • exclusion zones to north west of coupe within SMZ¹²⁵⁵ • exclusion zones to north east of coupe¹²⁵⁶
10.28	Bourbon street 345-526-0004	22.09	11.13	N/A	CFE	<ul style="list-style-type: none"> • coupe surrounded by SPZ to south border, and 2 THEZ abut coupe¹²⁵⁷ 	<ul style="list-style-type: none"> • SMZ to north west of coupe¹²⁶⁰ • large SPZ to south of coupe which stretches across to west of coupe¹²⁶¹

¹²⁴⁶ [CB 7.24D]

¹²⁴⁷ [CB 7.24.3h]

¹²⁴⁸ [CB 7.15C].

¹²⁴⁹ [CB 7.15.3h]

¹²⁵⁰ Second Paul Affidavit [CB 3.4; [450]]

¹²⁵¹ [CB 7.15.3h]

¹²⁵² [CB 7.15.3h]

¹²⁵³ [CB 7.15.3h; CB 7.15C]

¹²⁵⁴ [CB 7.15.3h]

¹²⁵⁵ [CB 7.15.3h]

¹²⁵⁶ [CB 7.15.3h]

¹²⁵⁷ [CB 7.15C].

¹²⁶⁰ [CB 7.15.3h]

¹²⁶¹ [CB 7.15.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
						<ul style="list-style-type: none"> exclusion zones along south and east borders overlapping with SPZ¹²⁵⁸ any future harvesting will not include any area modelled by the LBPAG High Probability Occupancy Layer¹²⁵⁹ 	<ul style="list-style-type: none"> multiple SPZs including THEZ zones to west and north west of coupe¹²⁶² exclusion zones through SPZ to south of coupe¹²⁶³ exclusion zones to north west of coupe within SMZ¹²⁶⁴ exclusion zones to north east of coupe¹²⁶⁵
10.29	Gallipoli 348-504-0005	24.869	15	N/A	CFE	<ul style="list-style-type: none"> coupe surrounded by abundant SPZ¹²⁶⁶ 	<ul style="list-style-type: none"> coupe surrounded by abundant SPZ and MOG¹²⁶⁷ State Forest east of coupe¹²⁶⁸ exclusion zones surrounding coupe, including leading into large SPZ south of coupe from within coupe, and leading to State Forest¹²⁶⁹
10.30	Johnny 348-518-0004	33.819	25	N/A	CFE	<ul style="list-style-type: none"> SPZs including THEZ along north border and into coupe¹²⁷⁰ 	<ul style="list-style-type: none"> SPZ to south west of coupe¹²⁷² SPZ to north east of coupe¹²⁷³ multiple THEZ north of coupe¹²⁷⁴

¹²⁵⁸ [CB 7.15.3h]

¹²⁵⁹ Second Paul Affidavit [CB 3.4; [450]]

¹²⁶² [CB 7.15.3h; CB 7.15C]

¹²⁶³ [CB 7.15.3h]

¹²⁶⁴ [CB 7.15.3h]

¹²⁶⁵ [CB 7.15.3h]

¹²⁶⁶ [CB 7.17C]

¹²⁶⁷ [CB 7.17C; 7.17.3h]

¹²⁶⁸ [CB 7.17C; 7.17D]

¹²⁶⁹ [CB 7.17.3h]

¹²⁷⁰ [CB 7.5D]

¹²⁷² [CB 7.5D; 7.5C]

¹²⁷³ [CB 7.5D; 7.5C]

¹²⁷⁴ [CB 7.5D; 7.5C]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
						<ul style="list-style-type: none"> exclusion zones along south, east and west borders¹²⁷¹ 	<ul style="list-style-type: none"> THEZ east of coupe¹²⁷⁵ exclusion zones surrounding coupe, including leading into SPZ to south of coupe¹²⁷⁶ exclusion zones to north east of coupe¹²⁷⁷ exclusion zones to north west of coupe lead into THEZ¹²⁷⁸
10.31	Turducken 348-519-0008	43.10	32	N/A	CFE	<ul style="list-style-type: none"> THEZ overlaps portion of coupe¹²⁷⁹ exclusion zones along north west border and south east border overlapping with SPZ¹²⁸⁰ 	<ul style="list-style-type: none"> SPZ to south west of coupe¹²⁸¹ SPZ to north east of coupe¹²⁸² multiple THEZ north of coupe¹²⁸³ THEZ east of coupe¹²⁸⁴ exclusion zones surrounding coupe, including leading into SPZ to south of coupe¹²⁸⁵ exclusion zones to north east of coupe¹²⁸⁶

¹²⁷¹ [CB 7.5.3h]

¹²⁷⁵ [CB 7.5D; 7.5C]

¹²⁷⁶ [CB 7.5.3h]

¹²⁷⁷ [CB 7.5.3h]

¹²⁷⁸ [CB 7.5.3h]

¹²⁷⁹ [CB 7.5C]

¹²⁸⁰ [CB 7.5.3h]

¹²⁸¹ [CB 7.5D; 7.5C]

¹²⁸² [CB 7.5D; 7.5C]

¹²⁸³ [CB 7.5D; 7.5C]

¹²⁸⁴ [CB 7.5D; 7.5C]

¹²⁸⁵ [CB 7.5.3h]

¹²⁸⁶ [CB 7.5.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							<ul style="list-style-type: none"> • exclusion zones to north west of coupe lead into THEZ¹²⁸⁷
10.32	Epiphanie 462-504-0009	35	24	1.83 ¹²⁸⁸	STR	<ul style="list-style-type: none"> • exclusion zones on north west and south borders¹²⁸⁹ • plantation bordering coupe¹²⁹⁰ 	<ul style="list-style-type: none"> • SPZ to west of coupe¹²⁹¹ • THEZ north of coupe¹²⁹² • Yarra Ranges National Park to north of coupe¹²⁹³ • plantation to south east of coupe, beginning on border¹²⁹⁴ • exclusion zones bordering coupe lead into SPZ to west of coupe and plantation south of coupe¹²⁹⁵ • exclusion zones north of coupe leading into Yarra Ranges National Park¹²⁹⁶
10.32A	Loch stock 462-504-0008	19.6	14	N/A	CFE		<ul style="list-style-type: none"> • SPZ to west of coupe¹²⁹⁷ • THEZ north of coupe¹²⁹⁸ • Yarra Ranges National Park to north of coupe¹²⁹⁹

¹²⁸⁷ [CB 7.5.3h]

¹²⁸⁸ Harvested using STR, see Annexure WEP-21A to the Fourth Paul Affidavit [CB 3.6.21A].

¹²⁸⁹ [CB 7.19.3h]

¹²⁹⁰ [CB 7.19C; 17.19D]

¹²⁹¹ [CB 7.19C]

¹²⁹² [CB 7.19.3h]

¹²⁹³ [CB 7.19D]

¹²⁹⁴ [CB 7.19D]

¹²⁹⁵ [CB 7.19.3h]

¹²⁹⁶ [CB 7.19.3h]

¹²⁹⁷ [CB 7.19C]

¹²⁹⁸ [CB 7.19.3h]

¹²⁹⁹ [CB 7.19D]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							<ul style="list-style-type: none"> • plantation to south east of coupe, beginning on border¹³⁰⁰ • exclusion zones bordering coupe lead into SPZ to west of coupe and plantation south of coupe¹³⁰¹ • exclusion zones north of coupe leading into Yarra Ranges National Park¹³⁰²
10.32B	Brugha 462-506-0019	33.10	18	N/A	CFE	<ul style="list-style-type: none"> • SPZ on north east border of coupe in vicinity of GG detections¹³⁰³ • exclusion zones around border of coupe¹³⁰⁴ 	<ul style="list-style-type: none"> • SPZ along north of coupe stretches out to east¹³⁰⁵
10.33	Jakop 462-507-0009	39.55	20.58	N/A	STR	<ul style="list-style-type: none"> • exclusion zones on north and west border of coupe in vicinity of GG detections¹³⁰⁶ • exclusion zone on south east border¹³⁰⁷ 	<ul style="list-style-type: none"> • SPZ along north of coupe stretches out to east¹³⁰⁸
10.34	Diving Spur 483-505-0018	45.7	17	N/A	CFE	<ul style="list-style-type: none"> • SPZ bordering coupe to the south¹³⁰⁹ • SMZ north border of coupe¹³¹⁰ 	<ul style="list-style-type: none"> • surrounded by abundant SPZ¹³¹²

¹³⁰⁰ [CB 7.19D]

¹³⁰¹ [CB 7.19.3h]

¹³⁰² [CB 7.19.3h]

¹³⁰³ [CB 7.13C; 7.13D]

¹³⁰⁴ [CB 7.13.3h]

¹³⁰⁵ [CB 7.13C; 7.13D]

¹³⁰⁶ [CB 7.13.3h]

¹³⁰⁷ [CB 7.13.3h]

¹³⁰⁸ [CB 7.13C; 7.13D]

¹³⁰⁹ [CB 7.7C]

¹³¹⁰ [CB 7.7C]

¹³¹² [CB 7.7C; 7.7D]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
						<ul style="list-style-type: none"> exclusion zones on north west and south east borders¹³¹¹ 	<ul style="list-style-type: none"> exclusion areas bordering coupe lead into and run through large SPZ to south¹³¹³ exclusion areas running through SPZ to east, leading into SPZ to south and SMZ to north east of coupe¹³¹⁴ exclusion areas through large SPZ to north of coupe¹³¹⁵
10.35	Backdoor 462-512-0002	55	36	N/A	CFE	<ul style="list-style-type: none"> SPZ on south border¹³¹⁶ SMZ on south west border and stream and visual buffer in place¹³¹⁷ habitat trees and seeds trees retained¹³¹⁸ 	<ul style="list-style-type: none"> SMZ on south west border extends to east of coupe; SMZ requires visual buffers be retained along the boundary of the DELWP Depot and adjacent to the SPZ south of McCarthy Spur Road¹³¹⁹ SPZ on south border extends south west and north east of coupe¹³²⁰ Noojee Trestle Bridge Historic & Cultural Features Reserve south west of coupe¹³²¹ Noojee Bushland reserve south east of coupe¹³²²

¹³¹¹ [CB 7.7.3h]

¹³¹³ [CB 7.7.3h]

¹³¹⁴ [CB 7.7.3h]

¹³¹⁵ [CB 7.7.3h]

¹³¹⁶ [CB 7.23C]

¹³¹⁷ [CB 7.23.3h]

¹³¹⁸ [CB 7.23.3h]

¹³¹⁹ [CB 7.23C; 7.23D; 8.33; pp 19-22]

¹³²⁰ [CB 7.23C; 7.23D]

¹³²¹ [CB 7.23C; 7.23D]

¹³²² [CB 7.23C; 7.23D]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							<ul style="list-style-type: none"> • La Trobe River Noojee Streamside Reserve south east of coupe¹³²³ • exclusion zones bordering coupe extend into SPZs, reserves and SMZ¹³²⁴ • exclusion zones south west of coupe¹³²⁵ • exclusion zones north and north east of coupe¹³²⁶
10.36	Lodge 463-501-0005	57.1	36	N/A	CFE	<ul style="list-style-type: none"> • entire coupe within SMZ¹³²⁷ • SPZ on south border¹³²⁸ • exclusion zones on south west and north east borders¹³²⁹ 	<ul style="list-style-type: none"> • coupe sits within SMZ which extends to east of coupe¹³³⁰ • SPZ on south border extends south west and north east of coupe¹³³¹ • Noojee Trestle Bridge Historic & Cultural Features Reserve south west of coupe¹³³² • Noojee Bushland reserve south east of coupe¹³³³ • La Trobe River Noojee Streamside Reserve south east of coupe¹³³⁴

¹³²³ [CB 7.23C;7.23D]

¹³²⁴ [CB 7.23.3h]

¹³²⁵ [CB 7.23.3h]

¹³²⁶ [CB 7.23.3h]

¹³²⁷ [CB 7.23C;7.23D]

¹³²⁸ [CB 7.23C;7.23D]

¹³²⁹ [CB 7.23.3h]

¹³³⁰ [CB 7.23C; 7.23D]

¹³³¹ [CB 7.23C; 7.23D]

¹³³² [CB 7.23C; 7.23D]

¹³³³ [CB 7.23C; 7.23D]

¹³³⁴ [CB 7.23C;7.23D]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							<ul style="list-style-type: none"> • exclusion zones bordering coupe extend into SPZs, reserves and SMZ¹³³⁵ • exclusion zones south west of coupe¹³³⁶ • exclusion zones north and north east of coupe¹³³⁷
10.38	Vice Captain 290-525-0002	42.808	20.21	2.5 ¹³³⁸	CFE	<ul style="list-style-type: none"> • exclusion zone on north border, south border and through middle of coupe¹³³⁹ 	<ul style="list-style-type: none"> • SPZ south of coupe¹³⁴⁰ • SPZ north west of coupe¹³⁴¹
10.39	Dry Spell 288-505-0001	37.3	12	N/A	CFE	<ul style="list-style-type: none"> • exclusion zone on north west border and south west border¹³⁴² 	<ul style="list-style-type: none"> • SPZ west of coupe¹³⁴³ • Snobs Creek Wildlife Reserve west of coupe, overlapping with SPZ¹³⁴⁴ • Lake Eildon National Park east of coupe¹³⁴⁵ • SMZ north of coupe¹³⁴⁶ • exclusion zones north of coupe extend into SMZ¹³⁴⁷

¹³³⁵ [CB 7.23.3h]

¹³³⁶ [CB 7.23.3h]

¹³³⁷ [CB 7.23.3h]

¹³³⁸ Harvested using STR, see Annexure WEP-21A to the Fourth Paul Affidavit [CB 3.6.21A].

¹³³⁹ [CB 7.9.3h]

¹³⁴⁰ [CB 7.9C; 7.9D]

¹³⁴¹ [CB 7.9C; 7.9D]

¹³⁴² [CB 7.22.3h]

¹³⁴³ [CB 7.22C; 7.22D]

¹³⁴⁴ [CB 7.22C; 7.22D]

¹³⁴⁵ [CB 7.22C; 7.22D]

¹³⁴⁶ [CB 7.22C; 7.22D]

¹³⁴⁷ [CB 7.22.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							<ul style="list-style-type: none"> • exclusion zone west of coupe extend through Snobs Creek Wildlife Reserve and SPZ¹³⁴⁸ • exclusion zones east of coupe extend into Lake Eildon National Park¹³⁴⁹ • SMZ bordering Lake Eildon National Park¹³⁵⁰
10.40	Dry Creek Hill 288-506-0001	73.9	17		RDI	<ul style="list-style-type: none"> • road partly constructed • west section of coupe abuts SPZ and Snobs Creek Wildlife Reserve¹³⁵¹ • exclusion zones run through west of coupe¹³⁵² • exclusion zone on north east border¹³⁵³ 	<ul style="list-style-type: none"> • Snobs Creek Wildlife Reserve west of coupe, overlapping with SPZ¹³⁵⁴ • Lake Eildon National Park east of coupe¹³⁵⁵ • SMZ north of coupe¹³⁵⁶ • exclusion zones north of coupe extend into SMZ¹³⁵⁷ • exclusion zone west of coupe extend through Snobs Creek Wildlife Reserve and SPZ¹³⁵⁸ • exclusion zones east of coupe extend into Lake Eildon National Park¹³⁵⁹

¹³⁴⁸ [CB 7.22.3h]

¹³⁴⁹ [CB 7.22.3h]

¹³⁵⁰ [CB 7.22.3h]

¹³⁵¹ [CB 7.22C; 7.22D]

¹³⁵² [CB 7.22.3h]

¹³⁵³ [CB 7.22.3h]

¹³⁵⁴ [CB 7.22C; 7.22D]

¹³⁵⁵ [CB 7.22C; 7.22D]

¹³⁵⁶ [CB 7.22C; 7.22D]

¹³⁵⁷ [CB 7.22.3h]

¹³⁵⁸ [CB 7.22.3h]

¹³⁵⁹ [CB 7.22.3h]

Coupe no.	Coupe name	Gross area ¹⁰⁷⁶	Net area ¹⁰⁷⁷	Harvested area	Silvicultural system (TRP)	Local biodiversity protection measures & detections	Landscape biodiversity protection measures & detections
							<ul style="list-style-type: none"> SMZ bordering Lake Eildon National Park¹³⁶⁰

¹³⁶⁰ [CB 7.22.3h]

Table C — Coupes harvested since 31 August 2018 not subject of proceeding in which LbP or GG was detected or reported to the Respondent

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
A. Brimbonga	1. Pieces of Eight 344-520-0003	8-9 Jan 2019: 2 GGs within coupe (Fourth McKenzie, CB 2.12 at [66], p16) Respondent notes: both GGs on border, with 1 potentially outside coupe border (CB 2.12.191)	-	14 Jan 2019 (CB 11.39, p10)	CFE (CB 11.39, p3)	33.7/14 ha CB 11.39 p2	CFE CB 6.6, p15	33.7/18 ha CB 6.6, p15	33.7/14 ha CB 12.35	<ul style="list-style-type: none"> exclusion zone in north of coupe which extends along north east border.¹³⁶¹ LBP buffer zone in north west of coupe.¹³⁶² exclusion zone (LBP buffer zone) in south east of coupe in vicinity of LBP and GG detections.¹³⁶³ hydro buffers surrounding exclusion zones.¹³⁶⁴ 	<ul style="list-style-type: none"> SPZ north east of coupe, overlapping with 2 exclusion zones (LBP buffer zones).¹³⁶⁸ exclusion zones (LBP buffer zones) immediately east of coupe.¹³⁶⁹ VF harvesting history to south west and north east of coupe.¹³⁷⁰ Yarra Ranges National Park to north east of coupe.¹³⁷¹ GG High Quality Habitat Class 1 areas south east of coupe.¹³⁷²

¹³⁶¹ CB 12.35

¹³⁶² CB 12.35

¹³⁶³ CB 12.35; 11.39 p25

¹³⁶⁴ CB 12.35

¹³⁶⁸ CB 11.39 p24

¹³⁶⁹ CB 11.39 p24

¹³⁷⁰ CB 11.39 p24

¹³⁷¹ CB 11.39 p25

¹³⁷² CB 11.39 p25

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
										<ul style="list-style-type: none"> Code exclusion zone in centre of coupe and along north east and north west border of coupe.¹³⁶⁵ VF harvesting history within coupe.¹³⁶⁶ filter in centre of coupe.¹³⁶⁷ 	<ul style="list-style-type: none"> Code exclusion zones extend north and south of coupe into LBP buffer zones.¹³⁷³ Historic/cultural sensitivity area north of coupe.¹³⁷⁴ SPZ to west of coupe.¹³⁷⁵ SPZ south west of coupe.
B. Easton	2. Conrad 457-501-0017 ¹³⁷⁶	LbP colony located within 500m of coupe boundary (Conrad Coupe Plan, CB 11.41, p23)	-	7 Mar 2019 (CB 11.41, p11)	Thinning from above (CB 11.41, p4)	41.6/20.8 ha CB 11.41 p3	Thinning from below CB 6.6, p18	41.6/24 ha CB 6.6 p18	N/a	<ul style="list-style-type: none"> SMZ along north west border of coupe.¹³⁷⁷ exclusion zone (LBP buffer zone) on south east border of coupe.¹³⁷⁸ 	<ul style="list-style-type: none"> VF reserve/exclusion zone (LBP buffer zone) immediately south east of coupe in vicinity of LBP detections.¹³⁸¹

¹³⁶⁵ CB 12.35

¹³⁶⁶ CB 12.35

¹³⁶⁷ CB 12.35

¹³⁷³ CB 11.39 p25

¹³⁷⁴ CB 11.39 p25

¹³⁷⁵ CB 11.39 p25

¹³⁷⁶ We understand the applicant no longer makes any submission in relation to this coupe.

¹³⁷⁷ CB 11.41 p27

¹³⁷⁸ CB 11.41 p27

¹³⁸¹ CB 11.41 p27, 28

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
		Respondent notes: 200m LBP buffer zone in place (CB 11.41, p23)								<ul style="list-style-type: none"> • exclusion zone (LBP monitoring site) in north east part of coupe.¹³⁷⁹ • Code exclusion zones along south east border of coupe and into south corner of coupe.¹³⁸⁰ 	<ul style="list-style-type: none"> • SMZ along north west border of coupe extends south and north of coupe.¹³⁸² • VF harvested areas surrounding coupe except for south east section.¹³⁸³ • Code exclusion zones surrounding coupe along creek borders, leading into LBP buffer zone.¹³⁸⁴ • exclusion zone north west of coupe.¹³⁸⁵

¹³⁷⁹ CB 11.41 p27

¹³⁸⁰ CB 11.41 p28

¹³⁸² CB 11.41 p28

¹³⁸³ CB 11.41 p28

¹³⁸⁴ CB 11.41 p28

¹³⁸⁵ CB 11.41 p27

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
	3. Pamir 457-508-0005	GG species observations within coupe boundary and adjacent to coupe, and LbP sightings are west of the coupe boundary (Pamir Coupe Plan, CB 11.42, pp21,22) Respondent notes: LBP sighting is historic, dated December 1995 (CB 11.42, p22).	-	19 Dec 2018 (CB 11.42, p12)	CFE (CB 11.42, p5)	27.3/18.6 ha CB 11.42 p3	CFE CB 6.6, p18	27.3/13 ha CB 6.6 p18	18.6 nett. 5.3 ha logged as at 18 Feb 2019. [NB this is not a post harvest map, it states further area to be harvested to mapped 18.6ha nett area.] CB 12.33	<ul style="list-style-type: none"> proposed exclusion zones in south east, north, and north west of coupe.¹³⁸⁶ filter in centre and along eastern border of coupe.¹³⁸⁷ Code exclusion zone on eastern border and extending through centre of coupe.¹³⁸⁸ GG High Quality Habitat in north of coupe and in south east corner.¹³⁸⁹ 	<ul style="list-style-type: none"> large SPZ north of coupe.¹³⁹⁰ multiple Code exclusion zones north of coupe in the vicinity of threatened species detections, with one on north east border that connects to the SPZ.¹³⁹¹ multiple Code exclusion zones south and east of coupe in the vicinity of threatened species detections.¹³⁹² large GG High Quality habitat Class 1 zone extending from south east of coupe, connected to Code exclusion zones.¹³⁹³

¹³⁸⁶ CB 11.42 p34

¹³⁸⁷ CB 11.42 p34

¹³⁸⁸ CB 11.42 p33

¹³⁸⁹ CB 11.42 p32

¹³⁹⁰ CB 11.42 p33

¹³⁹¹ CB 11.42 p33

¹³⁹² CB 11.42 p33

¹³⁹³ CB 11.42 p33

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
											<ul style="list-style-type: none"> • SPZ to south west of coupe.¹³⁹⁴ • historic cultural area north of coupe.¹³⁹⁵
C. Kalatha	4. Twisting 298-502-0002	GG species observation records within coupe and within 500m of boundary (Twisting Coupe Plan, CB 11.44, pp18,21)	-	16 Oct 2018 (CB 11.44, p12)	STR (includes retained overwood) (CB 11.44, p5)	24.4/23 ha CB 11.44 p3	CFE CB 6.6, p10	24.3/11 ha CB 6.6, p10	24.4/14.6 ha CB 12.49	<ul style="list-style-type: none"> • Exclusion zone across north west half of coupe.¹³⁹⁶ • VF harvesting history across south east half of coupe.¹³⁹⁷ • Code exclusion zone in south east of coupe bordering watercourse.¹³⁹⁸ • modelled LBP habitat in centre of coupe.¹³⁹⁹ 	<ul style="list-style-type: none"> • exclusion zones along east border of coupe, including one extending through north east.¹⁴⁰⁰ • Code exclusion zone east of coupe connecting to exclusion zone.¹⁴⁰¹ • Code exclusion zones west and north of coupe.¹⁴⁰²

¹³⁹⁴ CB 11.42 p32

¹³⁹⁵ CB 11.42 p32

¹³⁹⁶ CB 12.49

¹³⁹⁷ CB 12.49

¹³⁹⁸ CB 11.44 p24

¹³⁹⁹ CB 11.44 p26

¹⁴⁰⁰ CB 12.49

¹⁴⁰¹ CB 12.49

¹⁴⁰² CB 11.44 p25, 26

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
D. Lady	5. Fire Scan 484-504-0003	29 Aug 2018: 2 GGs within coupe (Fourth McKenzie, CB 2.12 at [38], p13)	2 Sep 2018 (Fourth McKenzie, CB 2.12 at [43], p13-14), reported to DELWP	8 Oct 2018 (CB 11.45, p12)	STR (includes retained overwood) (CB 11.45, p5)	26.7/ 12.1 ha CB 11.45 p3	STR (includes retained overwood) CB 6.6, p23	26.7/12 ha CB 6.6 p23	12.1 estimated nett area. 11 ha harvested as at 2 November 2018. CB 12.20 [NB: this is not the post harvest map. It shows a 1ha difference between estimated net area on the TRP & the harvested area]	<ul style="list-style-type: none"> • coupe sits within an SMZ.¹⁴⁰³ • exclusion zone on south third of coupe.¹⁴⁰⁴ • exclusion zone on north third of coupe.¹⁴⁰⁵ • old water run in middle of coupe surrounded by 5m filter buffer.¹⁴⁰⁶ • GG High Quality Habitat along south east border and north border of coupe within vicinity of GG detections¹⁴⁰⁷ 	<ul style="list-style-type: none"> • SPZ north east and south east of coupe.¹⁴⁰⁹ • GG High Quality Habitat north west and south west of coupe¹⁴¹⁰ • SMZ within which coupe sits extends to north, south and east of coupe.¹⁴¹¹

¹⁴⁰³ CB 12.20

¹⁴⁰⁴ CB 12.20

¹⁴⁰⁵ CB 12.20

¹⁴⁰⁶ CB 11.45 p25

¹⁴⁰⁷ CB 11.45 p26

¹⁴⁰⁹ CB 11.45 p26

¹⁴¹⁰ CB 11.45 p26

¹⁴¹¹ CB 11.45 p26

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
										<ul style="list-style-type: none"> Code exclusion zone along south and north borders of coupe within vicinity of GG detections.¹⁴⁰⁸ 	
	6. Puerile 484-501-0043	22-23 Jun 2018: 3 GGs within coupe (First McKenzie, CB 2.3 at [393], p88)	27 Jun 2018 (First McKenzie, CB 2.3 at [396], p88)	31 Aug 2018 (CB 11.46, p12)	STR (includes retained overwood) (CB 11.46, p5)	47.2/39.8 ha CB 11.46 p3	STR (includes retained overwood) CB 6.6, p23	47.2/29 ha CB 6.6 p23	47.2/37 ha CB 12.38	<ul style="list-style-type: none"> exclusion zone along west, south and east border extending into east section of coupe within vicinity of GG detections.¹⁴¹² smaller exclusion zone along north border within vicinity of GG detections.¹⁴¹³ filter within exclusion zone on west border.¹⁴¹⁴ 	<ul style="list-style-type: none"> SMZ east of coupe.¹⁴¹⁸ Code exclusion zones bordering coupe extend north, south and east of coupe, including in the vicinity of SMZ to the east of coupe.¹⁴¹⁹ VF harvested area west and north east of coupe.¹⁴²⁰ large Modelled GG Habitat extending from north border of coupe.¹⁴²¹

¹⁴⁰⁸ CB 11.45 p26

¹⁴¹² CB 12.38; 11.46 p25

¹⁴¹³ CB 12.38; 11.46 p25

¹⁴¹⁴ CB 12.38

¹⁴¹⁸ CB 11.46 p26

¹⁴¹⁹ CB 11.46 p26

¹⁴²⁰ CB 11.46 p25

¹⁴²¹ CB 11.46 p24

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
										<ul style="list-style-type: none"> • filter and hydro buffer within exclusion zone on east border.¹⁴¹⁵ • Code exclusion zone along east and west borders.¹⁴¹⁶ • large Modelled GG Habitat on north and east borders of coupe.¹⁴¹⁷ 	<ul style="list-style-type: none"> • Modelled GG Habitat south east and north east of coupe.¹⁴²²
E. Loch	7. Teamwork 462-506-0017	Post Feb 2014: 2 LbP (Fourth McKenzie, CB 2.12 at [97], p23)	-	4 Feb 2019 (CB 11.48, p11)	CFE (CB 11.48, p4)	38.5/6.4 ha CB 11.48, p3	CFE CB 6.6, p20	38.4/27 ha CB 6.6, p20	38.5/5.6 ha CB 12.44	<ul style="list-style-type: none"> • SPZ (LBP buffer zone) on north border of coupe.¹⁴²³ • SPZ (LBP buffer zone) on east border of coupe.¹⁴²⁴ 	<ul style="list-style-type: none"> • large SPZ south west of coupe.¹⁴²⁹ • large SPZ north of coupe.¹⁴³⁰ • Code exclusion zones along east border of coupe extending to SPZ north of coupe and SPZs south of coupe.¹⁴³¹

¹⁴¹⁵ CB 12.38

¹⁴¹⁶ CB 12.38

¹⁴¹⁷ CB 11.46 p24

¹⁴²² CB 11.46 p24

¹⁴²³ CB 12.44

¹⁴²⁴ CB 12.44

¹⁴²⁹ CB 11.48 p26

¹⁴³⁰ CB 11.48 p26

¹⁴³¹ CB 11.48 p26, 30

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
										<ul style="list-style-type: none"> majority of coupe covered by exclusion zone.¹⁴²⁵ exclusion zone (LBP buffer zone) on west border of coupe.¹⁴²⁶ exclusion zone (LBP buffer zone) on north east border of coupe.¹⁴²⁷ small VF harvesting area in south west of coupe.¹⁴²⁸ 	<ul style="list-style-type: none"> Code exclusion zones along west border of coupe extending into SPZ south of coupe.¹⁴³² VF Reserve (LBP buffer zone) north east of coupe in vicinity of threatened species observations.¹⁴³³ three SPZs (LBP buffer zones) south of coupe in vicinity of LBP detections.¹⁴³⁴ Code exclusion zones along east border of coupe extending into SPZs south of coupe.¹⁴³⁵ rainforest west of coupe.¹⁴³⁶

¹⁴²⁵ CB 12.44

¹⁴²⁶ CB 12.44

¹⁴²⁷ CB 12.44

¹⁴²⁸ CB 12.44

¹⁴³² CB 11.48 p26

¹⁴³³ CB 11.48 p30

¹⁴³⁴ CB 11.48 p30

¹⁴³⁵ CB 11.48 p30

¹⁴³⁶ CB 11.48 p30

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
	8. Tropical 462-506-0003	GG record within 500 m of coupe boundary (Tropical Coupe Plan, CB 11.49, p22) Respondent notes: GG record is historic, dated 1996 (CB 11.49, p22).		27 Feb 2019 (CB 11.49, p11)	CFE (CB 11.49, p4)	41.7/12.1 ha nett in 2019. CB 11.49 p2 p24 coupe plan map shows comparable area within coupe was already logged prior to this version of coupe plan. Respondent notes: Map on CB 11.49 p 23 shows incorrect gross ha. Map on CB 11.49 p24 is correct.	CFE CB 6.6, p20	41.7/25 ha CB 6.6, p20	41.7/11.9 ha nett in 2019. Comparable area within coupe already logged prior in 2015/16. CB 12.48	<ul style="list-style-type: none"> • exclusion zone across south half of coupe and along east and west borders.¹⁴³⁷ • exclusion zone (LBP buffer zone) on south east border of coupe.¹⁴³⁸ • Code exclusion zone along east and west borders of coupe.¹⁴³⁹ 	<ul style="list-style-type: none"> • multiple exclusion zones (LBP buffer zones) north east of coupe in vicinity of GG and LBP detections.¹⁴⁴⁰ • multiple SPZs (LBP buffer zones) west of coupe in vicinity of LBP detections.¹⁴⁴¹ • SPZ (LBP buffer zone) south of coupe in vicinity of LBP detections.¹⁴⁴² • large SPZ south west of coupe.¹⁴⁴³ • SPZ north west of coupe.¹⁴⁴⁴ • GG High Quality Habitat Class 1 north east and south of coupe.¹⁴⁴⁵

¹⁴³⁷ CB 12.48

¹⁴³⁸ CB 12.48

¹⁴³⁹ CB 11.49 p24

¹⁴⁴⁰ CB 11.49 p23, 24

¹⁴⁴¹ CB 11.49 p23, 24

¹⁴⁴² CB 11.49 p23, 24

¹⁴⁴³ CB 11.49 p24

¹⁴⁴⁴ CB 11.49 p24

¹⁴⁴⁵ CB 11.49 p24

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
											<ul style="list-style-type: none"> Code exclusion zones along coupe borders extending into SPZ south of coupe and in vicinity of SPZ south west of coupe.¹⁴⁴⁶ Code exclusion zone on east border of coupe extends north into exclusion zones.¹⁴⁴⁷
F. Little Yarra	9. Below Learmonth 347-515-0002	21-22 Jan 2019: 1 LbP adjacent to coupe (Fourth Lincoln CB 2.14, at [3] – [4], p2; Fourth McKenzie, CB 2.12 at [72], p19)	22 Jan 2019 (Fourth Lincoln, CB 2.14 at [5], p2), reported to DELWP and VF	14 Jan 2019 (CB 11.50, p14)	CFE (CB 11.50, p6)	33.8/16.8 ha CB 11.50, p3	CFE CB 6.6, p16	33.8/14 ha CB 6.6, p16	13.9h estimated nett area. 12.4 ha harvested area. CB 12.13	<ul style="list-style-type: none"> exclusion zone across majority of coupe.¹⁴⁴⁸ small VF harvesting areas in north and south parts of coupe.¹⁴⁴⁹ 	<ul style="list-style-type: none"> SPZ west of coupe.¹⁴⁵² SPZ east of coupe.¹⁴⁵³ Code exclusion zones along west border of coupe extend into SPZ to west.¹⁴⁵⁴

¹⁴⁴⁶ CB 11.49 p24

¹⁴⁴⁷ CB 11.49 p24

¹⁴⁴⁸ CB 12.13

¹⁴⁴⁹ CB 12.13

¹⁴⁵² CB 11.50 p27

¹⁴⁵³ CB 11.50 p27

¹⁴⁵⁴ CB 11.50 p27

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
		22-23 Jan 2019: 7 GGs (Fourth McKenzie, CB 2.12 at [75], p19 and JRM-196, CB 2.12.196 p9) 16 Feb 2019: 3 GGs (Fourth McKenzie, CB 2.12 at [83], p20)	27 Jan 2019 (Fourth McKenzie, CB 2.12 at [78], p20), reported to DELWP 18 Feb 2019 (Fourth McKenzie, CB 2.12 at [86], p21), reported to DELWP						[NB: this is not a post harvest map. It shows a 1.5 ha difference between the estimated net area on the TRP and the harvested area]	<ul style="list-style-type: none"> exclusion zone (LBP buffer zone) on east border of coupe.¹⁴⁵⁰ Code exclusion zone along west border of coupe and running through southern part of coupe.¹⁴⁵¹ 	<ul style="list-style-type: none"> multiple Code exclusion zones east of coupe extending into SPZs.¹⁴⁵⁵

¹⁴⁵⁰ CB 12.13

¹⁴⁵¹ CB 11.50 p27

¹⁴⁵⁵ CB 11.50 p27

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
	10. Jumping Jack Flash 347-520-0008	Post February 2014: 1 LbP (Fourth McKenzie, CB 2.12 at [96], p23 and JRM-208, CB 2.12.208; DELWP Leadbeater's Possum Interactive Map)	-	- <i>(Jake McKenzie observes logging underway at this coupe as at 19 March 2019, CB 2.12 at [96], p23)</i> Respondent notes: 19 March logging first observed (CB 2.12 at [96] p23).	-	-	CFE CB 6.6, p16	49.7/24 ha CB 6.6, p16	N/a	No maps available	No maps available

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
G. Murri ndindi	11. Floater 300-501-0003	LbP record from 1997 within coupe boundary and within 500m of coupe, and new LbP detection made during DELWP pre-harvest survey (Floater Coupe Plan, CB 11.52, pp22, 25) Respondent notes: 200m LBP buffer zone in place (CB 11.52, p25).	-	3 May 2019 (CB 11.52, p11)	RRH (CB 11.52, p4)	51.2/5.5 ha CB 11.52 p3 p26 coupe plan map shows majority of coupe was already logged prior to this version of coupe plan Respondent notes: approximately half of coupe logged (CB 11.52, p26).	CFE CB 6.6, p10	51.2/29.5 ha CB 6.6, p10	N/a	<ul style="list-style-type: none"> • SPZ (LBP buffer zone) on east border of coupe.¹⁴⁵⁶ • LBP monitoring sites in north east and west of coupe.¹⁴⁵⁷ • exclusion zone (LBP buffer zone) on north east border of coupe in vicinity of LBP detections.¹⁴⁵⁸ • VF harvested area across south east of coupe.¹⁴⁵⁹ • Code exclusion zone running through middle of coupe.¹⁴⁶⁰ 	<ul style="list-style-type: none"> • large SPZ south west of coupe containing small rainforest area.¹⁴⁶¹ • small SPZ south east of coupe in rainforest area.¹⁴⁶² • two exclusion zones (LBP buffer zones) north of coupe in vicinity of GG and LBP detections.¹⁴⁶³ • SPZs (LBP buffer zone) north of coupe in vicinity of LBP and GG detections.¹⁴⁶⁴ • SPZ (LBP buffer zone) north west of coupe.¹⁴⁶⁵

¹⁴⁵⁶ CB 11.52 p26

¹⁴⁵⁷ CB 11.52 p26

¹⁴⁵⁸ CB 11.52 p26

¹⁴⁵⁹ CB 11.52 p26

¹⁴⁶⁰ CB 11.52 p27

¹⁴⁶¹ CB 11.52 p26

¹⁴⁶² CB 11.52 p26

¹⁴⁶³ CB 11.52 p26

¹⁴⁶⁴ CB 11.52 p26

¹⁴⁶⁵ CB 11.52 p26

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
											<ul style="list-style-type: none"> • VF Reserve with Modelled Old Growth west of coupe.¹⁴⁶⁶ • Code exclusion zone east of coupe extends into SPZ in south east.¹⁴⁶⁷ • Code exclusion zone on west border of coupe extends into SPZ west of coupe.¹⁴⁶⁸
H. Narbet hong	12. Flow Zone 307-503-0003	Several GG and LbP records within coupe boundary (Flow Zone Coupe Plan, CB 11.54, pp22, 25, 33)	-	17 Oct 2018 (CB 11.54, p11)	RRH (CB 11.54, p4)	51.5/11.5 ha CB 11.54 p3	CFE CB 6.6, p11	51.5/ 24.9 ha CB 6.6, p11	51.5/12.8 ha CB 12.24	<ul style="list-style-type: none"> • SPZ (LBP buffer zone) on south border of coupe in vicinity of threatened species observations.¹⁴⁶⁹ • SPZ (LBP buffer zone) on west border of coupe in vicinity of threatened species observations.¹⁴⁷⁰ 	<ul style="list-style-type: none"> • large SMZ on east border of coupe extends east.¹⁴⁷⁵ • exclusion zone north west of coupe.¹⁴⁷⁶ • Code exclusion zone running through coupe extends north east and south into SMZ.¹⁴⁷⁷

¹⁴⁶⁶ CB 11.52 p26

¹⁴⁶⁷ CB 11.52 p26

¹⁴⁶⁸ CB 11.52 p26

¹⁴⁶⁹ CB 11.54 p26; 12.24 p1

¹⁴⁷⁰ CB 11.54 p26; 12.24 p1

¹⁴⁷⁵ CB 12.24 p2

¹⁴⁷⁶ CB 12.24 p2

¹⁴⁷⁷ CB 12.24 p2

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
		Respondent notes: 200m LBP buffer zone in place (CB 11.54, p25).								<ul style="list-style-type: none"> • buffer running through centre of coupe in same area as Code exclusion zone.¹⁴⁷¹ • entire coupe sits within plantation zone.¹⁴⁷² • east border of coupe within SMZ.¹⁴⁷³ • GG High Quality Habitat Class 1 on west border of coupe.¹⁴⁷⁴ 	<ul style="list-style-type: none"> • large SPZ south west of coupe, including 3 LBP buffer zones in the vicinity of LBP detections and small rainforest area.¹⁴⁷⁸ • small SPZ north west of coupe.¹⁴⁷⁹ • small SMZ north west of coupe.¹⁴⁸⁰ • GG High Quality Habitat Class 1 south east of coupe within SMZ.¹⁴⁸¹ • GG High Quality Habitat Class 1 south west of coupe within SPZ.¹⁴⁸²

¹⁴⁷¹ CB 11.54 p26; 12.24 p1

¹⁴⁷² CB 11.54 p31; 12.24 p1

¹⁴⁷³ CB 11.54 p32; 12.24 p1

¹⁴⁷⁴ CB 11.54 p33; 12.24 p1

¹⁴⁷⁸ CB 11.54 p33

¹⁴⁷⁹ CB 11.54 p33

¹⁴⁸⁰ CB 11.54 p33

¹⁴⁸¹ CB 11.54 p33

¹⁴⁸² CB 11.54 p33

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
											<ul style="list-style-type: none"> plantation zone that coupe sits in extends south, east and north east of coupe.¹⁴⁸³
I. Snobs	13. Impala 288-518-0006	LbP colony located within coupe (Impala Coupe Plan, CB 11.58, p18)	-	3 Jan 2019 (CB 11.58, p11)	RRH (CB 11.58, p4)	43.1/9.4 ha CB 11.58 p3	CFE CB 6.6, p9	43.1/22 ha CB 6.6, p9	N/a	<ul style="list-style-type: none"> 4 SPZs (LBP buffer zones) along length of east border in vicinity of LBP detections.¹⁴⁸⁴ rainforest running through centre of coupe.¹⁴⁸⁵ Code exclusion zone running through centre of coupe and along south border of coupe.¹⁴⁸⁶ 	<ul style="list-style-type: none"> large SPZ west of coupe.¹⁴⁸⁷ multiple SPZs (LBP buffer zones) on east border of coupe extend east and connect with another SPZ within vicinity of LBP detections.¹⁴⁸⁸ 2 SPZs (LBP buffer zones) further east of coupe.¹⁴⁸⁹

¹⁴⁸³ CB 11.54 p31

¹⁴⁸⁴ CB 11.58 p23, 24

¹⁴⁸⁵ CB 11.58 p23, 24

¹⁴⁸⁶ CB 11.58 p23, 24

¹⁴⁸⁷ CB 11.58 p23, 24

¹⁴⁸⁸ CB 11.58 p23, 24

¹⁴⁸⁹ CB 11.58 p23, 24

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
		Respondent notes: LBP Colony Protection Reserve located within coupe and within 500m of coupe (CB 11.58 p18, 19).									<ul style="list-style-type: none"> • SPZ north west of coupe, including LBP buffer zone.¹⁴⁹⁰ • rainforest areas north and south of coupe.¹⁴⁹¹
	14. Ivanhoe 288-519-0002	GG record within coupe and adjacent to coupe boundary; LbP colony within coupe and numerous LbP within 500m of coupe (Ivanhoe Coupe Plan, CB 11.59, pp20, 21, 24)	-	6 Dec 2018 (CB 11.59, p12)	CFE (CB 11.59, p5)	39.8/6.2 ha CB 11.59 p3	CFE CB 6.6, p9	39.8/7 ha CB 6.6, p9	39.8/6 ha CB 12.27	<ul style="list-style-type: none"> • majority of entire coupe within exclusion zone, including 2 LBP buffer zones on south border in the vicinity of threatened species observations.¹⁴⁹² • small VF harvesting area in east of coupe.¹⁴⁹³ 	<ul style="list-style-type: none"> • large SPZ along south border of coupe extends further south, including 4 LBP buffer zones.¹⁴⁹⁶

¹⁴⁹⁰ CB 11.58 p23, 24

¹⁴⁹¹ CB 11.58 p23, 24

¹⁴⁹² CB 12.27; 11.59 p 27, 28

¹⁴⁹³ CB 12.27

¹⁴⁹⁶ CB 11.59 p 27, 28

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
		Respondent notes: 200m LBP buffer zone in place for colonies within coupe and within 500m of coupe (CB 11.59, p20, 21).								<ul style="list-style-type: none"> • SPZ (LBP buffer zone) on north border of coupe.¹⁴⁹⁴ • SPZ along south border of coupe.¹⁴⁹⁵ 	<ul style="list-style-type: none"> • 3 SPZs (LBP buffer zones) north west of coupe in the vicinity of threatened species observations.¹⁴⁹⁷ • SPZ north west of coupe (including rainforest area).¹⁴⁹⁸ • Code exclusion zones east of coupe.¹⁴⁹⁹ • Mount Bullfight Nature Conservation Reserve south west of coupe, connected to large SPZ.¹⁵⁰⁰ • SPZ north of coupe.¹⁵⁰¹ • Modelled LBP Habitat north of coupe.¹⁵⁰²

¹⁴⁹⁴ CB 12.27

¹⁴⁹⁵ CB 12.27

¹⁴⁹⁷ CB 11.59 p 27, 28

¹⁴⁹⁸ CB 11.59 p 27, 28

¹⁴⁹⁹ CB 11.59 p 27, 28

¹⁵⁰⁰ CB 11.59 p 27, 28

¹⁵⁰¹ CB 11.59 p 27, 28

¹⁵⁰² CB 11.59 p 27, 28

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
J. Toorongo	15. Simpsons Road 461-501-0002	14-15 May 2018: 5 GGs within coupe (Fourth McKenzie, CB 2.12 at [25], p10)	17 May 2018 (Fourth McKenzie, CB 2.12 at [28], p11), reported to DELWP	22 May 2018 (CB 11.61, p12)	STR (CB 11.61, p5)	36.8/24.4 ha CB 11.61, p3	CFE CB 6.6 p137	36.8/14 ha CB 6.6 p137	72.7ha gross across Simpsons Road & Squeeze together 35ha nett across Simpsons Road & Squeeze together (20.1ha plus 14.9ha) CB 12.40p1-2	<ul style="list-style-type: none"> • coupe surrounded by substantial SPZ¹⁵⁰³ • areas of Modelled LBP habitat in coupe¹⁵⁰⁴ • areas of GG High Quality Habitat Class 1 in coupe¹⁵⁰⁵ • Code exclusions within coupe boundary¹⁵⁰⁶ 	<ul style="list-style-type: none"> • coupe surrounded by substantial SPZ¹⁵⁰⁷ • areas of Modelled LBP habitat in adjacent coupe¹⁵⁰⁸

¹⁵⁰³ CB 11.61 p 29

¹⁵⁰⁴ CB 11.61 p 29

¹⁵⁰⁵ CB 11.61 p 29

¹⁵⁰⁶ CB 11.61 p 29

¹⁵⁰⁷ CB 11.61 p 29

¹⁵⁰⁸ CB 11.61 p 29

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
	16. Squeeze 461-501-0004	14-15 May 2018: 3 GGs within coupe (Fourth McKenzie, CB 2.12 at [25], p10)	17 May 2018 (Fourth McKenzie, CB 2.12 at [28], p11), reported to DELWP	24 May 2018 (CB 11.62, p11)	CFE (CB 11.62, p4)	36.9/18.8 ha CB 11.62 p3	CFE CB 6.6 p137	36.9/15 ha CB 6.6 p137	72.7ha gross across Simpsons Road & Squeeze together 35ha nett across Simpsons Road & Squeeze together (20.1ha plus 14.9ha) CB 12.42p1-2	<ul style="list-style-type: none"> • coupe surrounded by substantial SPZ¹⁵⁰⁹ • Code and other exclusions within coupe¹⁵¹⁰ • Modelled LBP habitat within coupe overlapping SPZ¹⁵¹¹ • hydrological buffer¹⁵¹² 	<ul style="list-style-type: none"> • coupe surrounded by substantial SPZ, which contains areas of GG High Quality Habitat Class 1 ¹⁵¹³ • other areas of GG High Quality habitat layer in vicinity of coupe¹⁵¹⁴

¹⁵⁰⁹ CB 11.62 p 24

¹⁵¹⁰ CB 11.62 p 24

¹⁵¹¹ CB 11.62 p 24

¹⁵¹² CB 11.62 p 24

¹⁵¹³ CB 11.62 p 24

¹⁵¹⁴ CB 11.62 p 24

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
K. Torbreck River	17. Bayern Munich 312-509-0007	LbP colony located with 500m of coupe boundary (Bayern Munich Coupe Plan, CB 11.65, p11) Respondent notes: 200m LBP buffer zone in place (CB 11.65, p11).	-	15 Mar 2019 (CB 11.65, p6)	RRH (CB 11.65, p3)	29.5/5.9 ha CB 11.65 p2	CFE CB 6.6, p13	29.5/18 ha CB 6.6, p13	N/a	<ul style="list-style-type: none"> • SPZ (LBP buffer zone) in centre of coupe in vicinity of LBP detections.¹⁵¹⁵ • SPZ (LBP buffer zone) in north corner of coupe in vicinity of LBP detections.¹⁵¹⁶ • Code exclusion zone along eastern part of coupe.¹⁵¹⁷ • Code exclusion zone along north border of coupe in vicinity of GG detections.¹⁵¹⁸ 	<ul style="list-style-type: none"> • SPZ north east of coupe.¹⁵¹⁹ • 2 SPZs north west of coupe (including rainforest area).¹⁵²⁰ • 2 SPZs (LBP exclusion zones) north of coupe overlapping with SPZ on north border.¹⁵²¹ • VF Reserve (LBP buffer zone) immediately south west of coupe.¹⁵²² • VF Reserve (LBP buffer zone) south of coupe.¹⁵²³ • Modelled LBP habitat south west of coupe.¹⁵²⁴

¹⁵¹⁵ CB 11.65 p14

¹⁵¹⁶ CB 11.65 p14

¹⁵¹⁷ CB 11.65 p14

¹⁵¹⁸ CB 11.65 p14

¹⁵¹⁹ CB 11.65 p13,14

¹⁵²⁰ CB 11.65 p13,14

¹⁵²¹ CB 11.65 p13,14

¹⁵²² CB 11.65 p13,14

¹⁵²³ CB 11.65 p13,14

¹⁵²⁴ CB 11.65 p13,14

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
											<ul style="list-style-type: none"> Code exclusion zone on north border of coupe extends further north and into SPZs in north east and north west.¹⁵²⁵ Code exclusion zone running through coupe extends south into VF Reserves and further south west.¹⁵²⁶
	18. Dejavu 312-011-0015	18 Jul 2017: 1 LbP (Fourth McKenzie, CB 2.12 at [95], p22)	20 Jun 2017 (Fourth McKenzie, CB 2.12 at [95] and 2.12.205), reported to DELWP	13 Dec 2018 (CB 11.66, p11)	RRH (CB 11.66, p4)	31.5/16 ha CB 11.66 p3	CFE CB 6.6, p12	31.5/13 ha CB 6.6, p12	N/a	<ul style="list-style-type: none"> SPZ (LBP buffer zone) in south east corner of coupe.¹⁵²⁷ 	<ul style="list-style-type: none"> VF Reserve (LBP buffer zone) east of coupe.¹⁵³⁰ SPZ (LBP buffer zone) north east of coupe.¹⁵³¹ Yarra Ranges National Park west of coupe.¹⁵³²

¹⁵²⁵ CB 11.65 p13,14

¹⁵²⁶ CB 11.65 p13,14

¹⁵²⁷ CB 11.66 p25

¹⁵³⁰ CB 11.66 p30

¹⁵³¹ CB 11.66 p30

¹⁵³² CB 11.66 p30

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
										<ul style="list-style-type: none"> proposed exclusion zone along north border and in south west corner of coupe.¹⁵²⁸ Code exclusion zone along north border of coupe.¹⁵²⁹ 	<ul style="list-style-type: none"> VF Reserve (LBP buffer zone) south of coupe within Yarra Ranges National Park.¹⁵³³ Code exclusion zone along north border extends north connecting with SPZ in north west and Yarra Ranges National Park in north east.¹⁵³⁴ Code exclusion zones east and south of coupe connecting to LBP buffer zones.¹⁵³⁵ Modelled LBP Habitat east and south east of coupe.¹⁵³⁶ Rainforest area north and south west of coupe.¹⁵³⁷

¹⁵²⁸ CB 11.66 p25

¹⁵²⁹ CB 11.66 p26

¹⁵³³ CB 11.66 p30

¹⁵³⁴ CB 11.66 p30

¹⁵³⁵ CB 11.66 p30

¹⁵³⁶ CB 11.66 p30

¹⁵³⁷ CB 11.66 p30

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
L. Western Tyers	19. Lure 483-504-0001	15-16 Apr 2018: 1 GG within coupe (Fourth McKenzie, CB 2.12 at [7,9], p8)	1 May 2018 (CB 2.12 at [12], p9), reported to VF & DELWP	11 Dec 2018 (CB 11.69, p12)	CFE (CB 11.69, p5)	35.4/23.2 ha CB 11.69 p3	CFE CB 6.6, p22	35.4/18 ha CB 6.6, p22	35.4/12.2 ha CB 12.32	<ul style="list-style-type: none"> • coupe sits within SMZ.¹⁵³⁸ • approximately half of coupe is exclusion zone, with VF harvesting history area in north east part of coupe.¹⁵³⁹ • Code exclusion zone along south west border of coupe.¹⁵⁴⁰ • GG High Quality Habitat Class 1 in east of coupe within vicinity of GG detection.¹⁵⁴¹ 	<ul style="list-style-type: none"> • large SMZ extends west of coupe.¹⁵⁴⁴ • large SPZ south west of coupe.¹⁵⁴⁵ • Code exclusion zones extend into SMZ.¹⁵⁴⁶ • GG High Quality Habitat Class 1 east and south west of coupe.¹⁵⁴⁷ • Modelled LBP Habitat in east and north west of coupe.¹⁵⁴⁸ • large SPZ running west and up across north east of coupe, through SMZ.¹⁵⁴⁹ • large SPZ south east of coupe.¹⁵⁵⁰

¹⁵³⁸ CB 12.32

¹⁵³⁹ CB 12.32

¹⁵⁴⁰ CB 12.32

¹⁵⁴¹ CB 11.69 p26

¹⁵⁴⁴ CB 12.32

¹⁵⁴⁵ CB 12.32

¹⁵⁴⁶ CB 12.32

¹⁵⁴⁷ CB 11.69 p26

¹⁵⁴⁸ CB 11.69 p26

¹⁵⁴⁹ CB 11.69 p26

¹⁵⁵⁰ CB 11.69 p26

Coupe group	Coupe name & number	Species detections	Date of report	Date of Coupe Plan/s	Silviculture System designated on Coupe Plan/s	Gross/Nett area on Coupe plan	Silviculture System designated on TRP 2017	Gross/ Nett area on TRP	Gross/Nett on Post harvest or other map	Local Biodiversity protection measures	Landscape biodiversity protection measures
										<ul style="list-style-type: none"> • GG High Quality Habitat Class 1 in north west of coupe.¹⁵⁴² • Modelled LBP Habitat in south west and centre of coupe.¹⁵⁴³ 	<ul style="list-style-type: none"> • Code exclusion zone on west border of coupe connects to large SPZ.¹⁵⁵¹

¹⁵⁴² CB 11.69 p26

¹⁵⁴³ CB 11.69 p26

¹⁵⁵¹ CB 11.69 p26