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Details of Filing

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File Title: FRIENDS OF LEADBEATER'S POSSUM INC v VICFORESTS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 25/02/2019 10:17:10 AM AEDT

A handwritten signature in blue ink that reads 'Warwick Soden'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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FURTHER AMENDED DEFENCE TO SECOND FURTHER AMENDED STATEMENT OF CLAIM

No. VID 1228 of 2017

Federal Court of Australia
District Registry: Victoria
Division: ACLHR

FRIENDS OF LEADBEATER'S POSSUM INC

Applicant

VICFORESTS

Respondent

Defined terms in the **second further** amended statement of claim dated ~~29 March 6 September 2018~~ **18 January 2019** (the **2FASOC**) have the same meaning in this defence unless otherwise stated. Sub-headings in the 2FASOC are used in this defence for ease of reference only. To the **2FASOC** VicForests says by way of defence:

Parties

1. It admits paragraph 1.
2. It admits paragraph 2.

VicForests' functions

3. It admits paragraph 3.
4. It admits paragraph 4.
5. It admits paragraph 5.

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Timber Release Plan for the Central Highlands RFA Area

6. As to paragraph 6:

- (a) it says that in January 2017 VicForests approved a change to the timber release plan in accordance with s 43 of the *Sustainable Forests (Timber) Act 2004* (Vic) (the SFT Act);
- (b) the Timber Release Plan was prepared in respect of an area to which an allocation order applies for the purposes of:
 - (i) harvesting and selling, or harvesting or selling, timber resources; and
 - (ii) undertaking associated management activities in relation to those timber resources
 in accordance with s 37 of the SFT Act;
- (c) it admits that the Timber Release Plan identifies by map, schedule and coupe number, areas of forest in the CH RFA Area; and
- (d) otherwise does not admit paragraph 6.

6.1 It admits paragraph 6.1.

6.2 It admits paragraph 6.2.

6.3 As to paragraph 6.3 it:

- (a) admits sub-paragraph (a);
- (b) admits sub-paragraph (b);
- (c) says that:
 - (i) the Timber Release Plan identifies the most intensive silvicultural system that may be used for each coupe;
 - (ii) a less intensive silvicultural system ~~such as regrowth retention harvesting~~ may be used for a coupe on the Timber Release Plan (in whole or in part);

(iii) as part of VicForests' decision to achieve certification of its operations to the Forest Stewardship Council (FSC) controlled wood standard (FSC-STD-30-010 version 2-0) by 2020, VicForests has determined to shift from the predominant use of:

(A) clear-fall harvesting systems, to a more adaptive suite of silviculture systems including more selective and dispersed harvesting systems that will support multi-cohort forest management; and

(B) high intensity regeneration burns in all forest types, to a more adaptive suite of regeneration treatments that further reduces risks of damage to retained trees;

PARTICULARS

As at the date of filing this further amended defence the best available guidance as to the silviculture systems that will be used by VicForests in the Scheduled Coupes is contained in VicForests' draft *Harvesting and Regeneration Systems* (version 0.9) dated 13 February 2019 (**Systems Document**) (formerly called the *Guidelines for adaptive silviculture systems*, being exhibit WEP-127 to the affidavit of William Edward Paul affirmed on 11 February 2019 (**the fourth Paul affidavit**)).

Further particulars may be provided prior to, or during, trial.

(iv) the planning for timber harvesting operations in any of the Scheduled Coupes is not yet sufficiently advanced for VicForests to have determined, amongst other things, which particular silvicultural system it will use in any of the Scheduled Coupes;

(v) to the extent that timber harvesting operations are conducted in the Scheduled Coupes, the manner in which those timber harvesting operations occur will be subject to (amongst 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:

- (1) Timber Release Plan;
 - (2) Code, the Management Standards and Procedures and the Planning Standards; and
 - (3) SFT Act or other relevant legislation
- as in force at the time the timber harvesting operations are to occur;

(C) the results of any:

- (1) pre-harvest surveys; and/or
 - (2) 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; and

(vi) otherwise denies each allegation in sub-paragraph (c);

(d) ~~admits subparagraph (d)~~ says further that:

- (i) the Timber Release Plan includes details of the location and approximate timing of timber harvesting in the proposed coupes; and
- (ii) otherwise denies each allegation in subparagraph (d); and

(e) admits subparagraph (e).

7. It admits paragraph 7.

8. It does not admit paragraph 8.

Coupes that have been clear-felled

9. As to paragraph 9:

9.5 It ~~admits paragraph 9.5~~ denies each allegation in paragraph 9.5 and says that coupe 298-516-0001 (Glenview) was harvested using the seed tree harvesting silvicultural method.

9.6 It denies each allegation in paragraph 9.6 and says that coupe 298-519-0003 (Flicka) was harvested using the regrowth retention ~~and seed tree~~ harvesting silvicultural methods.

9.12 It ~~admits~~ denies each allegation in paragraph 9.12 and says that coupe 307-505-0011 (Guitar Solo) was harvested using the regrowth retention harvesting silvicultural method. ~~denies each allegation in paragraph 9.12 and says that coupe 307-505-0011 (Guitar Solo) was harvested using the seed tree harvesting silvicultural method.~~

9.13 It ~~admits paragraph 9.13~~ denies each allegation in paragraph 9.13 and says that coupe 309-507-0001 (Mont Blanc) was harvested using the seed tree harvesting silvicultural method.

9.14 It denies each allegation in paragraph 9.14 and says that coupe 309-507-0003 (Kenya) was harvested using the regrowth retention ~~and seed tree~~ harvesting silvicultural methods.

9.15 It denies each allegation in 9.15 and says that coupe 309-507-0004 (The Eiger) was harvested using the ~~clearfell and~~ seed tree harvesting silvicultural methods.

9.16 It denies each allegation in paragraph 9.16 and says that coupe 317-508-0008 (Professor Xavier) was harvested using the regrowth retention harvesting silvicultural method.

9.17 It denies each allegation in paragraph 9.17 and says that coupe 344-509-0009 (Ginger Cat) was harvested using the regrowth retention harvesting silvicultural method.

- 9.18 It denies each allegation in paragraph 9.18 and says that coupe 348-506-0003 (Blue Vein) will be harvested using the regrowth retention harvesting silvicultural method.
- 9.19 It denies each allegation in paragraph 9.19 and says that coupe 345-503-0005 (Bulls Eye) was harvested using the regrowth retention harvesting silvicultural method.
- 9.20 It denies each allegation in paragraph 9.20 and says that coupe 345-505-0006 (Hairy Hyde) was harvested using the seed tree harvesting silvicultural method.
- 9.21 It denies each allegation in paragraph 9.21 and says that coupe 345-506-0004 (Opposite Fitzies) was harvested using the seed tree harvesting silvicultural method.
- 9.25 It admits paragraph 9.25.
- 9.26 It denies each allegation in paragraph 9.26 and says that coupe 348-517-0005 (Tarzan) was harvested using the regrowth retention harvesting silvicultural method.
- 9.30 It admits paragraph 9.30 ~~denies each allegation in paragraph 9.30 and says that coupe 462-507-0008 (Estate) was harvested using the seed tree harvesting silvicultural method.~~
- 9.31 It denies each allegation in paragraph 9.31 and says that coupe 463-504-0009 (De Valera) was harvested using the regrowth retention harvesting ~~and the seed tree~~ harvesting silvicultural methods.
- 9.32 It admits paragraph 9.32 ~~denies each allegation in paragraph 9.32 and says that coupe 483-505-0002 (Rowels) was harvested using the seed tree harvesting silvicultural method.~~
- 9.33 It denies each allegation in paragraph 9.33 and says that coupe 312-510-0007 (Bromance) was harvested using the seed tree harvesting silvicultural method.
- 9.34 It denies each allegation in paragraph 9.34 and says that coupe 312-510-0009 (Lovers Lane) was harvested using the seed tree harvesting silvicultural method.

- 9.35 It denies each allegation in paragraph 9.35 and says that coupe 317-508-0010 (Swing High) was harvested using the regrowth retention harvesting silvicultural method.
- 9.36 It denies each allegation in paragraph 9.36 and says that coupe 462-504-0004 (Skerry's Reach) was harvested using the clear fell ~~and seed tree harvesting~~ silvicultural methods.
- 9.37 It denies each allegation in paragraph 9.37 and says that coupe 288-516-0007 (Golden Snitch) was harvested using the regrowth retention harvesting silvicultural method.
- 9.38 It denies each allegation in paragraph 9.38 and says that coupe 288-516-0006 (Hogsmeade) was harvested using the regrowth retention harvesting silvicultural method.
- 9.39 It admits paragraph 9.39.
- 9.40 It denies each allegation in paragraph 9.40 and says that coupe 287-511-0009 (Rocketman) was harvested using the regrowth retention harvesting silvicultural method.
- 9.41 **It admits paragraph 9.41.**

Proposed clear-felling

10. As to paragraph 10 it:

- (a) admits that each of the scheduled coupes is:
- (i) in the CH RFA Area; and
- (ii) listed on the Approved Timber Release Plan and, with the exception of coupe 288-506-0001 (Dry Creek Hill RDI), with a nominated silvicultural method of either clearfelling or seed tree retention;
- (aa) says that coupe 288-506-0001 (Dry Creek Hill RDI) is listed on the Approved Timber Release Plan with a nominated silvicultural method of road alignment — improvement;
- (b) refers to and repeats subparagraph 6.3(c) above};

- (c) says that the Approved Timber Release Plan includes the approximate timing of timber harvesting for all the coupes listed on the Approved Timber Release Plan; and
- (d) otherwise denies each allegation in paragraph 10.

Leadbeater's Possum and Greater Glider are listed threatened species under the EPBC Act

- 11. It admits paragraph 11.
- 12. It admits paragraph 12.
- 13. It admits paragraph 13.
- 14. As to paragraph 14 it:
 - (a) ~~admits sub-paragraph 14.1 says that on 2 May 2016 the Federal Minister for the Environment included Greater Glider in the vulnerable category of the listing of threatened species under s 178 of the EPBC Act; and~~
 - (b) says that on 2 May 2016 the Federal Minister for the Environment approved a conservation advice for the Greater Glider with effect under the EPBC Act from 25 May 2016; and
 - (c) otherwise does not admit ~~denies each allegation in~~ paragraph 14.

14A. It admits paragraph 14A.

15. It admits paragraph 15.

16. It admits paragraph 16.

Past forestry operations have, are, or are logging has, is or is likely to have a significant impact on the Leadbeater's Possum

17. It admits paragraph 17.

17A. It admits paragraph 17A.

22. It denies each allegation in paragraph 22.

23. It denies each allegation in paragraph 23.

- 24. It denies each allegation in paragraph 24.
- 25. It denies each allegation in paragraph 25.
- 26. It denies each allegation in paragraph 26.
- 27. It denies each allegation in paragraph 27.
- 28. It denies each allegation in paragraph 28.
- 29. It denies each allegation in paragraph 29.
- 29A. It denies each allegation in paragraph 29A.
- 29B. It denies each allegation in paragraph 29B.
- 29C. It denies each allegation in paragraph 29C.
- 30. It denies each allegation in paragraph 30.

Past forestry operations have, are, or are logging has, is or is likely to have a significant impact on the Greater Glider

- 31. It admits paragraph 31.
- 31A. It admits paragraph 31A.
- 32. It denies each allegation in paragraph 32.
- 33. It denies each allegation in paragraph 33.
- 34. It denies each allegation in paragraph 34.
- 35. It denies each allegation in paragraph 35.
- 36. It denies each allegation in paragraph 36.
- 37. It denies each allegation in paragraph 37.
- 38. It denies each allegation in paragraph 38.
- 39. It denies each allegation in paragraph 39.
- 39A. It denies each allegation in paragraph 39A.

39B. It denies each allegation in paragraph 39B.

39C. It denies each allegation in paragraph 39C.

39D. It denies each allegation in paragraph 39D.

40. It denies each allegation in paragraph 40.

Scheduled logging is likely to have a significant impact on the Leadbeater's Possum

41. It admits paragraph 41.

41A. It admits paragraph 41A.

42. As to paragraph 42 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 42.

43. As to paragraph 43 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 43.

44. As to paragraph 44 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;

- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 44.

45. As to paragraph 45 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 45.

46. As to paragraph 46 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 46.

47. As to paragraph 47 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 47.

48. As to paragraph 48 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 48.

49. As to paragraph 49 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 49.

50. As to paragraph 50 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 50.

51. As to paragraph 51 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 51.

52. As to paragraph 52 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 52.

53. As to paragraph 53 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 53.

54. As to paragraph 54 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 54.

55. As to paragraph 55 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and

- (c) otherwise denies each allegation in paragraph 55.

56. As to paragraph 56 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 56.

57. As to paragraph 57 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 57.

58. As to paragraph 58 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 58.

60. As to paragraph 60 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;

- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 60.

61. As to paragraph 61 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 61.

62. As to paragraph 62 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 60.

63. As to paragraph 63 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 63.

64. As to paragraph 64 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 64.

65. As to paragraph 65 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 65.

66. As to paragraph 66 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 66.

67. As to paragraph 67 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 67.

68. As to paragraph 68 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 68.

69. As to paragraph 69 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 69.

70. As to paragraph 70 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 70.

~~70A. As to paragraph 70A it:~~

- ~~(a) says that it has not finalised any proposed harvesting plan for the coupe;~~
- ~~(b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time to time; and~~
- ~~(c) otherwise denies each allegation in paragraph 70A.~~

70B. As to paragraph 70B it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 70B.

71. As to paragraph 71 it:

- (a) refers to and repeats paragraph 42–58 and 60–70B above; and
- (b) otherwise denies each allegation in paragraph 71.

Scheduled logging is likely to have a significant impact on the Greater Glider

72. It admits paragraph 72.

72A. It admits paragraph 72A.

73. As to paragraph 73 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 73.

74. As to paragraph 74 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and

- (c) otherwise denies each allegation in paragraph 74.

75. As to paragraph 75 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 75.

76. As to paragraph 76 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 76.

77. As to paragraph 77 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 75.

78. As to paragraph 78 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;

- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 78.

79. As to paragraph 79 it:

- (a) **refers to and repeats subparagraph 6.3(c) above and** says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 79.

80. As to paragraph 80 it:

- (a) **refers to and repeats subparagraph 6.3(c) above and** says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 80.

81. As to paragraph 81 it:

- (a) **refers to and repeats subparagraph 6.3(c) above and** says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 81.

82. As to paragraph 82 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 82.

83. As to paragraph 83 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 83.

84. As to paragraph 84 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 84.

85. As to paragraph 85 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 85.

86. As to paragraph 86 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 86.

87. As to paragraph 87 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 87.

88. As to paragraph 88 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 88.

89. As to paragraph 89 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;

- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 89.

90. As to paragraph 90 it:

- (a) **refers to and repeats subparagraph 6.3(c) above and** says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 90.

91. As to paragraph 91 it:

- (a) **refers to and repeats subparagraph 6.3(c) above and** says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 91.

92. As to paragraph 92 it:

- (a) **refers to and repeats subparagraph 6.3(c) above and** says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 92.

92A. As to paragraph 92A it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 92A.

92B. As to paragraph 92B it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 92B.

93. As to paragraph 93 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 93.

94. As to paragraph 94 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 94.

95. As to paragraph 95 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 95.

96. As to paragraph 96 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 96.

97. As to paragraph 97 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 97.

98. As to paragraph 98 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and

- (c) otherwise denies each allegation in paragraph 98.

99. As to paragraph 99 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 99.

100. As to paragraph 100 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 100.

101. As to paragraph 101 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 101.

102. As to paragraph 102 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;

- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 102.

102A. As to paragraph 102A it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 102A.

102B. As to paragraph 102B it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 102B.

103. As to paragraph 103 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 103.

104. As to paragraph 104 it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 104.

104A: As to paragraph 104A it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 104A.

104B: As to paragraph 104B it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 104B.

~~104C: As to paragraph 104C it:~~

- ~~(a) says that save for regeneration, timber harvesting operations have been completed in the coupe;~~
- ~~(b) says that regeneration in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time to time; and~~
- ~~(c) otherwise denies each allegation in paragraph 104C.~~

104D. As to paragraph 104D it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 104D.

104E. As to paragraph 104E it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that it has not finalised any proposed harvesting plan for the coupe;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 104E.

104F. As to paragraph 104F it:

- (a) refers to and repeats subparagraph 6.3(c) above and says that this coupe is a road coupe known as “Dry Creek Hill RDC” that is also to be used as a thoroughfare providing access to timber in coupe 288-606-0002 and for the taking of timber to and from coupe 288-606-0002;
- (b) says that any timber harvesting operations in the coupe will be conducted in accordance with the Code and any management prescriptions in force from time-to-time; and
- (c) otherwise denies each allegation in paragraph 104F.

105. As to paragraph 105 it:

- (a) refers to and repeats paragraphs 73–104F above; and
- (b) otherwise denies each allegation in paragraph 105.

Past and scheduled forestry operations are likely to have a significant impact on the Leadbeater's Possum and Greater Glider

105A. It admits paragraph 105A.

105B. It denies each allegation in paragraph 105B.

105C. It admits paragraph 105C.

105D. It denies each allegation in paragraph 105D.

No approval under Part 9 of the EPBC Act

106. It admits paragraph 106.

107. It admits paragraph 107.

Logging is not in accordance with a Regional Forestry Agreement

108. It admits paragraph 108.

109. It admits paragraph 109.

110. As to paragraph 110 it:

- (a) says that the timber harvesting operations in the logged coupes constituted a number of forestry operations for the purposes of the RFA Act; and
- (b) otherwise ~~denies each allegation in~~ admits paragraph 110.

111. As to paragraph 111 it:

- (a) says that any timber harvesting operations that occur in the scheduled coupes will constitute a number of forestry operations for the purposes of the RFA Act; and
- (b) otherwise denies each allegation in paragraph 111.

113A. As to paragraph 113A it:

- (a) says that the Code, the Management Standards and Procedures and the Planning Standards are part of a legislative scheme made under the *Conservation, Forests and Lands Act 1987* (Vic) that is directed at the

fulfilment of multiple purposes, including 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:

- (i) permits an economically viable, internationally competitive, sustainable timber industry;
 - (ii) is compatible with the conservation of the wide range of environmental, social and cultural values associated with forests;
 - (iii) provides for the ecologically sustainable management of native forests proposed for cyclical timber harvesting operations; and
 - (iv) enhances public confidence in the management of timber production in Victoria's forests and plantations;
- (b) says that, accordingly, the correct construction of the provisions of the Code must depend on the words used rather than a purposive approach that assumes the Code is directed towards conservation objectives only;
- (c) says further that:
- (i) 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 account of principles of environmentally sustainable development and provided for significant reserves; and
 - (ii) by operation of clause 1.3.1.1 of the Management Standards and Procedures, timber harvesting operations that comply with the Management Standards and Procedures are deemed to comply with the Code;
 - (iii) the timber harvesting operations in each of the Logged Glider Coupes complied with the Management Standards and Procedures;
 - (iv) accordingly, the timber harvesting operations in each of the Logged Glider Coupes are deemed to comply with the Code, including clause 2.2.2.2 of the Code;

(v) alternatively, the timber harvesting operations in each of the Logged Glider Coupes did not constitute a serious or irreversible threat to the environment with scientific uncertainty as to the environmental damage, such that the precautionary principle was not engaged in relation to any of the Logged Glider Coupes; and

(d) otherwise denies each allegation in paragraph 113A.

113B. As to paragraph 113B it:

(a) refers to and repeats subparagraphs 113A(a) and (b) above;

(b) otherwise denies each allegation in paragraph 113B.

113C. As to paragraph 113C it:

(a) refers to and repeats subparagraphs 113A(a) and (b) above;

(b) otherwise denies each allegation in paragraph 113C.

113D. As to paragraph 113D it:

(a) refers to and repeats subparagraphs 113A(a) and (b) above;

(b) otherwise denies each allegation in paragraph 113D.

113E. As to paragraph 113E it:

(a) refers to and repeats subparagraphs 113A(a) and (b) above;

(b) otherwise denies each allegation in paragraph 113E.

113F. As to paragraph 113F it:

(a) refers to and repeats subparagraphs 113A(a) and (b) above;

(b) otherwise denies each allegation in paragraph 113F.

113G. As to paragraph 113G it:

(a) denies that any of the forestry operations in the coupes the subject of paragraphs 113A to 113F was not in accordance with the CH RFA;

- (b) says, in the alternative, that in the event that VicForests has failed to comply with the Code by reason of any of the matters alleged in paragraphs 113A to 113F (all of which is denied) on the proper construction of s 38 of the EPBC Act and s 6(4) of the RFA Act, any loss of exemption from the application of Part 3 of the EPBC Act is limited to the forestry operation or operations that is or are not in accordance with the CH RFA and does not extend to other forestry operations within the same coupe that are undertaken in accordance with the CH RFA; and
- (c) otherwise denies each allegation in paragraph 113G.

113H. As to paragraph 113H it:

- (a) refers to and repeats paragraphs 73 to 104E above and subparagraphs 113A(a), (b) and (c)(i) and (ii) above;
- (b) says that any timber harvesting operations in the scheduled coupes will comply with the Management Standards and Procedures;
- (c) says that, accordingly, any timber harvesting operations in the scheduled coupes will be deemed to comply with the Code including clause 2.2.2.2 of the Code; ~~and~~
- (d) further, and in the alternative, says that the planning for timber harvesting operations in any of the Scheduled Coupes is not sufficiently advanced to enable an assessment as to whether the timber harvesting operations will pose a threat of serious or irreversible damage to the environment; and
- (e) otherwise denies each allegation in paragraph 113H.

113I. As to paragraph 113I it:

- (a) refers to and repeats paragraph 113H above;
- (b) denies that any of the forestry operations that may occur in the scheduled coupes will not be in accordance with the CH RFA;
- (c) says in the alternative that, if any forestry operations that may occur in the scheduled coupes are not undertaken in accordance with the CH RFA, on the proper construction of s 38 of the EPBC Act and s 6(4) of the RFA

Act, any loss of exemption from the application of Part 3 of the EPBC Act is limited to the extent the forestry operation or operations is or are not in accordance with the CH RFA and does not extend to other forestry operations within the same coupe that are undertaken in accordance with the CH RFA; ~~and~~

- (d) says further and in the alternative, that if VicForests has failed, or will fail, to comply with clause 2.2.2.2 of the Code in any of the respects alleged in paragraph 113A (all of which is denied):
- (i) any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern Greater Glider only; and
 - (ii) accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater's Possum, VicForests' forestry operations in the relevant coupes are exempt from the application of Part 3 of the EPBC Act insofar as Leadbeater's Possum and any other listed threatened species is concerned (except to the extent those forestry operations are found to have breached the precautionary principle concerning Greater Glider); and
- (e) otherwise denies each allegation in paragraph 113I.

Past logging is a contravention of the EPBC Act

115. ~~As to paragraph 115 it:~~

- (a) ~~refers to and repeats paragraphs 9.5, 9.6, 9.12, 9.15, 9.17, 9.18, 9.20, 9.26, 9.30, 9.32, 9.36, 11, 14, 17, 22, 24, 25, 27, 29, 29B, 31, 39C, 106, 108, 110, 113A and 113G above;~~
- (b) ~~says further and in the alternative, that if VicForests has failed to comply with clause 2.2.2.2 of the Code in any of the respects alleged in paragraph 113A (all of which is denied):~~

- ~~(i) any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern Greater Glider only; and~~
- ~~(ii) accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater's Possum, VicForests' forestry operations in the relevant coupes are exempt from the application of Part 3 of the EPBC Act insofar as Leadbeater's Possum (and any other listed threatened species is concerned except to the extent those forestry operations have breached the precautionary principle concerning Greater Glider); and~~
- (c) ~~otherwise denies each allegation in paragraph 115.~~

115AA. As to paragraph 115AA it:

- (a) refers to and repeats paragraphs 9.12, 9.17, 9.18, 9.20, 9.26, 9.32, 9.35, 9.36, 11, 13, 14, 14A, 15, 17, 22-29C, 106, 108-110, 113A and 113G above;
- (b) says further and in the alternative, that if VicForests has failed to comply with clause 2.2.2.2 of the Code in any of the respects alleged in paragraph 113A (all of which is denied):
 - (i) any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern Greater Glider only; and
 - (ii) accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater's Possum, VicForests' forestry operations in the relevant coupes are exempt from the application of Part 3 of the EPBC Act insofar as Leadbeater's Possum and any other listed threatened species is concerned) except to the extent those forestry operations are found to have breached the precautionary principle concerning Greater Glider); and

- (c) otherwise denies each allegation in paragraph 115AA.

115AB. As to paragraph 115AB it:

- (a) refers to and repeats paragraphs 9.5, 9.6, 9.12–9.15, 9.17, 9.18, 9.20, 9.26, 9.30, 9.32–9.36, 9.41, 11, 14, 14A, 16, 31, 32–39CD, 106, 108–110, 113A, 113G and sub-paragraph 115AA(b) above; and
- (b) otherwise denies each allegation in paragraph 115AB.

115AC. As to paragraph 115AC it:

- (a) refers to and repeats paragraphs 9.12, 9.17, 9.18, 9.20, 9.26, 9.32, 9.35, 9.36, 11, 13, 14, 14A, 15, 17A, 30, 106, 108–110, 113A, 113G and sub-paragraph 115AA(b) above; and
- (b) otherwise denies each allegation in paragraph 115AC.

115AD. As to paragraph 115AD it:

- (a) refers to and repeats paragraphs 9.5, 9.6, 9.12–9.15, 9.17, 9.18, 9.20, 9.26, 9.30, 9.32–9.36, 9.41, 11, 14, 14A, 16, 31A, 40, 106, 108–110, 113A, 113G and sub-paragraph 115AA(b) above; and
- (b) otherwise denies each allegation in paragraph 115AD.

115AE. As to paragraph 115AE it:

- (a) refers to and repeats paragraphs 9.36, 11, 13, 15, 17, 29B, 106, 108–110, 113B and 113G above;
- (b) says further and in the alternative, that if VicForests has failed to comply with clause 2.2.2.4 of the Code in any of the respects alleged in paragraph 113B (all of which is denied):
- (i) any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern Tree Geebung only; and
- (ii) accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater’s Possum or

Greater Glider, VicForests' forestry operations in the relevant coupes are exempt from the application of Part 3 of the EPBC Act insofar as Leadbeater's Possum and Greater Glider are concerned; and

- (c) otherwise denies each allegation in paragraph 115AE.

115AF. As to paragraph 115AF it:

- (a) refers to and repeats paragraphs 9.36, 11, 14, 16, 31, 39C, 106, 108–110, 113B, 113G and sub-paragraph 115AE(b) above; and
- (b) otherwise denies each allegation in paragraph 115AF.

115BA. As to paragraph 115BA it:

- (a) refers to and repeats paragraphs 9.18, 11, 13, 15, 17, 24, 106, 108–110, 113C and 113G above; and
- (b) otherwise denies each allegation in paragraph 115BA.

115BB. As to paragraph 115BB it:

- (a) refers to and repeats paragraphs 9.18, 11, 14, 16, 31, 35, 106, 108–110, 113C and 113G above;
- (b) says further and in the alternative, that if VicForests has failed to comply with clause 4.2 or 2.1.1.3 of the Management Standards and Procedures in any of the respects alleged in paragraph 113C (all of which is denied):
- (i) any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Management Standards and Procedures, the allegations of which concern Leadbeater's Possum only;
- (ii) accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Greater Glider, VicForests' forestry operations in the relevant coupes are exempt

from the application of Part 3 of the EPBC Act insofar as Greater Glider is concerned; and

- (c) otherwise denies each allegation in paragraph 115BB.

115CA. As to paragraph 115CA it:

- (a) refers to and repeats paragraphs 9.20, 11, 13, 15, 17, 25, 106, 108–110, 113D and 113G above; and
- (b) otherwise denies each allegation in paragraph 115CA.

115CB. As to paragraph 115CB it:

- (a) refers to and repeats paragraphs 9.20, 11, 11, 16, 31, 36, 106, 108–110, 113D and 113G above;
- (b) says further and in the alternative, that if VicForests has failed to comply with clause 2.2.2.4 of the Code in any of the respects alleged in paragraph 113D (all of which is denied):
- (i) any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern Leadbeater's Possum only;
- (ii) accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Greater Glider, VicForests' forestry operations in the relevant coupes are exempt from the application of Part 3 of the EPBC Act insofar as Greater Glider is concerned; and
- (c) otherwise denies each allegation in paragraph 115CB.

115DA. As to paragraph 115DA it:

- (a) refers to and repeats paragraphs 9.12, 9.16, 9.17, 9.19, 9.21, 9.25, 9.31, 9.36–9.40, 11–13, 15, 17, 22–27, 28, 29B–29C, 106, 108–110, 113E and 113G above;

- (b) says further and in the alternative, that if VicForests has failed to comply with any of clauses 5.3.1.5 or 7.1.2.1(e) of the Management Standards and Procedures or clauses 2.3.1.1 or 2.5.1.1 of the Code in any of the respects alleged in paragraphs 113E (all of which is denied):
- (i) any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Management Standards and Procedures, the allegations of which concern vegetation buffers only;
- (ii) accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater’s Possum or Greater Glider, VicForests’ forestry operations in the relevant coupes are exempt from the application of Part 3 of the EPBC Act insofar as Leadbeater’s Possum and Greater Glider are concerned; and
- (c) otherwise denies each allegation in paragraph 115DA.

115DB. As to paragraph 115DB it:

- (a) refers to and repeats paragraphs 9.5, 9.6, 9.12–9.15, 9.17, 9.30, 9.36, 9.41, 11, 14, 16, 31, 32–35, 38, 39C, 39D, 106, 108–110, 113E, 113G and sub-paragraph 115DA(b) above; and
- (b) otherwise denies each allegation in paragraph 115DB.

115DC. As to paragraph 115DC it:

- (a) refers to and repeats paragraphs 9.12, 9.16, 9.17, 9.19, 9.21, 9.25, 9.31, 9.36–9.40, 11-13, 15, 17A, 30, 106, 108–110, 113E, 113G and sub-paragraph 115DA(b) above; and
- (b) otherwise denies each allegation in paragraph 115DC.

115DD. As to paragraph 115DD it:

- (a) refers to and repeats paragraphs 9.5, 9.6, 9.12–9.15, 9.17, 9.30, 9.36, 9.41, 11, 14, 16, 31A, 40, 106, 108–110, 113E, 113G and sub-paragraph 115DA(b) above; and
- (b) otherwise denies each allegation in paragraph 115DD.

115EA. As to paragraph 115EA it:

- (a) refers to and repeats paragraphs 9.16, 9.17, 9.25, 9.31, 9.37–9.40, 11–13, 15, 17, 23, 24, 26, 28, 29C, 106, 108–110, 113F and 113G above;
- (b) says further and in the alternative, that if VicForests has failed to comply with clause 2.2.2.1 of the Code or clause 4.1.1.1 of the Management Standards and Procedures in any of the respects alleged in paragraphs 113F (all of which is denied):
 - (i) any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern gaps between retained vegetation only;
 - (ii) accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater’s Possum or Greater Glider, VicForests’ forestry operations in the relevant coupes are exempt from the application of Part 3 of the EPBC Act insofar as Leadbeater’s Possum and Greater Glider are concerned; and
- (c) otherwise denies each allegation in paragraph 115EA.

115EB. As to paragraph 115EB it:

- (a) refers to and repeats paragraphs 9.16, 9.17, 9.25, 9.31, 9.37–9.40, 11–13, 15, 17, 30, 106, 108–110, 113F, 113G and sub-paragraph 115EA(b) above; and
- (b) otherwise denies each allegation in paragraph 115EB.

~~115A. As to paragraph 115A it:~~

- ~~(c) — refers to and repeats paragraphs 9.36, 11, 13–14, 17, 29B, 39C, 106, 108–110, 113B and 113G above;~~
- ~~(d) — says further and in the alternative, that if VicForests has failed to comply with clause 2.2.2.4 of the Code in any of the respects alleged in paragraph 113B (all of which is denied):~~
 - ~~(i) — any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern the identification and protection of mature Tree Geebungs in Skerry’s Reach coupe only; and~~
 - ~~(ii) — accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater’s Possum or Greater Glider, VicForests’ forestry operations in Skerry’s Reach coupe are exempt from the application of Part 3 of the EPBC Act insofar as Leadbeater’s Possum, Greater Glider, and any other listed threatened species is concerned; and~~
- ~~(e) otherwise denies each allegation in paragraph 115A.~~

~~115B. As to paragraph 115B it:~~

- ~~(a) — refers to and repeats paragraphs 9.18, 11–14, 17, 24, 35, 106, 108–110, 113C and 113G above;~~
- ~~(b) — says further and in the alternative, that if VicForests has failed to comply with clause 2.2.2.4 of the Code in any of the respects alleged in paragraph 113C (all of which is denied):~~
 - ~~(i) — any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern the identification and protection of an area of alleged Leadbeater’s Possum Zone 1A habitat in the Blue Vein coupe only; and~~

~~(ii) — accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Greater Glider, VicForests' forestry operations in Blue Vein coupe are exempt from the application of Part 3 of the EPBC Act insofar as Greater Glider, and any other listed threatened species is concerned (except to the extent those forestry operations have breached the Code concerning Leadbeater's Possum); and~~

~~(c) — otherwise denies each allegation in paragraph 115B.~~

~~115C. As to paragraph 115C it:~~

~~(a) — refers to and repeats paragraphs 9.20, 11 14, 17, 25, 36, 106, 108 110, 113D and 113G above;~~

~~(b) — says further and in the alternative, that if VicForests has failed to comply with clause 2.2.2.4 of the Code in any of the respects alleged in paragraph 113D (all of which is denied):~~

~~(i) — any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern the identification and protection of a Leadbeater's Possum colony within Hairy Hyde coupe only; and~~

~~(ii) — accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Greater Glider, VicForests' forestry operations in Hairy Hyde coupe are exempt from the application of Part 3 of the EPBC Act insofar as Greater Glider, and any other listed threatened species is concerned (except to the extent those forestry operations have breached the Code concerning Leadbeater's Possum); and~~

~~(c) — otherwise denies each allegation in paragraph 115C.~~

~~115D. As to paragraph 115D it:~~

~~(a) — refers to and repeats paragraphs 9 (excluding 9.18, 9.20, 9.26, 9.32–9.35), 11 14, 17 29C (excluding 27, 29, 29A), 31 39C (excluding 36,37, 39 39B), 106, 108 110, 113E and 113G above;~~

- ~~(b) — says further and in the alternative, that if VicForests has failed to comply with clause 2.3.1.1 or clause 2.5.1.1 of the Code in any of the respects alleged in paragraph 113D (all of which is denied):~~
- ~~(i) — any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern the failure to screen timber harvesting operations and new road alignments from view with a 20m vegetation buffer; and~~
- ~~(ii) — accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater’s Possum or Greater Glider, VicForests’ forestry operations in the 113E coupes are exempt from the application of Part 3 of the EPBC Act insofar as Leadbeater’s Possum or Greater Glider, and any other listed threatened species is concerned; and~~
- ~~(c) — otherwise denies each allegation in paragraph 115D.~~

~~115E. As to paragraph 115E it:~~

- ~~(a) — refers to and repeats paragraphs 9.16, 9.17, 9.25, 9.31, 9.37 9.40, 11 14, 17, 23, 24, 26, 28, 29C, 35, 106, 108 110, 113F and 113G above;~~
- ~~(b) — says further and in the alternative, that if VicForests has failed to comply with clause 2.2.2.1 of the Code in any of the respects alleged in paragraph 113E (all of which is denied):~~
- ~~(i) — any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern alleged gaps greater than 150 metres between retained vegetation; and~~
- ~~(ii) — accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater’s Possum or Greater Glider, VicForests’ forestry operations in the 113F coupes are exempt from the application of Part 3 of the EPBC Act insofar~~

as ~~Leadbeater's Possum or Greater Glider, and any other listed threatened species is concerned; and~~

- (c) ~~otherwise denies each allegation in paragraph 115E.~~

116. As to ~~paragraph 116~~ it:

- (a) ~~refers to and repeats paragraphs 9.5, 9.6, 9.12 9.15, 9.17, 9.18, 9.20, 9.26, 9.30, 9.32 9.36, 11 14, 22, 24, 25, 27, 29 29B, 40, 106, 108 113A and 113G above; and~~
- (b) ~~otherwise denies each allegation in paragraph 116~~

116A. As to ~~paragraph 116A~~ it:

- (a) ~~refers to and repeats paragraphs 9, 11 14, 30, 40, 106, 108 113A and 113G above; and~~
- (b) ~~otherwise denies each allegation in paragraph 116A.~~

Proposed logging is a contravention of the EPBC Act

116BA. As to paragraph 116BA it:

- (a) refers to and repeats paragraphs 10.1 10.8, 10.11 10.16, 10.18 10.20, 10.22 10.31, 10.32A, 10.34, 11, 13, 14, 14A, 15, 41, 42-70B, 107-109, 111, 113H, 113I and sub-paragraph 115AA(b) above; and
- (b) otherwise denies each allegation in paragraph 116BA.

116BB. As to paragraph 116BB it:

- (a) refers to and repeats paragraphs 10, 11, 14, 14A, 16, 72, 73-104F, 107-109, 111, 113H and 113I above; and
- (b) otherwise denies each allegation in paragraph 116BB.

116BC. As to paragraph 116BC it:

- (a) refers to and repeats paragraphs 10.1 10.8, 10.11 10.16, 10.18 10.20, 10.22 10.31, 10.32A, 10.34, 11, 13, 14, 14A, 15, 41A, 71, 107-109, 111, 113H, 113I and sub-paragraph 115AA(b) above; and

- (b) otherwise denies each allegation in paragraph 116BC.

116BD. As to paragraph 116BD it:

- (a) refers to and repeats paragraphs 10, 11, 14, 14A, 16, 72A, 105, 107–109, 111, 113H and 113I above; and
- (b) otherwise denies each allegation in paragraph 116BD.

~~116B. As to paragraph 116B it:~~

- ~~(a) — refers to and repeats paragraphs 10, 11, 14, 72 104F, 107 109, 111, 113H and 113I above;~~
- ~~(b) — says further and in the alternative, that if VicForests will fail to comply with clause 2.2.2.2 of the Code in any of the respects alleged in paragraph 113H (all of which is denied):~~
- ~~(i) — any loss of exemption from the application of Part 3 of the EPBC Act must be limited to those forestry operations in respect of which VicForests has failed to comply with the Code, the allegations of which concern Greater Glider only; and~~
- ~~(ii) — accordingly, in the absence of any established breach of the Code concerning forestry operations relating to Leadbeater’s Possum, VicForests’ forestry operations in the relevant coupes are exempt from the application of Part 3 of the EPBC Act insofar as Leadbeater’s Possum (and any other listed threatened species is concerned except to the extent those forestry operations will breach the precautionary principle concerning Greater Glider); and~~
- ~~(c) — otherwise denies each allegation in paragraph 116B.~~

~~116C. As to paragraph 116C it:~~

- ~~(a) — refers to and repeats paragraphs 10, 11, 13, 41–70B, 107–109, 111, 113H 113I and 116B(b) above; and~~
- ~~(b) otherwise denies each allegation in paragraph 116C.~~

Past and proposed logging is a breach of the EPBC Act

119A. As to paragraph 119A it:

- (a) refers to and repeats paragraphs 9.12, 9.16–9.21, 9.25, 9.26, 9.31, 9.32, 9.35–9.40, ~~10.1–10.8, 10.11–10.16, 10.18–10.20, 10.22–10.31, 10.32A, 10.34~~, 11–13, 14, 14A, 15, 105A, 105B, 106–113I and sub-paragraphs 115AA(b), 115AE(b), 115BB(b), 115CB(b), 115DA(b) and 115EA(b) above;
- (b) and otherwise denies each allegation in paragraph 119A.

119B. As to paragraph 119B it:

- (a) refers to and repeats paragraphs 9.5, 9.6, 9.12–9.15, 9.17, 9.18, 9.20, 9.26, 9.30, 9.32–9.36, 9.41, 10, 11, 14, 14A, 16, 105C, 105D, 106–113E, 113G–113I and sub-paragraph 115AA(b), 115AE(b), 115BB(b), 115CB(b) and 115DA(b) above; and
- (b) otherwise denies each allegation in paragraph 119B.

Claim for relief

120. By reason of the foregoing VicForests denies the applicant is entitled to any of the relief claimed or to any relief against VicForests at all.

I G WALLER

H L REDD

R V HOWE

Date: ~~29 June 2018~~ ~~13 September~~ ~~26 October 2018~~ ~~22 January 2019~~ 22 February 2019

A handwritten signature in black ink, appearing to read "Alex Wolff". The signature is written in a cursive style with a large initial "A" and "W".

Signed by Alex Wolff
Lawyer for the Respondent

This pleading was prepared by Alex Wolff, lawyer

Certificate of lawyer

I Alex Wolff certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~13 September~~ ~~29 October 2018~~ ~~22 January 2019~~ 22 February 2019



Signed by Alex Wolff
Lawyer for the Respondent