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FRIENDS OF LEADBEATER'S POSSUM INC

Applicant

and

VICFORESTS

Respondent

Applicant's Opening Submissions

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A. Introduction

1. This case is about the protection of the Greater Glider and the Leadbeater’s Possum under the *Environment Protection of Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). The essential questions in this case are factual questions about the threat posed by, and impact of, forestry operations on those species.
2. The EPBC Act is concerned with matters of national environmental significance. The EPBC Act contains a prohibition on conduct affecting listed threatened species as a matter of national environmental significance:
 - a. section 18(2) provides that a person must not take an action that has or will have or is likely to have a significant impact on a listed threatened species including in the critically endangered category – in this case, the Leadbeater’s Possum;
 - b. section 18(4) provides that a person must not take an action that has or will have a significant impact or is likely to have a significant impact on a listed threatened species included in a vulnerable category – in this case, the Greater Glider.
3. What constitutes a “critically endangered” native species is defined in s 179(3) of the Act. What constitutes a “vulnerable” native species is defined in s 179(5) of the Act. In 1999 neither the Leadbeater’s Possum nor the Greater Glider were listed as threatened species. The Leadbeater’s Possum was listed as “endangered” on 11 July 2000. It was transferred to the “critically endangered” category on 2 May 2015. The Greater Glider was listed as “vulnerable” on 25 May 2016.

4. Where a person contemplates an “action” (as defined in Subdivision A of Division 1 of Part 23 of the EPBC Act) that has, will or is likely to have a significant impact (“impact” as defined in s 527E) on a threatened species, then, in general, such an “action” can only be undertaken with the approval of the relevant Minister (see s 19 and Part 9 of the Act which deals with Ministerial approval).
5. There are exceptions to the requirement for Ministerial approval under the EPBC Act. Relevantly, there is no requirement to subject an “action” to the Part 9 Ministerial approval process where that action is a forestry operation “undertaken in accordance with the Regional Forest Agreement” (s 38, EPBC Act).
6. Section 6(4) of the *Regional Forestry Agreements Act 2002* (Cth) (**RFA Act**) is a mirror provision to s 18 of the EPBC Act. Section 6(4) says that Part 3 of the EPBC Act does not apply to an RFA forestry operation that is undertaken “in accordance with” an RFA.
7. The Central Highlands RFA (**CH RFA**) is agreed to have application to the facts in issue in this proceeding. The Respondent (**VicForests**) is a party to the CH RFA which has been on foot since 27 March 1998 (CB 6.12). The CH RFA defines “forestry operations” (CB 6.12, PDF p 5). “RFA forestry operation” is defined in s 4 as forestry operations (as defined in an RFA) that are conducted in relation to land in a region covered by the RFA. It is common ground that the forestry operations in the logged and the proposed forestry operations in the scheduled coupes in issue in this proceeding meet that definition.
8. The structure of forestry operations in Victoria is that VicForests is allocated timber resources in State Forests under an Allocation Order (see Part 3, *Sustainable Forests (Timber) Act 2004* (Vic) (**SFT Act**)). VicForests is then required to prepare a Timber Release Plan (**TRP**) in respect of the area to which the allocation order applies for the purposes of harvesting and/or selling timber resources and undertaking associated activities (Part 5, SFT Act). This involves VicForests planning how it will meet contractual demand. As part of that planning function VicForests identifies coupes and, having done so, it engages in further operational planning for forestry operations in each individual coupe. This involves VicForests preparing coupe plans which it provides to contractors who carry out the timber harvesting operations in each coupe and who are obliged to do so at an operational level in compliance with the

VicForests individual coupe plans (Maguire Affidavit, [8]-[20]; First Paul Affidavit [35]-[45]).

9. The first critical question of fact in this case is whether VicForests' forestry operations undertaken in logged coupes or proposed to be undertaken in the scheduled coupes in Central Highlands of Victoria have been or will be undertaken "in accordance with" the CH RFA.
10. The Applicant will demonstrate, at trial, that both in the case of the logged coupes and the scheduled coupes, such operations have not been and are not proposed to be undertaken "in accordance with" the CH RFA. The consequence of this is that VicForests has lost any purported exemption from the requirement for Ministerial approval.
11. By reason of cl 47 of the CH RFA, VicForests, is required to comply, in the conduct of its forestry operations in the Central Highlands, with the Code of Practice for Timber Production (**the Code**) (CB 6.12, PDF p 4), the current version of which was published in 2014.¹
12. Clause 2.2.2.2 of the Code is central to this proceeding. It requires adherence to the precautionary principle as defined in the Code. Clause 2.2.2.2 of the Code (CB 6.9 PDF p 34) provides that:

*[t]he **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.*

13. The precautionary principle is defined by the Code (CB 6.9 PDF p 15) as follows:

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

¹ In Victoria, s 46 of the *Sustainable Forests (Timber) Act 2004* (Vic) (**the SFT Act**) also requires that VicForests must comply with the Code in the conduct of forestry operations.

various options. When dealing with threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

14. The Code incorporates the Management Standards and Procedures for Timber Harvesting in Victoria's State Forests 2014 (**Management Standards**) (CB 6.10),² which provide standards and procedures to instruct managing authorities, harvesting entities and operators in interpreting the requirements of the Code (CB 6.10). Where there is a conflict between the incorporated document and the Code, the Code prevails (cl 1.2.1.3, Management Standards)
15. The Applicant notes cl 1.3.1.1 of the Management Standards concerning deemed compliance in the case of certain operations. So far as Vic Forests is concerned, including in relation to planning where forestry operations are to occur, the identification and specification in that context of individual coupes and their boundaries and the preparation of individual coupe plans, compliance with the Code is mandatory. Clause 1.3.1.1 of the Management Standards does not excuse Vic Forests from compliance with the Code either in general or, in particular, concerning cl 2.2.2.2 and the obligation to act in accordance with the precautionary principle as defined in the Code.
16. The Applicant's essential case is as follows:
 - a. any breach of the Code in relation to an individual coupe or in a group of coupes means that the exemption from the operation of the EPBC Act which provides "protection" in respect of forestry operations is lost for that coupe or group of coupes. That means, by way of example, if the precautionary principle has not been adhered to by VicForests in relation to the Greater Glider for a particular coupe, then the protection from s 18 of the EPBC Act provided by the s 38 exemption does not apply to that coupe. That is the first critical question of fact in this proceeding.
 - b. if the protection provided by the RFA does not apply to one, some or all coupe/s, (for whatever reason) then, the fundamental question posed by s 18 of the EPBC Act falls to be considered. Namely, is the proposed action one

² See s 31(2) of the *Conservation, Forests and Lands Act 1987* (Vic).

which has, will or is likely to have a significant impact on a listed threatened species. That is the second critical question of fact in this proceeding. That question is required to be answered by applying s 18 of the EPBC Act to each, some or all coupes in issue in the proceeding by reference to both the Greater Glider and the Leadbeater's Possum.

17. Upon the Court being satisfied that VicForests has engaged, is engaging or is proposing to engage in a contravention of s 18(2) and/or s 18(4) of the EPBC Act, in relation to each of the scheduled coupes the Court should grant an injunction pursuant to s 475 of the EPBC Act restraining VicForests from engaging in contravening conduct.
18. In addition, the Applicant will also seek 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 Coupes; and
 - b. VicForests has breached s 18(4) of the EPBC Act by reason of its forestry operations in the logged Glider Coupes.

B. Objects of the legislative scheme

19. The object of the EPBC Act, the RFA Act and the State conservation systems that they accredit is the protection and recovery of the Greater Glider and the Leadbeater's Possum; species that are on a path to extinction.
20. The objects at s 3 of the EPBC Act have a "singular emphasis" on environmental protection and biodiversity conservation (*Friends of Leadbeater's Possum v VicForests* [2018] FCA 178 (s 38 Reasons [221])).
21. Likewise, the objects of the RFA Act as stated in s 3 include giving effect to "certain aspects" of the National Forest Policy Statement 1992 (NFPS) (CB 1.3). The NFPS was signed by States and territories excluding Tasmania in 1992 and by Tasmania in April 1995). The NFPS records that the signatories "have come together to develop a strategy for the ecologically sustainable management of ... forests".
22. The relevant provisions of the NFPS are set out at [111]-[123] of the s 38 Reasons. Two of the principle objectives of the NFPS are the maintenance of an extensive and

permanent native forest estate in Australia and the protection of native conservation values in those forests (at [115]). Those objectives are agreed to be achieved in public forests by two means:

- a. the first, a reserve system (i.e. areas set aside as dedicated conservation reserves to protect native forest communities and to safeguard endangered and vulnerable species and the protection of other areas of forest outside the reserves to safeguard special areas and provide links between reserves or other protected areas³) (at [116]);
 - b. the second, complementary management of other areas outside the reserve system through “ecologically sustainable forest management (**ESFM**) and codes of practice” (at [118]). Fundamental to ESFM is the conservation of biodiversity values, which includes endangered and vulnerable species and communities (NFPS, Agreed Facts Ann 1, CB 1.3 pp 27-28, 31).
23. As signatories to the NFPS, all Governments agreed via the RFA that ecologically sustainable forest management includes both the establishment of the Comprehensive, Adequate and Representative (**CAR**) Reserve System **and** an ESFM, a forest management system, one feature of which is that it is capable of responding to new information (cl 39). Complementary management of public forests outside the CAR Reserve System demands action, in respect of those forests where, for example, after and in spite of 17 years of the CAR Reserve System, one native species which inhabits native forest, the Greater Glider, is found to be vulnerable and another, the Leadbeater’s Possum, has had its status altered from ‘endangered’ in 2000 to “critically endangered” in 2015.
24. The two means of achieving the agreed principle objectives are both independent of operation and complementary. Contrary to what appears to be the case for VicForests, the reserve system is not intended to provide the only area in which biodiversity values are protected. Independently, the RFA Act, via the NFPS, requires that forestry operations outside the reserve system but also on public land are managed in a manner that safeguards identified biodiversity values. The framing

³ Dedicated reserves, informal reserves and values protected by prescription as SPZ (including stream buffers) comprise the 3 components of the Comprehensive Adequate Representative (**CAR**) Reserve System established via the CH RFA process (CH RFA, CB 6.12 p27) (and mirrored in other RFAs nationally)

of its case by VicForests that the reserve system is sufficient to protect biodiversity values (see Davey (1) pp 133-136) (CB 5.1.1) is flawed, as it only addresses one of the two means specified in the NFPS.

25. The day to day regulation of forestry operations falls to the States, in the present case, the State of Victoria. The fact that the State regimes are accredited in place of the approvals process in Part 9 of the EPBC Act does not mean that State based approvals processes are intended to be any less rigorous than or to permit conduct contrary to the intent of the prohibitions in s 18 of the EPBC Act (s 38 Reasons at [221]). As a consequence, forestry operations to be carried out in public forests outside CAR Reserves regulated under State legislation and delegated instruments may only be carried out in a manner that delivers protection for the environmental values which are present in the forests the subject of those operations equal to that which would be provided directly under the EPBC Act.
26. As has previously been observed “the form of substitute regulation for which the RFA provides [is intended to] ensure on an adaptive basis that forestry operations are conducted in a manner that delivers the environmental protection and biodiversity conservation objectives to which the NFPS and the EPBC Act refer” (S 38 Reasons [140]). Further:
 - a. clause 25 of the CHRFA deals with “on-going co-operative work”, a statement clearly inconsistent with the proposition that the RFA is intended to provide any fixed or static arrangement as at 1998;
 - b. the CH RFA is intended to deal with an adaptive, dynamic situation whereby the management of forestry operations may well need to change in order to respond to environmental considerations (including, for example, changes in threat levels, habitat destruction or changes in the endangered status of particular species).
27. There is nothing in the CH RFA that addresses the Greater Glider. The CH RFA was entered into in 1998. At that time provision was made in the CH RFA for the protection of the Baw Baw Frog and its habitat (s 38 Reasons [166] – [170]) including scheduling new coupes in areas determined not to contain the Baw Baw Frog (s 38 Reasons [166]). There is nothing in the 1998 Code or the 2014 Management Standards that expressly addresses the Greater Glider in the CH RFA

(c/f in East Gippsland (Management Standards at CB 6.10, PDF p 79)). Each of these documents, like the CH RFA itself predate the listing of the Greater Glider as vulnerable. There is no Recovery Plan for the Greater Glider (see s 269A, EPBC Act) and no Action Statement (see s 19, *Flora and Fauna Guarantee Act 1988* (Vic)). So far as the Greater Glider in public forests is concerned, cl 2.2.2.2 of the Code and the precautionary principle as defined is its only safeguard in respect of forestry operations.

28. The evidence will show that, whilst it is possible forestry operations can be conducted in a manner that is consistent with the precautionary principle and, therefore, with the conservation of the Greater Glider (Smith (1), CB 4.2.1. PDF pp 20-23, see similarly pp 43-44) that is not what has occurred in the past in respect of the logged coupes nor what is proposed by VicForests to occur in respect of the scheduled coupes. 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.
29. Attachment 2 to the CH RFA states that there is already in existence a Recovery Plan for the Leadbeater’s Possum under the *Endangered Species Protection Act 1992* (Vic). The fact there is, in existence, a Recovery Plan for the Leadbeater’s Possum does not have the consequence that the Commonwealth has abandoned any supervision of the conservation measures and protections for the species.
30. The objects of the EPBC Act are not merely aspirational. The CH RFA accredits the State system but if that system is not adhered to the exemption under s 38 is lost and actions are subject to the EPBC Act. In that event, the injunction regime under s 475 of the EPBC Act provides that the protective regime created by the EPBC Act is intended to be enforceable.

C. Greater Glider

31. The Greater Glider is the largest gliding marsupial in Australia.

32. On 25 May 2016, the Greater Glider was listed under the EPBC Act as a vulnerable threatened species, triggering protection under the EPBC Act. This means that the species has been assessed by a Commonwealth Government Threatened Species Scientific Committee as “facing a high risk of extinction in the wild in the medium-term future” (EPBC Act s 179(5)(b)).
33. The Greater Glider is herbivorous and nocturnal, feeding on young leaves and flower buds of Eucalyptus trees at night and sleeping in hollows in large old (senescent) and dead trees during the day (Smith (1) CB 4.2.1 PDF p 7). It is found on the East Coast of Australia in Ash forests and Mixed Species forests with particular overstorey and understorey characteristics (Smith (1) CB 4.2.1 PDF p 8). Examples of this forest can be seen in the Goliath and Shrek coupes which are the first coupes that will be visited on the view.
34. The effect of habitat loss, due to “clearing, clearfell logging and the destruction of senescent trees due to prescribed burning and fragmentation”, on the Greater Glider has been described as “catastrophic” (Conservation Advice pages 4-5) (CB 6.18). The effect of fires, “timber production”, climate change and hyper-predation by owls, such as the Powerful Owl and Sooty Owl, on the species is described as “severe” (Conservation Advice pp 4-5. See also Smith (1) CB 4.2.1 at PDF p 42-43).
35. Surveys for the Greater Glider in the Central Highlands in 2013 revealed the “striking result” of “the scarcity of the species which was, until recently, common across the Central Highlands”. Over the period 1997-2010, the Greater Glider population in the Central Highlands declined by an average of 8.8 percent per year (Conservation Advice p 5), which extrapolates to a decline of 87% over 22 years. The overall rate of population decline across the country over a 22-year period exceeds 30% (Conservation Advice p 7).
36. Dr Smith is an expert in relation to the Greater Glider. The Applicant relies on his evidence both as to failure by VicForests to adhere to the precautionary principle concerning the Greater Glider and as to the fact of s 18 impacts upon that species. It is his evidence that the VicForests management systems do not provide adequate baseline information for adaptive management and that they do not provide effective procedures for the assessment of impacts on the Greater Glider (Smith (3) p 3-7). Further, that the 8 March 2019 draft Harvesting and Regenerative Systems Policy

(**HRS draft**) (CB INSERT) has the wrong objectives, so far as the precautionary principle and adaptive management to protect the Greater Glider and the Leadbeater's Possum are concerned (Smith (3) p 9-10). Similarly, having reviewed the five systems in the VicForests 8 March 2019 draft High Conservation Values Management Systems Document (**HCV draft**) Dr Smith concludes that, if implemented, combined with the HRS draft the HCV draft silvicultural management practices pose a real threat of serious and irreversible damage to the Greater Glider and its habitat in the Central Highlands (Smith (3) p 26).

D. Leadbeater's Possum

37. The Leadbeater's Possum is a small, omnivorous nocturnal possum that is almost entirely arboreal.
38. In 2015 the Leadbeater's Possum was listed as "critically endangered" under the EPBC Act on the basis of a reduction in its total population size of at least 80% over the previous three possum generations (i.e. 18 years) and also on a projected decline in its population size of at least 80% over the next three possum generations (Woinarski (1) CB 4.7.1 [12]). The listing of the species as "critically endangered" means that the species has been assessed as "facing an extremely high risk of extinction in the wild in the immediate future" (EPBC Act, s 179(3)).
39. The Leadbeater's Possum rarely comes to the ground. It feeds on plant and insect secretions and invertebrates, and is dependent on large hollows in large mature Eucalypts for dens and for breeding (Woinarski (1) CB 4.7.1 [5(g), (j)]). The Leadbeater's Possum lives in small family groups (colonies) in Montane Ash forests (Woinarski (1) CB 4.7.1 [5(g),(o)]). Because of its arboreal nature it is dependent on a suitable understorey of continuous spatially interconnected network of woody vegetation (branches, trunks and foliage of trees and small shrubs) (Woinarski (1) CB 4.7.1 [5(e)]). The Court will see an example of such forest in the Blue Vein Coupe (among others) on the view.
40. The Leadbeater's Possum was previously thought to be extinct (Conservation Advice CB 6.23 p 2). It is restricted to Victoria with almost all of its distribution and population within the Central Highlands (Woinarski (1) CB 4.7.1 [5(c)]). The greatest threat to the Leadbeater's Possum is loss, fragmentation and reduction in

quality of suitable habitat. This mostly occurs through timber harvesting (and accompanying and associated disturbance, such as track networks), which is associated with almost certain direct mortality of any Leadbeater's present but also detrimentally affects the Leadbeater's Possum through the destruction and fragmentation of their habitat (Woinarski (1) CB 4.7.1 [24]).

41. Professor Woinarski is an expert in relation to the Leadbeater's Possum. The Applicant relies on his evidence as to impacts upon the Leadbeater's Possum contrary to s 18 of the EPBC Act.

E. Hollow bearing trees and habitat requirements

42. Whilst the *species* at the centre of this case are the Greater Glider and the Leadbeater's possum, the subject matter that the Applicant's case seeks to protect in order to protect those species are individual coupes that provide *habitat* that, in the case of the scheduled coupes is proposed to be the subject of forestry operations and, in the case of the logged coupes, has been the subject of such operations.
43. One habitat feature that is essential to both species is hollow bearing trees. Hollow bearing trees are the "single best predictor of the abundance of Greater Gliders" in the Central Highlands (Smith (1) CB 4.2.1 PDF p 38), and a "critical resource for Leadbeater's Possums and the species' abundance is positively correlated with hollow availability" (Conservation Advice at p 3).
44. However it is important to appreciate that each species has distinct habitat requirements that are more complex than the presence of hollow bearing trees.
45. The habitat requirements of Greater Gliders may be summarised as (Smith (1) CB 4.2.1 PDF p 9-10):
 1. scattered emergent (>1/ha) to abundant (>12/ha) large diameter living and dead trees with hollows suitable for nesting;
 2. a tall open forest structure with an abundance of large tree stems (>25/ha) in the mature size class (40-80 cm in diameter at breast height (dbh) and a scarcity of dense young regrowth in the understorey, to provide an open structure suitable for movement by gliding;

3. low maximum mean monthly temperatures that do not exceed about 20 degrees C and moderate high rainfall(>about 400 mm/annum);
 4. infrequent disturbance by fire, >10 year intervals in Mixed Species eucalyptus forest and >40 – 120+ year intervals in wet Eucalyptus forests;
 5. no recent history of high intensity logging (clearfelling) or timber harvesting that has removed more than about 33% (wet forests) to 15% (dry forests) of the natural tree basal area ...;
 6. no recent history of intensive Owl predation.
46. By contrast, the “key attributes” of forest appropriate for Leadbeater’s possum are (Conservation Advice, at p 3):
- *Hollow-bearing trees with large internal dimensions in the order of 30 cm in diameter ...;*
 - *Density of hollow bearing trees ... ;*
 - *Predominance of smooth-barked eucalypts (with loose bark hanging in strips providing shelter for insect prey and material for nests) or gum-barked Eucalypts (related to foraging behavior). Forest types of Leadbeater’s possum are most commonly ash forest typically dominated by mountain ash, alpine ash and shining gum but is also known to occur in subalpine woodlands and lowland forest dominated by snow gum or mountain swamp gum ...;*
 - *A structurally dense interlocking canopy or secondary tree layer of continuous interconnecting structure (to facilitate movement) ... and;*
 - *a wattle understory (providing food)*
47. The contrast in the species’ habitat requirements is most evident in the density of the understorey required by each animal, and in the nature of the food source requirements for each species. In short:
- a. the Greater Glider is herbivorous and requires a tall open forest structure with a scarcity of dense regrowth in the understorey suitable for movement by gliding; and
 - b. the Leadbeater’s Possum is omnivorous and requires a structurally dense interlocking canopy to facilitate movement and a wattle understory for food.

48. Whilst both species require large old trees with hollows for nesting, their foraging habits differ. The habitat occupied by both species is uneven-aged Ash forest which has a tall overstory of mature and older trees suitable for movement by the Greater Glider and a dense regenerating understory of Ash and Acacias suitable for Leadbeater's Possum (Smith (3) p 14-16)

F. Coupes and Maps

49. There are 26 Central Highlands coupe groups in issue in the proceeding, that contain a total of 66 coupes. Of those coupes, 25 are logged coupes, 40 are scheduled coupes, and one coupe is partially logged and is scheduled.
50. Greater Gliders have been detected in or bordering 16 logged coupes and all scheduled coupes. Leadbeater's possums have been detected in or within 200m of 15 logged coupes and 22 scheduled coupes.
51. These details about each coupe, as well as the method of silviculture designated for each coupe on the TRP, the species for which a threat or significant impact is pleaded, and the breach of the Code alleged, are set out in the Coupe Table, Annexure 1 to these submissions.
52. There are maps of the CH RFA Area, of each coupe group, and of each coupe in Volume 7 of the Court book. Map 7.0D provides an overview of the whole CH RFA Area showing all 26 coupe groups in issue in the proceeding. Within each coupe group:
- a. the logged coupes have a black shaded boundary;
 - b. the scheduled coupes have a blue shaded boundary;
 - c. red marks other coupes listed for forestry operations in the TRP but which are not the subject of the proceeding.
 - d. Viewed on this map the logged and scheduled coupes in issue in the proceeding may appear relatively small and isolated. However, as well as having regard to the other coupes scheduled for forestry operations in the TRP, it is important to add context to the coupes in issue. The first key element providing context is past logging history, the second key element is fire. The first element can be controlled and is only permitted to be carried out in

accordance with the CH RFA. The second element, fire, kills possum populations and destroys habitat and is not capable of control.

53. Viewed in context, the habitat value of the logged and scheduled coupes for the Greater Glider and Leadbeater's Possum in the CH RFA Area in issue in the proceeding is immediately apparent.
54. Relying upon field inspections of the coupes, which establishes the presence of the Greater Glider and expert evidence, the Applicant will establish that the logged and scheduled coupes are home to the threatened species and comprise important habitat and that forestry operations in those coupes:
 - a. pose a threat of serious or irreversible damage to the Greater Glider;
 - b. have had or are likely to have a significant impact on either or both species.
55. There are clear and uncontroversial reasons for the extraordinary (87%) decline in the Greater Glider population over 22 years to 2013:
 - a. Map 7.0D shows the location of past forestry operations over large areas of land year by year. As is clear from the map, past forestry operations have very materially reduced the available habitat for the species whose habitat is in issue in this proceeding.
 - b. Map 7.0G is a map that includes the identification of past forestry operations and plots the area of the 2009 fire according to fire severity.
56. The combination of forestry operations and fire both reduces the habitat available for Greater Gliders and Leadbeater's Possums and increases the value of the remaining pockets of suitable habitat (Smith (1) CB 4.2.1 PDF p 42).
57. Four other matters are shown on map 7.0G which are important to note:
 - a. The dark green shaded areas represent parks and conservation reserves, which are protected from forestry operations.
 - b. The pink shaded areas represent Special Protection Zones (SPZ) in State Forest, which are also protected from forestry operations.
 - c. The light green shaded areas represent General Management Zone (GMZ) in State Forest, in which forestry operations are both permitted and given a high priority.

- d. The light yellow shaded areas represent land designated Special Management Zone (SMZ) in State Forest, in which forestry operations are permitted subject to conditions to conserve specific features.

(Central Highlands Forest Management Plan, CB 6.15, p17)

58. The Applicant's case is that the legislative regime, both is directed toward and requires protection of both species and of their habitats from forestry operations *outside* parks, conservation reserves and SPZ.

G. The Applicant's evidence

59. The Applicant relies on the affidavits and expert material filed in the proceeding and listed below. On 29 April 2019, VicForests advised that it required all of the Applicants' witnesses to attend for cross examination.
60. Jake McKenzie has made four affidavits, the first affirmed 14 September 2018 (McKenzie (1)) (CB 2.3), the second, 20 September 2018 (McKenzie (2)) (CB 2.6), the third, 31 October 2018 (McKenzie (3)) (CB 2.9), the fourth, 24 March 2019 (McKenzie (4)) (CB 2.12). Mr McKenzie is an experienced, lay fauna surveyor.
 - a. McKenzie (1) contains evidence of Mr McKenzie detecting and recording numerous Greater Gliders, and some Leadbeater's Possums, in the logged and scheduled coupes, and his correspondence with VicForests and the regulator, Department of Environment, Land Water and Planning (**DELWP**) in respect of those detections. His evidence is relevant to the precautionary principle and significant impact on Greater Glider, including whether proportionate or adaptive management was taken in response to notice of his detections.
 - b. McKenzie (2) corrects one sentence in McKenzie (1).
 - c. McKenzie (3) deposes to some of Mr McKenzie's detections being recorded in the Victorian Biodiversity Atlas, and interactive map maintained by the Victorian government showing threatened species records.
 - d. McKenzie (4) deposes to detecting and recording Greater Gliders in coupes logged between July 2018 to March 2019, his correspondence with VicForests and DELWP in respect of those detections, and recording drone and photograph evidence of the logged areas in such coupes. This evidence is

relevant to continued use of clearfell and seed tree retention logging in coupes with Leadbeater's Possum and Greater Glider since the purported implementation of the Interim Greater Glider Strategy in 2017 and the development and purported implementation of the HRS draft and HCV draft documents.

61. Blake Nisbet, affidavit affirmed 16 September 2018 (CB 2.4). Mr Nisbet is an experienced, lay fauna surveyor. He deposes to detecting and recording Greater Gliders in a smaller number of coupes, and events involving Mr Nisbet that are recounted by Mr McKenzie. He deposes to the detection of a Leadbeater's Possum in Starlings Gap coupe Hairy Hyde coupe after logging had commenced. His evidence is relevant to the precautionary principle and significant impact on Greater Glider, and the failure to identify and protect Leadbeater's Possum in breach of the Code at Hairy Hyde coupe ([113D] of the 2FASOC).
62. Nathan Wainwright, affidavit made 19 September 2018 (CB 2.5). Mr Wainwright is an experienced, lay fauna surveyor. He deposes to detecting and recording Greater Gliders in a smaller number of coupes, and events involving Mr Wainwright that are recounted by Mr McKenzie.
63. Andrew Lincoln has made four affidavits. The first (**Lincoln (1)**) affirmed 21 September 2018 (CB 2.7), the second affirmed 16 January 2019 (**Lincoln (2)**) (CB 2.10), the third affirmed 23 January 2019 (**Lincoln (3)**) (CB 2.11) and the fourth affirmed, 25 March 2019 (**Lincoln (4)**) (CB 2.14). Mr Lincoln is an experienced, lay fauna surveyor and GIS operator.
 - a. Lincoln (1) deposes to detecting and recording Greater Gliders in a smaller number of coupes, and events involving Mr Lincoln that are recounted by Mr McKenzie. He also deposes to a Leadbeater's Possum detection in Blue Vein/Ada Tree coupe after logging had commenced in that coupe, and hollow-bearing trees recorded at Blue Vein/Ada Tree coupe. The latter is relevant to the failure to identify and protect Leadbeater's Possum Zone 1A habitat in that coupe ([113C] of 2FASOC).
 - b. Lincoln (2) deposes to further recording of one hollow bearing tree in issue for the purpose of identifying Zone 1A in Blue Vein/Ada coupe, relevant to the allegation at [113C] of 2FASOC.

- c. Lincoln (3) deposes to and records the absence of 20m visual screens in 5 coupes. Relevant to failure to screen timber harvesting operations from view in logged coupes subject of proceeding, relevant to the allegation at [113E] of 2FASOC.
 - d. Lincoln (4) deposes to detecting and recording Leadbeater's Possum in one coupe logged in February to March 2019, and Mr Lincoln's correspondence with VicForests and DELWP in respect of that detection. McKenzie and Forster (see below) record visual evidence of the logged area in the same coupe. His evidence is relevant to the continued use of clearfell and seed tree retention logging in coupes with Leadbeater's Possum and Greater Glider since the Interim Greater Glider Strategy and since the HCV draft and HRS draft documents were developed and purported to be implemented.
64. Hayley Forster, affidavit affirmed 24 March 2019 (CB 2.13). Ms Forster is an experienced, lay fauna surveyor. Ms Forster deposes to detecting and recording Greater Gliders in a smaller number of coupes logged between July 2018 and March 2019, and to events involving Ms Forster recounted by Mr McKenzie. Her evidence is relevant to the continued use of clearfell and seed tree retention logging in coupes with Leadbeater's Possum and Greater Glider since the development and purported implementation of VicForests policies.
65. Dr Van der Ree, report dated 31 October 2018 (CB 4.1). Dr Van der Ree is an ecologist with expertise in arboreal mammals whose reports identify species of animals recorded by the Applicant's lay witnesses and who engaged Mr Shepherd to map the location of those detections.
66. Mr Shepherd, expert reports dated 18 January 2019 (**Shepherd (1)**) (CB 4.6), 30 January 2019 (**Shepherd (2)**) (CB 4.6.4), 3 February 2019 (**Shepherd (3)**) (CB 4.6.5) and 4 February 2019 (**Shepherd (4)**) (CB 4.6.6). Mr Shepherd is an environmental scientist with expertise in GIS who conducts GIS analysis of VicForests' and one of Mr Lincoln's tree records at Blue Vein coupe for the purpose of identifying patches of Zone 1A.
67. Expert Reports of Dr Smith dated 7 January 2019 (**Smith (1)**) (CB 4.2.1), 9 January 2019 (**Smith (2)**) (CB 4.3) and 11 February 2019 (**Smith (3)**) (CB 4.10) and 7 May 2019 (**Smith (4)**) (CB 4.12). Dr Smith is an ecologist with specialist expertise in

possums and gliders, forest ecology and structure whose reports concern the Greater Glider species, its habitat and the impacts of forestry operations on Greater Glider and Leadbeater's Possum.

68. Expert Reports of Professor Woinarski dated 18 January 2019 (**Woinarski (1)**) (CB 4.7), 11 February 2019 (**Woinarski (2)**) (CB 4.9) and 9 April 2019 (**Woinarski (3)**) (CB 4.11). Professor Woinarski is an ecologist and zoologist with expertise in arboreal mammals with particular expertise concerning the Leadbeater's Possum whose reports concern Leadbeater's Possum species, its habitat and the impacts of forestry operations on Leadbeater's Possum
69. Expert Report of Dr Nicolle dated 14 January 2019, including supplementary report dated 17 January 2019 (CB 4.5). Dr Nicolle is a botanist with expertise in eucalypt species and research whose reports concern species, maturity and form of one hollow bearing tree recorded by Mr Lincoln and in issue for purposes of Zone 1A Habitat in Blue Vein coupe.
70. Expert Reports of Mr Stephen Mueck dated 10 January 2019 (**Mueck (1)**) (CB 4.4) and 22 January 2019 (**Mueck (2)**) (CB 4.8). Mr Mueck is a botanist and ecologist with expertise in forest ecology whose first report concerns species, maturity and damage of plant species (Tree Geebung) recorded by Mr McKenzie in Skerry's Reach coupe. Mr Mueck engaged Ms Mitchell to conduct GIS analysis as to whether there are gaps greater than 150m in 5 coupes, which analysis is set out in Mueck (2).
71. The Applicant will also tender a bundle of relevant documents.

H. The evidence filed by VicForests

72. VicForests relies on the affidavits and expert material filed in the proceeding and listed below.
73. Affidavit of Mr Andrew Maguire sworn on 1 May 2018 (CB 3.1). Mr Maguire is the Regional Manager, North East Region, VicForests. His primary responsibility is to manage and plan timber harvesting operations. He refers to this as "operational planning", i.e. planning of the "actual operations" of timber harvesting to meet demand (c/f "tactical planning – i.e. preparation of the TRP) (Maguire p 2).

74. Affidavits of Mr William Paul affirmed 1 May 2018 (Paul 1) (CB 3.2), 15 October 2018 (Paul 2) (CB 3.4), 15 October 2018 (Paul 3) (CB 3.6), and 11 February 2019 (Paul 4) (CB 3.6). Mr Paul is the Manager, Community Forestry at VicForests and has also been involved in policy and compliance for VicForests (Paul (1) [24]). He deposes to the VicForests' pre-harvest surveys and procedures, biodiversity maps, the regulatory regime, policies and procedures, responses to reports of detections, management of Leadbeater's possum, Regrowth Retention Harvesting Method, and all substantive material relating to the coupes including nett areas of coupes and species detections by VicForests). He also deals with a more recent VicForests Policy for Giant Tall and Large Tree Protection, proposed draft new silvicultural methods and efforts to obtain FSC certification.
75. Paul (4) exhibits two draft documents upon which it is anticipated Vic Forests will place significant reliance at trial:
- a. *VicForests Management for High Conservation Values* (Versions as at November 2017, 8 March 2019 CB 4.12.2.3). The 8 March version of this document, the HCV draft states at 1 that "This document presents an overview of VicForests' management system for High Conservation Values (HCVs) in its eastern Forest Management Unit (FMU), as part of its broader remit and responsibility for the sustainable harvest, regrowth and commercial sale of timber from public native forests on behalf of the Victorian Government This draft document pertaining to VicForests' HCV management system is presented for stakeholder input on the content and format".
 - b. *VicForests Harvesting and Regeneration Systems* (Versions as at January 2019 (WEP-126), 1 February 2019 (WEP-127) and 8 March 2019 (CB 4.11.2.3). The 8 March version of this document, the HRS draft states at 1.1 that "This draft document set out VicForests' current suites of harvesting and regeneration systems, as part of its broader remit and responsibility for the sustainable harvest, regrowth and commercial sale of timber from public native forests on behalf of the Victorian Government This draft document pertaining to harvesting and regeneration systems is presented for stakeholder input on the content and format".

76. Affidavit of Mr Tim McBride affirmed 15 October 2018 (CB 3.3). Mr McBride is the Manager, Biodiversity Conservation and Research at VicForests. Mr McBride commenced employment at VicForests in November 2016 having previously worked exclusively in the United States, most recently for the Hancock Timber Resource Group (2003-2016). Since August 2018, he has also been filling the role of Manager, Environmental Performance. He deposes to VicForests' management of the Greater Glider including the Interim Greater Glider Strategy and the management of Tree Geebung.
77. Export reports of Dr Stuart Davey dated 25 January 2019 (Davey (1)) (CB 5.1) and 18 April 2019 (Davey (2)) (CB 5.4). Dr Davey is a private forest consultant. He gives evidence in relation to the history of entry into the Regional Forest Agreements and the impacts of forestry operations on Greater Glider and Leadbeater's Possum as well as the material produced by VicForests in their attempts to obtain FSC certification.
78. His PhD thesis title was "The Environmental Relationships of Arboreal Marsupials in a Eucalypt Forest: A Basis for Australian Forest Wildlife Management" (Davey (1) [12]- [15]).
79. Expert Reports of Professor Patrick Baker dated 11 February 2019 (Baker 1) (CB 5.2), dated 17 April 2019 (Baker 2) (CB 5.3), and dated 9 May 2019 (Baker 3) (CB 5.5). Professor Baker is a Professor of Silviculture and forest ecology at the University of Melbourne. He gives evidence as to the density of living hollow-bearing trees in coupes subject of the proceeding and the impacts of forestry operations on Leadbeater's Possum. He also replies to the reports of Dr Woinarski and Mr Shepherd

I. Critical areas of contest between the experts

80. Critical areas of contest between the expert witnesses regarding the precautionary principle and significant impact include:
- a. whether the Greater Glider and Leadbeater's possum populations are declining and, if so, the threats causing the decline;

- b. matters relating to the presence and characteristics of critical habitat for the Greater Glider and Leadbeater's possums;
- c. whether the current system of conservation parks, reserves, special protection zones and Code prescriptions (including habitat tree, 200 metre Leadbeater's Possum buffers, Zone 1A) is effective to prevent serious threats and significant impact to the Greater Glider and Leadbeater's Possum;
- d. whether certain models are reliable and relevant to an assessment of threats to and impacts on the Greater Glider and Leadbeater's Possum by reason of forestry operations in coupes subject of the proceeding;
- e. what is relevant to the assessment of the impact of forestry operations on the Greater Glider and the Leadbeater's Possum in coupes the subject of the proceeding, including whether field inspections are necessary;
- f. whether forestry operations in the coupes the subject of the proceeding have had, are having, or are likely to have the following impacts (by the methods specified on the TRP or any of the methods in the HCV draft document):
 - i. adversely affect habitat critical to the survival of Greater Glider;
 - ii. cause a long term decrease in the Greater Glider population in the CH RFA Area, being an important population of Greater Glider;⁴
 - iii. reduce the area of occupancy of the Greater Glider population in the CH RFA Area (being an important population);
 - iv. fragment the Greater Glider population in the CH RFA Area (being an important population), into two or more populations;
 - v. disrupt the breeding cycle of the Greater Glider population in the CH RFA Area (being an important population);
 - vi. modified, destroyed, removed, isolated or decreased the availability or quality of habitat to the extent that Greater Glider will decline;
 - vii. substantially interfere with the recovery of the Greater Glider;

⁴ Dr Davey and Dr Smith agree that the Greater Glider population in the Central Highlands RFA Area is an 'important population' of Greater Glider within the meaning of the Guidelines.

- viii. adversely affect habitat critical to the survival of Leadbeater's Possum;
 - ix. cause a long term decrease in Leadbeater's Possum population;
 - x. modified, destroyed, removed, isolated or decreased the availability or quality of habitat to the extent that the Leadbeater's Possum will decline;
 - xi. interfere with the recovery of the Leadbeater's Possum;
 - xii. have an impact other than the above that is important notable or of consequence for Greater Glider and Leadbeater's Possum having regard to its context and intensity and the sensitivity, quality and value of the environment being impacted.
- g. whether forestry operations (by the methods specified in the TRP or any of the methods in the HCV draft) pose a threat of serious or irreversible damage to Greater Glider;
 - h. whether VicForests management approaches and policies, including the Interim Greater Glider Conservation Strategy, Precautionary Approach to Biodiversity management, Pre-harvest biodiversity survey instruction, Regrowth Retention Harvesting Instruction, Large and Giant Tree Protection policy, and coupe reconnaissance procedures satisfy the precautionary principle;
 - i. whether VicForests' HCV draft and HRS draft documents are effective, with a high degree of certainty through demonstrated application, study or surveys, to prevent forestry operations having or being likely to have a significant impact on Greater Glider and Leadbeater's Possum;
 - j. whether VicForests March 2019 HCV draft and HRS draft documents, assuming their implementation, satisfy the precautionary principle.

J. Loss of exemption by reason of breaches of the Code of Practice for Timber Production

- 81. By reason of its breaches of the Code, VicForests has lost the benefit of the exemption in s 38 of the EPBC Act in each, some and all of the logged and scheduled coupes.

82. The Applicant adopts what was previously said (s 38 Reasons at [146]-[150]) in relation to the accreditation of the Code under the CH RFA and the Code bearing directly on the conduct of forestry operations, such that failure to comply with the Code will be a failure to conduct forestry operations in accordance with the CH RFA for the purposes of s 38(1) of the EPBC Act.
- i. Breaches in logged coupes*
83. The evidence will establish that VicForests' forestry operations in each of the Logged Glider Coupes failed to apply the precautionary principle to the conservation of the Greater Glider (cl 2.2.2.2) (Pleadings, CB 1.13 at [113A]). That is so in circumstances where the species was listed as vulnerable under the EPBC Act in May 2016 and as threatened under the *Flora and Fauna Guarantee Act 1988* (Vic) in June 2017, but there remains no Recovery Plan⁵, Action Statement⁶, or prescription for the species in the Code⁷ in the CH RFA Area.
84. Further the evidence will establish that VicForests' forestry operations undertaken in:
- a. Nooje coupe Skerry's Reach were not in accordance with cl 2.2.2.4 of the Code because VicForests did not identify Tree Geebungs before commencing forestry operations and/or protect Mature Tree Geebungs (Pleadings, CB 1.13 at [113B]);

⁵ On 3 May 2016, the Minister decided a recovery plan was required for Greater Glider (Cth Species Profile and Threats Database, CB 6.21, p1). Contrary to s 273(1) of the EPBC Act, which requires the Minister to make a recovery plan within 3 years of a decision to have such a plan, no Recovery Plan has been made for Greater Glider.

⁶ Despite s 19(1) of the FFG Act which requires the Secretary to prepare an Action Statement as soon as possible following a species listing, no action statement has been prepared.

⁷ The Code was published prior to the listing of the Greater Glider in 2014 with 2 incorporated documents – the *Management Standards and Procedures for timber harvesting operations in Victoria's State Forests 2014 (Managements Standards)* and the *Planning Standards for Timber Harvesting Operations in Victoria's State Forests 2014 (Planning Standards)*. Together, they include both fixed and detection-based forest management zone rules for fauna which prescribe protective measures (such as SPZs of certain size) for specified fauna species, including for example 200m SPZ centred on Leadbeater's Possum colony detections (p36). See the Planning Standards Tables 3 and 4, CB 6.11, pp 20-68. No such rule exists for Greater Glider in the CH RFA Area. These rules are informed by Action Statements and Forest Management Plans, see MSPs, CB 6.10, p24.

- b. Ada Tree coupe Blue Vein were not in accordance with cl 2.2.2.4 of the Code because VicForests did not identify and protect Zone 1A Habitat (Pleadings, CB 1.13 at [113C]);
- c. Starling’s Gap coupe Hairy Hyde were not in accordance with cl 2.2.2.4 of the Code because VicForests did not identify a Leadbeater’s Possum colony in the coupe before commencing forestry operations (Pleadings, CB 1.13 at [113D]);
- d. All coupes except Blue Vein, Hairy Hyde, Tarzan, Rowels, and the Cambarville logged coupes were not in accordance with cl 2.3.1.1. and 2.5.1.1 of the Code because VicForests did not screen harvesting operations from view using a minimum 20m buffer (Pleadings, CB 1.13 at [113E]);
- e. The Salvage Creek coupe De Valera, the Ada Tree coupe Ginger Cat, the New Turkey Spur coupe Greendale, the Triangle coupe Professor Xavier and the Rubicon coupes were not in accordance with cl 2.2.2.1 of the Code because there are gaps between retained vegetation of greater than 150 meters (Pleadings, CB 1.13 at [113F]).

ii. *Breaches in scheduled coupes*

85. As to the future, the evidence establishes that VicForests’ proposed forestry operations in each of the scheduled coupes are not in accordance with the Code. That is the case because those proposed operations are not in accordance with cl 2.2.2.2. The proposed forestry operations do not apply the precautionary principle to the conservation of the Greater Glider (Pleadings, CB 1.13 at [113H]). Nothing in the 9 March 2019 HRS draft and HCV draft publications, issued by VicForests, but neither finalised nor adopted alters that fact.

iii. *Failure to comply with the precautionary principle*

86. Clause 2.2.2.2 of the Code provides that:

[t]he 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.

87. The precautionary principle is defined by the Code as follows:

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.

88. Attention to the definition of the precautionary principle in the Code is important. It does not require the establishment of any preconditions of threat of damage or of scientific uncertainty in order to engage the precautionary principle⁸.

89. Thus the Applicant's primary case is that the question to be answered is whether VicForests has, in relation to its past and proposed forestry operations, failed to:

- a. carefully evaluate management options to wherever practical avoid serious or irreversible damage to the Greater Glider; and
- b. properly assess the risk weighted consequences of various options in respect of the Glider.

90. Whether such evaluation or assessment has occurred is a question of fact – it is simply a question of whether the requisite evaluation and assessment:

- a. has been done such that the precautionary principle has been complied with and forestry operations have been or will be conducted in accordance with the Code and are lawful; or

⁸ This contention is contrary to the finding of Osborn J in *Environment East Gippsland v VicForests* (2010) 30 VR 1 at [177]-[211]. However the source of the error in Osborn J's reasons is clear – his Honour applied the analysis of the precautionary principle from *Telstra Corporation Ltd v Hornsby Shire Council* (2006) 67 NSWLR 256 at 269 at [128]. But that was an entirely different statutory scheme, with different text, in which those preconditions were part of the statutory text. Section 6(2)(a) of the *Protection of the Environment Administration Act 1991* (Cth) provided that: "(2)(a) ... 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. In the application of the precautionary principle, public and private decisions should be guided by: (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and (ii) an assessment of the risk-weighted consequences of various options".

b. has not been done and forestry operations have not been or will not be conducted in accordance with the Code and are unlawful.

91. The evidence will show that VicForests does not engage in careful evaluation or proper assessment of various options to wherever practical avoid serious or irreversible damage to the Greater Glider in the conduct of forestry operations. The first step in any such assumption process is to carefully and properly evaluate each coupe in order to determine the presence or otherwise of the species. VicForests simply has no system or process in place or proposal that addresses this issue.
92. Without careful and proper species identification systems in place, there can be no sound footing upon which to determine, first, whether any forestry operations ought to be conducted within a coupe and, secondly, if so, as to the silvicultural methods appropriate so as to give effect to the precautionary principle.
93. Separately, proposed systems 2-5, as described in the 2019 HCV draft, do not satisfy the precautionary principle at a conceptual level. Further, even if one or more of the methods were considered to do so, if employed by VicForests, the draft document identifies no careful or proper basis upon which VicForests might proceed to determine, based upon the presence or otherwise of the listed species, which of proposed systems 2-5 is to be employed in each individual coupe.
94. If contrary to the Applicants' primary case, it is necessary that there be a lack of full scientific certainty concerning the Greater Glider, the evidence certainly establishes that to be the case.

1. Serious or irreversible damage to the Glider

95. The evidence will establish that the forestry operations in the Logged Glider Coupes, and those in the scheduled coupes whether by clear-fell, seed tree retention, regrowth retention harvesting, or any of the systems 1-5 in the March HCV draft document (CB 4.12.23), pose a threat of serious or irreversible damage to the Greater Glider.

2. TRP

96. The first step in VicForests' planning for forestry operations is to conduct the analysis necessary to identify coupes proposed for forestry operations in the TRP (CB 6.6-6.8C) and to then to arrange for the gazettal of the TRP.

97. The current TRP was first gazetted in 2014 (CB 6.6). In April 2019, VicForests approved changes to the TRP and a further version was gazetted (CB 6.8A). The 2014 TRP is relevant to the logged coupes and the amended April 2019 TRP is relevant to the scheduled coupes.
98. The TRP identifies by map, schedule and coupe number, areas of forest in the CH RFA Area which are proposed for forestry operations by specified silvicultural methods (see from page 6 of the TRP onwards). The TRP:
- a. has no ecological or conservation function;
 - b. does not purport to have any such function; and
 - c. is not informed by such considerations.
99. Instead, the TRP simply divides up the areas of land allocated to VicForests under the Allocation order⁹ for forestry operations, and identifies the net area in hectares expected to be logged in each coupe (being the gross coupe area minus any areas likely to be excluded from harvesting due to such factors as Code exclusions, Management Plan requirements and retained habitat areas¹⁰).
100. The Applicant's Table in Annexure 1 shows the silvicultural method designated in the gazetted TRP for each of the logged and scheduled coupes. The majority of the coupes are designated for clearfelling, however some are also designated for forestry operations by seed tree retention or regrowth retention harvesting.
101. There is no evidence that the designation of the location, size or silvicultural method for any of the coupes in the 2014 TRP, gazette before the Greater Glider was listed as vulnerable, nor in the 2019 TRP by which time the Greater Glider was listed as vulnerable and a number of the scheduled coupes were the subject of this proceeding was informed by any considerations relevant to the conservation of the Greater Glider.
102. To the contrary, the Applicant's evidence will show that:
- a. each of the coupes contain habitat that, if logged, seriously threatens the Greater Glider;

⁹ See Part 3, *Sustainable Forests (Timber) Act 2004* (Vic).

¹⁰ TRP, CB 6.6 p5.

- b. each of the silvicultural methods specified and gazetted pose a threat of serious or irreversible damage to the Greater Glider (see Smith (1) at Smith (1) CB 4.2.1 at PDF pp 32-35, 42-43, 48-49, 51-52); and
 - c. the designated size, location and methods of silviculture in the coupes could not have been chosen with the conservation of the Greater Glider in mind.
103. The Applicant anticipates that VicForests will contend that the silvicultural methods specified in the TRP designate “the most intensive silvicultural system that may be used for the coupe” rather than the actual method. Such a reading is contrary to:
- a. the text of the TRP. The silvicultural system is designated in a column headed “silviculture”. “Silviculture system” is defined on page 5 as describing “the method that will be used to regenerate (and hence to harvest) the coupe”¹¹;
 - b. the status of the TRP as a publication in the Victorian Government Gazette; and
 - c. what has occurred on the ground – the methods used in the logged coupes closely reflect the methods identified on the TRP.
104. Concerning the scheduled coupes, it will be observed that VicForests updated TRP gazetted in April 2019 does not include the silviculture methods described any of the Systems 2-5 that are referred to in the March HRS draft document. The failure to list any of those proposed systems in the TRP is consistent with both the status of the draft document and the fact that proposed systems 2-5 might most generously to VicForests be described as at a stage of acute infancy.
105. The failure to carefully evaluate or properly assess options to conserve the presence of Greater Gliders and/or Greater Glider habitat in the Central Highlands at the broader level of the TRP has consequences for the evaluation and assessment that must be undertaken at a coupe by coupe level in order to give effect to the precautionary principle. Because, as the evidence shows, VicForests has not located particular coupes and designated their silvicultural methods with any degree of confidence as to where Greater Gliders and important Greater Glider habitat are

¹¹ Although the definitions on page 5 do not correspond precisely with the headings in the table on page 6 onwards, it is clear from the correspondence of the defined terms on page 5 with the headings to the columns in the table on page 6 that the glossary is intended to provide assistance in interpreting those headings.

found in the Central Highlands, it is incumbent on VicForests to act with a greater degree of caution at a coupe-by-coupe level.

106. However VicForests' management at a coupe-by-coupe level also fail to constitute careful evaluation or proper assessment of options to where practical prevent serious or irreversible damage to the Greater Glider.

3. The Interim Greater Glider Conservation Strategy (CB 2.1.33)

107. The Interim Greater Glider Strategy created on 30 November 2017 is manifestly deficient. The interim strategy is described by VicForests as “demonstrating responsible stewardship and fidelity to the precautionary principle”. Unfortunately, the interim strategy does not constitute careful evaluation or proper assessment of options to avoid serious or irreversible harm to the Greater Glider. That is so for reasons including:

- a. As noted in the interim strategy, “little data is to hand with which to define Greater Glider habitat or habitat occupancy” (page 4 of 10);
- b. The Greater Glider Distribution Model used in the Strategy to predict Glider habitat is wholly unreliable (Smith (1) CB 4.2.1 PDF pp 60-61);
- c. The Strategy does nothing to prevent or ameliorate the impacts of short harvesting rotations that do not allow forest to reach a[n] old growth state (Smith (1) CB 4.2.1 PDF p 61).

108. The only ameliorative measure with any benefit in the Interim Greater Glider strategy is the use of low intensity single tree silviculture to be carried out in the Strathbogie ranges (page 5 of 10). The single tree silvicultural method is not designated as a method to be implemented in the CH RFA area. To seek to give effect to the precautionary principle in the CH RFA the interim strategy places reliance upon the 2014 Management Procedures (page 6 of 10), procedures devised before the Greater Glider was listed as vulnerable and it is not detailed enough to ensure that it will be implemented effectively. The strategy requires monitoring and adaptive feedback process to ensure that it is implemented effectively (Smith (1) 4.2.1 PDF p 62).

109. Further, the proposed silvicultural methods are so ill defined that they can be implemented in essentially the same manner (with same adverse impacts) as current practices in Ash forests and are too ill-defined to be certain of preventing impacts in Mixed Species forest (Fourth Smith Report, CB 4.12, pp7). The proposed methods are not sufficiently precautionary to ensure that local or regional extinctions do not occur before harvesting methods are changed. The selection of harvesting methods does not account for actual occurrences or abundance of Greater Gliders on coupes as determined by pre-harvest surveys and it has no alternative silvicultural methods for effective mitigation of logging impacts on important Glider populations where they occur (Smith (4), CB 4.12, p5).

4. VicForests March 2019 High Conservation Values Management System (draft) document

110. The evidence of Dr Smith (Smith 4, CB 4.12) establishes that even if it were the case that VicForests had adopted the HCV draft dated 8 March 2019, the draft document does not carefully evaluate or properly assess options to avoid serious or irreversible harm to the Greater Glider. In particular:

- a. it offers no improvement over current systems in terms of obtaining adequate baseline information and has, little relevance to the assessment, mitigation and management of the impacts of forestry operations on Greater Glider outside the reserve system at the coupe level (Smith (4), CB 4.12, p5);
- b. it relies on the same pre-logging assessment procedures shown to be unreliable (having missed 97% of Greater Glider populations in coupes subject of the proceeding);
- c. there are no proposed pre and post-harvesting surveys and monitoring;
- d. no thresholds are set to trigger changes to management if Greater Glider numbers decline or fail to recover after forestry operations;
- e. there is little or no improvement to habitat tree retention (Smith (4), CB 4.12, pp7-8);

- f. there are no objectives identified with respect of Greater Glider conservation whatsoever, let alone objectives with sufficient specificity and certainty (such as, for example, maintaining populations of Greater Gliders on coupes) (Smith (4), CB 4.12, pp 11-12).

5. VicForests March 2019 Harvesting and Regeneration Systems (draft) document

111. The evidence of Dr Smith (Smith (4), CB 4.12) establishes that even if it were the case that VicForests had adopted the HRS draft dated 8 March 2019 the draft does not carefully evaluate or properly assess options to avoid serious or irreversible harm to the Greater Glider. The draft document simply does not have, as its objective, either the application of the precautionary principle or the protection of listed species.

6. What might careful evaluation and proper assessment look like?

112. Careful evaluation of management options and assessment of risk weighted consequences of those options necessary in order that Vic Forest acts in accordance with clause 2.2.2.2 and the precautionary principle as defined would require VicForests:

- a. to develop and specify timber harvesting prescriptions that specifically and effectively protect the Greater Glider;
- b. to conduct effective surveys for the Greater Glider and its habitat in the coupes where forestry operations are to be conducted; and
- c. upon detection, to apply those timber harvesting prescriptions and monitor Greater Glider populations by surveys after forestry operations to ensure populations are retained.

113. The evidence of Dr Smith indicates:

- a. measures that could be put in place to reduce or avoid the impact of forestry operations on the Greater Glider (Smith (1) CB 4.2.1 PDF pp 31-32; and Smith (4));
- b. measures that can be taken to provide for the recovery of the Greater Glider and provides practical examples of the prescriptions that may be implemented

(Smith (1) CB 4.2.1 PDF pp 43-45). For example, Dr Smith recommends that VicForests conducts pre-logging surveys in all timber production forests and protect habitat around known records by unlogged buffers of 100-200 metres in all Victorian Forests.

114. The measures described by Dr Smith are practicable.

7. What is the evidence concerning the Greater Glider and the scheduled coupes

115. The evidence in the present case shows the following:

- a. Greater Gliders have been detected in all coupes subject of precautionary principle allegations;
- b. in relation to the logged coupes, VicForests proceeded with forestry operations at detection sites of the species;
- c. In relation to scheduled coupes, it has no specific plan that will be effective to ameliorate the risk to the listed species;
- d. there is no existing prescription for the Greater Glider;
- e. there is no Recovery Plan, no Action Statement for the species despite the fact the Greater Glider was listed Federally in 2016 and at the State level in 2017. As a consequence, even the existing reserve system (one element only of what is required by the NFPS) has not been designed to provide for the species' habitat or conservation requirements in light of its population decline and threatened status;
- f. VicForests has not developed or applied any prescription for the Greater Glider since its listing Federally or at the State level (including because neither the Interim Greater Glider Strategy nor any of the new systems prescribe or mandate any protection or system).

116. The Applicant will establish that the approach taken to forestry operations in the logged coupes has posed a serious threat to the Greater Glider. Further, that forestry operations have since continued in the same manner in other coupes in which the species is present over the course of this litigation. VicForests' operations in that manner and by other proposed methods in the scheduled coupes pose a serious threat to the listed species.

117. Of critical importance to breach, there is no evidence to demonstrate that VicForests has undertaken the necessary evaluation and assessment to develop an appropriate prescription with respect to the Greater Glider in order to comply with the Code. Its past and current approach to forestry operations evinces this failure.

8. Lack of full scientific certainty

118. If the Court is persuaded, contrary to the Applicants' primary case, that despite the express language in cl 2.2.2.2 the five step test identified in *Environment East Gippsland v VicForests* (2010) 30 VR 1 at [212] is correct and that it is necessary that there be a lack of full scientific certainty concerning the Greater Glider before the precautionary principle has application, there can be no doubt that such a lack of full scientific certainty both exists and is established on the evidence.

119. The evidence both meets the test adopted in *Environment East Gippsland* and shows that the preconditions of threat of damage and scientific uncertainty (here as to the extent of that damage) are both met in the case of the Greater Glider:

- a. The Applicant's evidence will show that VicForests' forestry operations pose a real threat of serious or irreversible damage to the Greater Glider. The damage is irreversible given the length of time it takes for habitat to re-establish, especially tree hollows;
- b. There is uncertainty as to the extent of that threat given the lack of knowledge about the existence and locations of important populations of Greater Glider and habitat that is critical to the survival of the Greater Glider;
- c. The threat is not negligible (noting that it is for VicForests to prove that the threat is negligible);
- d. The threat is able to be addressed by adaptive management – e.g. surveys and prescriptions (the evidence of Dr Smith states what action is necessary to provide for the recovery of the Greater Glider and provides practical examples of the prescriptions that may be implemented (Smith (1) CB 4.2.1 pp 43-45);
- e. Surveys and prescriptions are proportionate to the threat that forestry operations pose to the Greater Glider.

iv. *Breaches of cl 2.2.2.4*

120. Clause 2.2.2.4 of the Code provides that “During planning identify biodiversity values listed in the Management Standards and Procedures prior to roading, harvesting, tending and regeneration. Address risks to these values through management actions consistent with the Management Standards and Procedures such as appropriate location of coupe infrastructure, buffers, exclusion areas, modified harvest timing, modified silvicultural techniques or retention of specific structure attributes”.

1. Failure to Protect Mature Tree Geebungs

121. Tree Geebungs (*Persoonia arborea*) are a biodiversity value listed in the Management Standards (Management Standards, CB 6.10, p 94 requires “Protect mature individuals from disturbance where possible”).

122. The Applicant will establish that in Noojee coupe Skerry’s Reach, VicForests failed to identify mature Tree Geebung prior to commencing forestry operations and/or protect mature Tree Geebungs in the course of forestry operations (McKenzie (1), CB 2.3 [237]-[248]; First Mueck Report CB 4.4.1).

2. Failure to identify Zone 1A habitat

123. Zone 1A Habitat is a biodiversity value listed in the Management Standards (Management Standards, CB 6.10, p77).

124. The Management Standards requires that where evidence of Zone 1A is found in the field, follow cl 2.1.1.3 using Table 4 in the Planning Standards (p 77).

125. Cl 2.1.1.3 of the Management Standards (p23) provides that “Where evidence of a value that requires protection via the establishment or amendment of an SPZ or SMZ is found in the field application must be made to the Secretary or delegate prior to commencement of the timber harvesting operation to create or amend an SPZ or SMZ in accordance with Appendix 5 the Planning Standards...”.

126. Table 4 of the Planning Standards at p 39 provides “Establish a SPZ over areas of Zone 1A habitat where there are more than 10 hollow bearing trees per 3 ha in patches greater than 3ha. “Hollow-bearing tree” in the context of Zone 1A habitat is

defined on p 12 of the Management Standards as “living mature or senescent trees of Ash eucalypt species containing hollows”.

127. It is admitted that several trees recorded by VicForests in or adjacent to Blue Vein coupe constitute “hollow bearing trees in the context of Zone 1A habitat” as defined on p 12 of the Management Standards, see Notice to Admit CB 1.9 at [1], Notice of Dispute CB 1.10 p3.
128. The Applicant will establish that one additional tree within Blue Vein coupe is a hollow bearing tree in the context of Zone 1A habitat, which is not admitted by VicForests (Reports of Dr Nicolle, CB 4.5.1; Lincoln (2), CB 2.10 at [1-7], ASL-6).
129. The Applicant will establish that in the Ada Tree Blue Vein coupe, VicForests failed to identify Zone 1A Habitat within the coupe and apply to the Secretary prior to commencement of forestry operations to create an SPZ over such Zone 1A (Expert reports of Mr Shepherd, CB 4.6.1, CB 4.6.4, CB 4.6.5; Lincoln (1), CB 2.7 at [60-91], ASL-5; Jacobs (5), CB 2.8 at [3-29], DJ-83 - DJ-111).

3. Failure to identify Leadbeater’s Possum Colony

130. Leadbeater’s Possum colonies are a biodiversity value listed in the Management Standards (Management Standards, CB 6.10, p77).
 131. The Applicant will establish that in the Starlings Gap coupe Hairy Hyde, VicForests failed to identify Leadbeater’s Possum colony prior to commencing forestry operations in that coupe, in circumstances where VicForests had not conducted a survey for Leadbeater’s Possum prior to commencing operations (Nisbet, CB 2.4 [19]-[34]; Notice to Admit, CB 1.9 at [8]-[9] and Notice of Dispute, CB 1.10, p3)
- v. *Breach of cl 2.5.1.1– Failure to screen harvesting operations using a minimum 20m buffer*
132. Part 2.5 of the Code deals with Timber Harvesting, and includes the following relevant mandatory action: cl 2.5.1.1 “Planning and management of timber harvesting operations must comply with relevant coupe management measures specified in the Management Standards and Procedures”.
 133. Cl 5.3.1.5 of the Management Standard and Procedures provides that contactors must “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 sensitive landscape features listed in table 9 in Appendix 5 the Planning Standards.”

134. The Applicant will establish that in all logged coupes subject of the proceeding (except the Starlings Gap coupes Blue Vein and Hairy Hyde, Ada River coupe Tarzan, Baw Baw coupe Rowels, and the Cambarville logged coupes) VicForests did ensure that contractors screened harvesting operations from view using a minimum 20m buffer (Pleadings 113E); (Smith (1), CB 4.2.1, p48; Lincoln (3), CB 2.11 at [1]-[7], ASL7-ASL11).

vi. *Breach of cl 2.2.2.1 - Gaps in the retained vegetation of greater than 150 metres*

135. Cl 2.2.2.1 of the Code provides that “Planning and Management of timber harvesting timber operations must comply with relevant biodiversity conservation measures specified within the Management Standards and Procedures”.

136. Cl 4.1.4.4 of the Management Standard provides that, in CH FMAs, “No gap between retained vegetation is to be greater than 150m”.

137. The Applicant will establish that in the Salvage Creek coupe De Valera, Starlings Gap coupe Ginger Cat, New Turkey Spur coupe Greendale, the Triangle coupe Professor Xavier and the Rubicon coupes, there are gaps between retained vegetation of greater than 150 metres (Pleadings 113F), (Mueck (2), CB 4.8.1; Ginger Cat Post-Harvest Map, CB 8.5A).

K. Consequence of loss of exemption – Application of s 18 to forestry operations

138. The second limb of the Applicant’s case involves the application of ss 475 and 18 of the EPBC Act to VicForests’ forestry operations.

139. Upon the Court being satisfied that VicForests has breached and will breach the Code in its forestry operations or proposed forestry operations in any of the coupes, the consequence is that VicForests loses the benefit of s 38(1) of the EPBC Act in respect of that coupe. This is because VicForests is required to conduct forestry operations “in accordance with” the systems accredited by the CH RFA, which

include the Code, in order to have the benefit of the exemption under s 38 of the EPBC Act (see [149]-[150], s 38 Reasons).

140. The significance of the failure by VicForests to conduct forestry operations “in accordance with” the Code is that, the limited exemption from the EPBC Act having been lost:
 - a. section 18(4) of the EPBC Act has application to any action that has, will or is likely to have a significant impact on the Greater Glider; and
 - b. section 18(2) of the EPBC Act has application to any action that has, will or is likely to have a significant impact on the Leadbeater’s Possum.
141. The exemption is lost regardless of the nature of the breach of the Code. That includes whether the breach of the Code relates to the Greater Glider or the Leadbeater’s Possum – the text of s 38 does not admit of distinctions based on the nature of the breach. In the event of a breach of the Code, for whatever reason, for example, a breach concerning Tree Geebung, the forestry operations are no longer exempt.
142. In the case of the Greater Glider, once the RFA protection of forestry operations falls away for the particular coupe or cohort of coupes, the s 18 EPBC Act question must be answered in the affirmative concerning that coupe or cohort of coupes based on the expert evidence of significant impact:
 - a. Any of the relevant factors listed in the Commonwealth guidelines for vulnerable species (CB 4.2.2.14), if proved, is sufficient;
 - b. when considering the likelihood of significant impact context is relevant, including past history of fire and forestry operations and the impact of proposed forestry operations beyond the individual coupe;
 - c. to be “likely”, it is not necessary for a significant impact to have a greater than 50% chance of happening, it is sufficient if a significant impact on the environment is a real or not remote chance or possibility.
143. The Applicant will establish through the evidence of Dr Smith and Professor Woinarski that the approach taken to forestry operations in the logged and scheduled coupes has had, will have, or is likely to have a significant impact on the Greater Glider and the Leadbeater’s Possums.

144. In the case of the Leadbeater’s Possum, because the exemption based on compliance with the Code has been lost for a particular coupe (for example, due to breach of the precautionary principle concerning the Greater Glider):
- a. it will not necessarily be the case that compliance with the prescriptive measures adopted in Victoria for Leadbeater’s Possum as noted in Schedule 2 of the Central Highlands RFA will be sufficient to ensure that action proposed will not have a “significant impact”. For example, it will not be sufficient to merely say that a 200 metre buffer will be allowed around a Leadbeater’s Possum habitat colony. That action will not automatically be deemed to prevent breach of s 18;
 - b. it will be a matter for broader expert consideration whether the proposed action will or is likely to have a significant impact on the listed species.
145. When evaluating the impact of proposed forestry operations, it will be material to consider the impact of such operations (where relevant based on forest type) on:
- a. the Greater Glider; and
 - b. separately, the Leadbeater’s Possum.
- i. Conduct/proposed conduct*
146. Section 475 permits an applicant to obtain an injunction where a person has engaged in conduct or “proposes to engage in conduct” that would be a contravention of the EPBC Act.
147. In the case of the logged coupes, the conduct that has been engaged in is clear and certain.
148. It may be anticipated that VicForests will contend that the conduct in relation to the scheduled coupes is not sufficiently certain because it has not yet occurred. However the contention of uncertainty should be treated as undermining VicForests’ case, rather than the Applicant’s.
149. A provision that permits an applicant to challenge “proposed” conduct is necessarily one that is concerned with future action that has not yet occurred. There is always some uncertainty inherent in proposed future actions. The fact that a less intensive method *could* be used is not to the point. The question is what has been proposed – it

is the proposal that gives rise to sufficient certainty and which both enables and requires the Court to injunct the relevant conduct.

150. For the reasons set out above, the Court should deal with the scheduled coupes on the basis that VicForests *proposes* to conduct forestry operations in the scheduled coupes in the manner identified in the TRP. Briefly repeated, the TRP itself states that the silvicultural methods identified in the TRP *will* be used in the scheduled coupes. In this context, the requirement that VicForests prepare and publish and act in accordance with the TRP under Part 5 of the *Sustainable Forests (Timber) Act 2004* (Vic) (**SFT Act**) is relevant – it ensures that third parties are informed about the conduct of forestry operations in State forests, and allows for forestry operations to be open to both public scrutiny and that of the Courts and the regulator. The text of ss 37 and 38(1) of the SFT Act is apt, it requires VicForests to prepare a TRP which must include “a schedule of coupes *selected* for timber harvesting ...[and] details of the location and approximate timing of timber harvesting in the *proposed* coupes” [emphasis added].
151. The TRP should be treated as VicForests’ formal proposed conduct in relation to the scheduled coupes.
152. If contrary to that submission, the Court has regard to methods 2-5 in the 8 March 2019 draft documents, the answer, for s 18 purposes, remains the same.
153. The methods proposed by VicForests in the HCV draft and HRS draft document are in their infancy and, even assuming the methods to be satisfactory, which, as Dr Smith explains (Smith (4)), they are not, the draft documents are not even adopted by VicForests.
154. Unless and until VicForests is able to and does specify which system it proposes to use for which coupe, on the basis of at a minimum, adopted policy documents and is able to do so specifying individual methods across all scheduled coupes in the Central Highlands, the HCV draft document should not be treated as undermining what is in fact proposed in the TRP. The uncertainty that VicForests seeks so strenuously to establish and rely on (Further Amended Defence, CB 1.14 at [6.3(c)(iv)], [42(a) and each equivalent pleading at 43(a)-70B(a) and 73(a)-104(a)] and [113H(d)]; Second Paul, CB 3.4, at [444]; Fourth Paul, CB 3.6, at [116-118]) should be treated as undermining VicForests’ own case.

155. VicForests’ argument that the impact of its future conduct cannot be assessed unless and until its coupe planning is final (Further Amended Defence, CB 1.14 at [6.3(c)(iv)], [42(a) and each equivalent pleading at 43(a)-70B(a) and 73(a)-104(a)] and [113H(d)]) has the consequence of shielding VicForests’ conduct from the Court’s scrutiny in perpetuity, until completed. On VicForests’ own case, its planning is continuous and may always be altered (including after operations have commenced) on the basis of new information. Further, it is entirely at VicForests’ discretion to determine when its coupe plans have ‘finalised’ (if ever). On the facts in this case, 5 coupes were the subject of final coupe plans when the application for interlocutory injunction was heard in May 2017 (Second Paul, CB 3.4, at [444]). VicForests case is now that even the impact of operations in those coupes cannot be assessed because the passage of time since May 2017 has rendered even that planning “stale” such that it may be subject to change (Second Paul, CB 3.4, at [444]).

156. The purpose of the EPBC Act would not be served by permitting VicForests to evade scrutiny under the Act. The impact of VicForests’ future conduct must be assessed on the basis of the totality of the evidence at the time of trial.

157. We thus turn to the conduct said to constitute the offences under the EPBC Act.

ii. Relevant “action”

158. Section 18 of the EPBC Act operates on conduct identified as an “action”.

VicForests admits all of the pleaded actions with the exception that VicForests does not admit that the TRP is an action. The Applicant submits that the identification of and scheduling of coupes is clearly a “project” within the meaning of the word action in s 523 of the EPBC Act: *Brown v Forestry Tasmania (No 4)* (2006) 157 FCR 1 at [62].

159. The “action(s)” for the purposes of this case, are “regional forestry operations” (see s 38 Reasons [136]). Forestry operations are defined in the EPBC Act as having the same meaning as in the *Regional Forests Agreement Act 2002* (Cth). In the RFA Act “regional forestry operations” are relevantly defined as:

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).

160. Under the CH RFA, forestry operations are defined as “(a) the planting of trees; or (b) the managing of trees before they are harvested; or (c) the harvesting of Forest Products; for commercial purposes and includes any related land clearing, land preparation and regeneration (including burning), and transport operations”.
161. The Applicant asks the Court to look at the impact of forestry operations in each, some and all of the scheduled coupes.

iii. Coupe by coupe basis

162. The evidence to be relied on at trial will establish significant impact on a coupe-by-coupe basis on its evidence. The evidence of the Applicant will show that each of the coupes in the proceeding contain either or both Greater Glider and Leadbeater’s Possums, and important habitat that, if subject to forestry operations will have a significant impact on the listed species.

iv. Some or all coupes

163. In the alternative, the Applicant will establish significant impact at trial by reference to forestry operations in some or all coupes.
164. To attempt to artificially limit the consideration of an impact to the bounds of one coupe would be to undermine the objects of the EPBC Act. As Marshall J observed in *Brown v Forestry Tasmania (No 4)* (2006) 157 FCR 1 at [63]:

It is artificial to seek to break down the forestry operations of Forestry Tasmania in Wielangta into a series of individual actions and thereby avoid scrutiny under the EPBC Act.

165. Forestry operations in multiple/a series coupes may be treated as a “series of activities” (see s 523), and therefore as one action, and the impact of that one action can be examined to determine whether or not it is significant.

v. Significant impact

166. A significant impact is one which is important, notable, or of consequence, having regard to its context and intensity, and the sensitivity, value and quality of the environment being impacted: *Booth v Bodsworth* [2001] FCA 1453; 114 FCR 39 at

[99]-[100]; *Tasmanian Aboriginal Centre Incorporated v Secretary, Department of Primary Industries, Parks, Water and Environment (No 2)* (2016) 337 ALR 96 at [240].

167. It is important to consider the “context” within which VicForests’ past and proposed forestry operations subject of this proceeding are occurring, and to which regard must be had. The relevant context includes:

- a. the presence of the species in the coupes, often multiple records;
- b. the forest type, structure and habitat value for the species in the coupes;
- c. the conservation status of both species, population trends and threats identified as reasons for the species’ population trends and listing;
- d. the absence of any protective prescription for the Greater Glider in the CH RFA Area;
- e. the current Reserve System (including SPZs), and the evidence as to its effectiveness for Leadbeater’s Possum and Greater Glider;
- f. the current prescriptions for the Leadbeater’s Possum, and the evidence as to their effectiveness for the species;
- g. the extent and intensity of logging history in the CH RFA Area and surrounding the subject coupes in particular;
- h. the extent and severity of the 2009 fires;
- i. existing Code prescriptions, including habitat tree, stream, slope, Modelled Old Growth Forest, and the evidence as to their effectiveness for the species;
- j. abundance and trends of hollow-bearing trees in the CH RFA Area;
- k. available information as to forest age classes in the CH RFA Area;
- l. characteristics, ecology and distribution of the species and its habitat;
- m. available information, and scientific uncertainty, relating to habitat critical to the survival of both species
- n. available information, and scientific uncertainty, relating to important populations of Greater Glider

- o. the information contained in Agreed Maps, Coupe plans and post-reconnaissance maps.

168. The Significant Impact Guidelines (the **Guidelines**) published by the Department of the Environment (CB 4.2.2.14). The impacts listed in the Guidelines which the Applicant's evidence shows arise in coupes subject of these proceedings are:

- a. For Leadbeater's Possum (in the critically endangered category):
 - i. lead to a long-term decrease in the size of the population of Leadbeater's Possum;
 - ii. adversely affect habitat critical to the survival of Leadbeater's Possum;
 - iii. modify, destroy, remove, or decrease the availability or quality of habitat to the extent that Leadbeater's Possum is likely to decline;
 - iv. interfere with the recovery of the Leadbeater's Possum;
- b. For Greater Glider (in the vulnerable category):
 - i. lead to a long-term decrease in the size of an important population of Greater Glider, reduce the area of occupancy of an important population, fragment an important population of Greater Glider into two or more populations, or disrupt the breeding cycle of an important population;
 - ii. adversely affect habitat critical to the survival of the Greater Glider;
 - iii. modify, destroy, remove, isolate, or decrease the availability or quality of habitat to the extent that the Greater Glider is likely to decline;
 - iv. interfere substantially with the recovery of the Greater Glider.

169. In relation to habitat critical to the survival of a species, the Guidelines provide:

'Habitat critical to the survival of a species or ecological community' refers to areas that are necessary:

for activities such as foraging, breeding, roosting, or dispersal

for the long-term maintenance of the species or ecological community ...

to maintain genetic diversity and long term evolutionary development, or

for the reintroduction of populations or recovery of the species ...

Such habitat may be, but is not limited to: habitat identified in a recovery plan for the species or ecological community as habitat critical for that species or ecological community; and/or habitat listed on the Register of Critical Habitat maintained by the minister under the EPBC Act.

170. In relation to important population of a species, the Guidelines provide:

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.

171. The Applicant's expert evidence shows that forestry operations in each, some and all of the logged and scheduled coupes has, will, or is likely to have a significant impact on the Greater Glider and/or the Leadbeater's Possum. The table that is Annexure 1 identifies the species for which significant impact will be established for each coupe, consistently with the Applicant's pleading and the expert evidence at trial.

172. The Applicant does not, however, press that forestry operations have had, are having or are likely to have a significant impact on Leadbeater's Possum in Ada River logged coupe 9.26 (Tarzan), Baw Baw logged coupe 9.32 (Rowels), Hermitage Creek scheduled coupes 10.14-10.16 (Drum Circle, San Diego, Flute) and Torbreck River scheduled coupes 10.18-10.20 (Skupani, Splinter and Bhebhe). Accordingly, the Applicant does not press paragraphs [27], [29], [53]-[55], and [56]-[58] of the Second Further Amended Statement of Claim. Significant impact in respect of Greater Glider is pressed for each of those coupes.

L. Relief

173. In circumstances where VicForests:

- a. has taken action in the logged coupes that has had, will or are likely to have a significant impact on the Greater Glider and the Leadbeater's Possum, contrary to ss 18(4) and 18(2) of the EPBC Act; and

- b. has proposed to take action in the scheduled coupes that is likely to have a significant impact on the Greater Glider and the Leadbeater's Possum, contrary to ss 18(4) and 18(2) of the EPBC Act;

the Court may grant an injunction restraining the person from engaging in the conduct under s 475 of the EPBC Act. The Applicant seeks that relief in [120] of the 2FASOC.

174. In addition, the Applicant will seek leave before the trial to amend the pleadings to seek 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) by reason of its forestry operations in the logged Leadbeater's Coupes; and
- b. VicForests has breached s 18(4) by reason of its forestry operations in the logged Glider Coupes.

175. There is a substantial public interest in the Court indicating its disapproval of VicForests' unlawful conduct (see *ACCC v EDirect Pty Ltd* [2008] FCA 65 at [21]).

Date: 13 May 2019

JIM DELANY

JULIA WATSON

TANYA SKVORTSOVA

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|--|----------------------------------|-------------------------|--|---|--|---|
| A. Acheron | 1. Mont Blanc 309-507-0001 9.13 | STR | Logged | LbP: 0 GG: 10 (Lay witnesses (LW)) 9 (Smith) | Agreed Map CB 7.4C Third VDR CB 4.1.1, p21 | Threat: GG SI: GG | CI 2.2.2.2 (Precautionary principle [PP]) CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 2. Kenya 309-507-0003 9.14 | CFE | Logged | LbP: 0 GG: 4 (LW) 3 (Smith) | Agreed Map CB 7.4C Third VDR CB 4.1.1, p21 | Threat: GG SI: GG | CI 2.2.2.2 (PP) CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 3. The Eiger 309-507-0004 9.15 | CFE | Logged | LbP: 0 GG: 4 (LW/Smith) | Agreed Map CB 7.4C Third VDR CB 4.1.1, p21 | Threat: GG SI: GG | CI 2.2.2.2 (PP) CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 4. White House 309-507-0007 10.17 | CFE | Scheduled | LbP: 0 GG:5 (LW) 4 (Smith) | Agreed Map CB 7.4C Third VDR CB 4.1.1, p21 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| B. Ada River | 5. Tarzan 348-517-0005 9.26 | CFE | Logged | LbP: 1 within 200m GG: 0 (LW) 1 (Smith) | Agreed Map CB 7.5C | Threat: GG SI: LbP (not pressed) & GG | CI 2.2.2.2 (PP) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|--|----------------------------------|-------------------------|--|---|-------------------------------|--|
| | 6. Johnny 348-518-0004 10.30 | CFE | Scheduled | LbP: 1 in coupe & 1 within 200m GG: 3 (LW/Smith) | Agreed Map CB 7.5C Third VDR CB 4.1.1, p22 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| | 7. Turducken 348-519-0008 10.31 | CFE | Scheduled | LbP: 1 in coupe GG: 3 (LW/Smith) | Agreed Map CB 7.5C Third VDR CB 4.1.1, p22 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| C. Ada Tree | 8. Ginger Cat 344-509-0009 9.17 | CFE | Logged | LbP: 3 within 200m GG: 0 (LW) 1 (Smith) | Agreed Map CB 7.6C | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) CI 2.2.2.1 (150m gap) & CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 9. Blue Vein 348-506-0003 9.18 | CFE | Logged | LbP: 2 in coupe & 6 within 200m GG: 1 (LW/Smith) | Agreed Map CB 7.6C Third VDR CB 4.1.1, p23 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) CI 2.2.2.4 (identify & protect Zone 1A) |
| | 10. Blue Cat 344-509-0007 10.22 | CFE | Scheduled | LbP: 4 in coupe & 5 within 200m GG: 0 (LW) 1 (Smith) | Agreed Map CB 7.6C | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|---|----------------------------------|-------------------------|--|---|--|---|
| D. Baw Baw | 11. Rowels 483-505-0002 9.32 | STR | Logged | LbP: 0 GG: 0 (LW) 1 (Smith) | Agreed Map CB 7.7C | Threat: GG SI: LbP (not pressed) & GG | CI 2.2.2.2 (PP) |
| | 12. Diving Spur 483-505-0018 10.34 | CFE | Scheduled | LbP: 1 in coupe GG: 3 (LW) 2 (Smith) | Agreed Map CB 7.7C Third VDR CB 4.1.1, p24 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| E. Beech Creek | 13. Waves 300-524-0002 10.12 | CFE | Scheduled | LbP: 3 in coupe and 2 within 200m GG: 1 (LW) 0 (Smith) | Agreed Map CB 7.8C Third VDR CB 4.1.1, p25 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| | 14. Surfing 300-539-0001 10.13 | CFE | Scheduled | LbP: 2 in coupe and 2 within 200m GG: 3 (LW/Smith) | Agreed Map CB 7.8C; Third VDR CB 4.1.1, p25 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| F. Big River | 15. Camberwell Junction 290-527-0004 9.41 | CFE | Logged | LbP: 0 GG: 2 (LW/Smith) | Third VDR CB 4.1.1, p26 | Threat: GG SI: GG | CI 2.2.2.2 (PP) CI 2.3.1.1, 2.5.1.1 (20m visual screen) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|--|----------------------------------|-------------------------|--|---|-------------------------------|---|
| | 16. Vice Captain 290-527-0004 10.38 | CFE | Scheduled | LbP: 0 GG: 4 (LW/Smith) | Third VDR CB 4.1.1, p26 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| G. Cambarville | 17. Bromance 312-510-0007 9.33 | CFE | Logged | LbP: 1 in coupe GG: 5 (LW/Smith) | Agreed Map CB 7.10C Third VDR CB 4.1.1, p27 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| | 18. Lovers Lane 312-510-0009 9.34 | CFE | Logged | LbP: 0 GG: 3 (LW/Smith) | Third VDR CB 4.1.1, p27 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| H. Coles Creek | 19. Home & Away 297-538-0004 10.8 | CFE | Scheduled | LbP: 1 in coupe and 2 within 200m GG: 3 (LW) 2 (Smith) | Agreed Map CB 7.11C Third VDR CB 4.1.1, p28 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| I. Hermitage Creek | 20. Guitar Solo 307-505-0011 9.12 | STR | Logged | LbP: 3 in coupe GG: 7 (LW) 6 (Smith) | Agreed Map CB 7.12C Third VDR CB 4.1.1, p29 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) CI 2.3.1.1, 2.5.1.1 (20m visual screen) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|--|----------------------------------|-------------------------|--|---|--|---|
| | 21. Drum Circle 307-505-0001 10.14 | CFE | Scheduled | LbP: 0 GG: 4 (LW/Smith) | Agreed Map CB 7.12C Third VDR CB 4.1.1, p29 | Threat: GG SI: LbP (not pressed) & GG | CI 2.2.2.2 (PP) |
| | 22. Flute 307-505-0009 10.15 | STR | Scheduled | LbP: 0 GG: 8 (LW) 7 (Smith) | Agreed Map CB 7.12C Third VDR CB 4.1.1, p29 | Threat: GG SI: LbP (not pressed) & GG | CI 2.2.2.2 (PP) |
| | 23. San Diego 307-505-0010 10.16 | STR | Scheduled | LbP: 0 GG: 8 (LW) 5 (Smith) | Agreed Map CB 7.12C Third VDR CB 4.1.1, p29 | Threat: GG SI: LbP (not pressed) & GG | CI 2.2.2.2 (PP) |
| J. Loch and Noojee | 24. Estate 462-507-0008 9.30 | STR | Logged | LbP: 0 GG: 8 (LW/Smith) | Agreed Map CB 7.13C Third VDR CB 4.1.1, p3 | Threat: GG SI: GG | CI 2.2.2.2 (PP) CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 25. Brugha 462-506-0019 10.32B | CFE | Scheduled | LbP: 0 GG: 3 (LW) no data in Smith | Agreed Map CB 7.13C Third VDR CB 4.1.1, p30 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|--|----------------------------------|-------------------------|--|---|-------------------------------|---|
| | 26. Jakop 462-507-0009 10.33 | STR | Scheduled | LbP: 0 GG: 11 (LW) 10 (Smith) | Agreed Map CB 7.13C Third VDR CB 4.1.1, p30 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| K. Matlock and the Triangle | 27. Professor Xavier 317-508-0008 9.16 | CFE | Logged | LbP: 4 in coupe and 2 within 200m GG: 0 | Agreed Map CB 7.14C | SI: LbP | CI 2.3.1.1, 2.5.1.1 (20m visual screen) & CI 2.2.2.1 (150m gap) |
| | 28. Swing High 317-508-0010 9.35 | CFE | Logged | LbP: 3 within 200m GG: 6 (LW) 5 (Smith) | Agreed Map CB 7.14C Third VDR CB 4.1.1, p31 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| L. Mount Bride | 29. Louisiana 345-526-0003 10.27 | CFE | Scheduled | LbP: 1 within 200m GG: 1 (LW/Smith) | Agreed Map CB 7.15C Third VDR CB 4.1.1, p32 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| | 30. Bourbon Street 345-526-0004 10.28 | CFE | Scheduled | LbP: 1 within 200m GG: 1 (LW/Smith) | Agreed Map CB 7.15C Third VDR CB 4.1.1, p32 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbP ⁱ and GG ⁱⁱ detections | Pleaded threat/ impact | Code breach |
|----------------------|---|---------------------------|------------------|---|--|------------------------|--|
| M. Mount Despair | 31. Glenview 298-516-0001 9.5 | STR | Logged | LbP: 0 GG: 10 (LW) 7 (Smith) | Agreed Map CB 7.16C Third VDR CB 4.1.1, p33 | Threat: GG SI: GG | CI 2.2.2.2 (PP) CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 32. Flicka 298-519-0003 9.6 | CFE | Logged | LbP: 0 GG: 3 (LW) 2 (Smith) | Agreed Map CB 7.16C Third VDR CB 4.1.1, p33 | Threat: GG SI: GG | CI 2.2.2.2 (PP) CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 33. Chest 298-502-0003 10.9 | CFE | Scheduled | LbP: 0 GG: 17 (LW) 12 (Smith) | Third VDR CB 4.1.1, p33 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| | 34. Bridle 298-510-0003 10.10 | STR | Scheduled | LbP: 0 GG: 23 (LW) 12 (Smith) | Third VDR CB 4.1.1, p33 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| N. New Turkey Spur | 35. Greendale 348-515-0004 9.25 | CFE | Logged | LbP: 1 within 200m GG: 0 | Agreed Map CB 7.17C | SI: LbP | CI 2.3.1.1, 2.5.1.1 (20m visual screen) CI 2.2.2.1 (150m gap) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|--|----------------------------------|-------------------------|--|---|-------------------------------|--------------------|
| | 36. Gallipoli 348-504-0005 10.29 | CFE | Scheduled | LbP: 1 within 200 m GG: 3 (LW) 5 (Smith) | Agreed Map CB 7.17C Third VDR CB 4.1.1, p34 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| O. Nolans Gully | 37. Goliath 297-505-0001 10.1 | CFE | Scheduled | LbP: 0 GG: 6 (LW) 7 (Smith) | Agreed Map CB 7.18C Third VDR CB 4.1.1, p35 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| | 38. Shrek 297-509-0001 10.2 | CFE | Scheduled | LbP: 1 within 200m GG: 7 (LW) 5 (Smith) | Agreed Map CB 7.18C Third VDR CB 4.1.1, p35 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| | 39. Infant 297-509-0002 10.3 | CFE | Scheduled | LbP: 1 within 200m GG: 3 (LW) 1 (Smith) | Agreed Map CB 7.18C Third VDR CB 4.1.1, p35 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| | 40. Junior 297-511-0002 10.4 | CFE | Scheduled | LbP: 0 GG: 2 (LW/Smith) | Third VDR CB 4.1.1, p35 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbP ⁱ and GG ⁱⁱ detections | Pleaded threat/ impact | Code breach |
|----------------------|--|---------------------------|------------------|---|--|----------------------------|--|
| P. Noojee | 41. Skerry's Reach 462-504-0004 9.36 | CFE | Logged | LbP: 2 within 200m GG: 6 (LW/Smith) | Agreed Map CB 7.19C Third VDR CB 4.1.1, p36 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) CI 2.2.2.4 (fail to identify & protect Tree Geebung) CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 42. Epiphanie 462-504-0009 10.32 | STR | Scheduled | LbP: 0 GG: 6 (LW) 8 (Smith) | Agreed Map CB 7.19C Third VDR CB 4.1.1, p36 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| | 43. Loch Stock 462-504-0008 10.32A | CFE | Scheduled | LbP: 0 GG: 12 (LW) 8 (Smith) | Agreed Map CB 7.19C Third VDR CB 4.1.1, p36 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| Q. Rubicon | 44. Golden Snitch 288-516-0007 9.37 | CFE | Logged | LbP: 2 within 200m GG: 0 | Agreed Map CB 7.20C | SI: LbP | CI 2.3.1.1, 2.5.1.1 (20m visual screen) CI 2.2.2.1 (150m gap) |
| | 45. Hogsmeade 288-516-0006 9.38 | CFE | Logged | LbP: 2 within coupe & 4 within 200m GG: 0 | Agreed Map CB 7.20C | SI: LbP | CI 2.3.1.1, 2.5.1.1 (20m visual screen) CI 2.2.2.1 (150m gap) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|--|----------------------------------|-------------------------|--|---|-------------------------------|---|
| | 46. Rocketman 287-511-0009 9.39 | CFE | Logged | LbP: 5 within a kilometre GG:0 | Agreed Map CB 7.20C | SI: LbP | CI 2.3.1.1, 2.5.1.1 (20m visual screen) CI 2.2.2.1 (150m gap) |
| | 47. Houston 287-511-0006 9.40 | CFE | Logged | LbP: 5 within a kilometre GG:0 | Agreed Map CB 7.20C | SI: LbP | CI 2.3.1.1, 2.5.1.1 (20m visual screen) CI 2.2.2.1 (150m gap) |
| R. Salvage Creek | 48. De Valera 463-504-0009 9.31 | CFE | Logged | LbP: 4 within 200m GG: 0 | Agreed Map CB 7.21C | SI: LbP | CI 2.3.1.1, 2.5.1.1 (20m visual screen) CI 2.2.2.1 (150m gap) |
| S. Snobbs Creek | 49. Dry Spell 288-505-0001 10.39 | CFE | Scheduled | LbP: 0 GG: 7 (LW) 6 (Smith) | Third VDR CB 4.1.1, p38 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| | 50. Dry Creek Hill 288-506-0001 10.40 | Road alignment - improvement | Scheduled | LbP: 0 GG: 24 (LW) 15 (Smith) | Third VDR CB 4.1.1, p38 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| T. South Noojee | 51. Backdoor 462-512-0002 10.35 | CFE | Scheduled | No LbP GG: 13 (LW) 7 (Smith) | Third VDR CB 4.1.1, p37 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|--|----------------------------------|-------------------------|--|---|-------------------------------|---|
| | 52. Lodge 463-501-0005 10.36 | CFE | Scheduled | LbP: 0 GG: 2 (LW/Smith) | Third VDR CB 4.1.1, p37 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| U. Starlings Gap | 53. Bullseye 345-503-0005 9.19 | RRH | Logged | LbP: 4 within 200m GG: 0 | Agreed Map CB 7.24C | SI: LbP | CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 54. Opposite Fitzies 45-506-0004 9.21 | CFE | Logged | LbP: 2 in coupe & 2 within 200m GG: 0 | Agreed Map CB 7.24C | SI: LbP | CI 2.3.1.1, 2.5.1.1 (20m visual screen) |
| | 55. Smyth Creek 345-504-0003 10.23 | STR | Scheduled | LbP: 1 in coupe & 1 within 200m GG: 4 (LW) 6 (Smith) | Agreed Map CB 7.24C Third VDR CB 4.1.1, p39 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| | 56. Starlings Gap 345-504-0005 10.24 | CFE | Scheduled | LbP: 4 in coupe & 5 within 200m GG: 2 (LW) 1 (Smith) | Agreed Map CB 7.24C Third VDR CB 4.1.1, p39 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------------|--|----------------------------------|-------------------------|--|---|-------------------------------|---|
| | 57. Hairy Hyde 345-505-0006 10.25 & 9.20 | CFE | Scheduled | LbP: 1 in coupe & 3 within 200m GG: 5 (LW/Smith) | Agreed Map CB 7.24C Third VDR CB 4.1.1, p39 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) CI 2.2.2.4 (fail to identify & protect LbP in coupe) |
| | 58. Blacksands Road 345-505-0009 10.26 | STR | Scheduled | LbP: 2 within 200m GG: 3 (LW/Smith) | Agreed Map CB 7.24C Third VDR CB 4.1.1, p39 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| V. Sylvia Creek and Kalatha Creek | 59. Gun Barrel 297-526-0001 10.5 | CFE | Scheduled | LbP: 2 within 200m GG: 0 | Agreed Map CB 7.25C | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| | 60. Imperium 297-530-0001 10.6 | CFE | Scheduled | LbP: 2 in coupe & 1 within 200m GG: 3 (LW) 5 (Smith) | Agreed Map CB 7.25C Third VDR CB 4.1.1, p40 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| | 61. Utopia 297-530-0002 10.7 | CFE | Scheduled | LbP: 1 within 200m GG: 2 (LW/Smith) | Agreed Map CB 7.25C Third VDR CB 4.1.1, p40 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |

Annexure 1 - Coupe table

| Coupe group location | Coupe name, number and 2FASOC paragraph | Silviculture system (TRP) | Logged/scheduled | LbP detections in or within 200m of coupe / GG detections in or bordering coupe | Reference for LbPⁱ and GGⁱⁱ detections | Pleaded threat/ impact | Code breach |
|-----------------------------|--|----------------------------------|-------------------------|--|---|--|--------------------|
| | 62. South Col 298-509-0001 10.11 | CFE | Scheduled | LbP: 1 in coupe & 5 within 200m GG: 1 (LW) 2 (Smith) | Agreed Map CB 7.25C Third VDR CB 4.1.1, p40 | Threat: GG SI: LbP & GG | CI 2.2.2.2 (PP) |
| W. Torbreck (North & South) | 63. Bhebe 312-503-0002 10.20 | CFE | Scheduled | LbP: 1 within 200m GG: 3 (LW) 5 (Smith) | Agreed Map CB 7.26C Third VDR CB 4.1.1, p42 | Threat: GG SI: LbP (not pressed) & GG | CI 2.2.2.2 (PP) |
| | 64. Farm Spur Gum 312-002-0006 10.21A | STR | Scheduled | LbP: 0 GG: 16(LW) 11 (Smith) | Agreed Map CB 7.26C Third VDR CB 4.1.1, p42 | Threat: GG SI: GG | CI 2.2.2.2 (PP) |
| | 65. Skupani 312-007-0014 10.18 | CFE | Scheduled | LbP: 0 GG: 7 (LW) 6 (Smith) | Agreed Map CB 7.27C Third VDR CB 4.1.1, p43 | Threat: GG SI: LbP (not pressed) & GG | CI 2.2.2.2 (PP) |
| | 66. Splinter 312-508-0002 10.19 | CFE | Scheduled | LbP: 0 GG: 9 (LW/Smith) | Agreed Map CB 7.27C Third VDR CB 4.1.1, p43 | Threat: GG SI: LbP (not pressed) & GG | CI 2.2.2.2 (PP) |

Annexure 1 - Coupe table

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- i The Respondent admits that Leadbeater's Possum were detected at each location marked by a blue circle on the Agreed Maps, see Notice to Admit CB 1.9 at [11]; Notice of Dispute CB 1.10 at p3.
- ii Greater Glider detections were recorded by the Applicant's lay witnesses Mr McKenzie, Mr Nisbet, Mr Wainwright and Mr Lincoln, whose video, photo and GPS records were reviewed by Dr Van der Ree for the purposes of species identification and mapping. Dr van der Ree presented the results by way of maps depicting all records with accompanying table specifying the GPS waypoint number, date and time contained in the record, the species identified and number of individuals (if any) for each record, see Third van der Ree Report, CB 4.1.1, p21-43. The Lay Witness counts presented here per coupe represent those records for which Dr van der Ree provided a Greater Glider species identification of 50% confidence or higher. The Agreed Maps depict Greater Glider records contained in the Victorian Biodiversity Atlas (**VBA**), managed by DELWP. DELWP included some (not all) of the Applicant's lay witnesses' Greater Glider detections in the VBA (see Third McKenzie Affidavit, CB 2.9), consequently some GG records appear in both Dr van der Ree's report and the Agreed Maps. Dr Smith reviewed both Dr van der Ree's report and the Agreed Maps, and counted the number of GGs in each coupe as "the sum of all records post 1997 in a coupe that were more than about 50m apart, including those on the coupe boundary, and including double counts for locations where 2 gliders were reported at the same location in the survey data presented by Dr. Van der Ree ... Where a location record occurred on the boundary of two different coupes it was included in counts of both coupes. If a location record from the VBA ... appeared within approximately 50m of a location previously counted in the report of Van der Ree it was not included", see Smith (2), CB 4.3, p8. With respect to records in Dr van der Ree's report, Dr Smith relied only on those Greater Glider records for which Dr van der Ree provided species identification with 75% accuracy or higher (Smith (1), CB 4.2.1, p46).