

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST

No. 8547 of 2009

BETWEEN

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

and

VICFORESTS

Defendant

AFFIDAVIT OF JILL REDWOOD

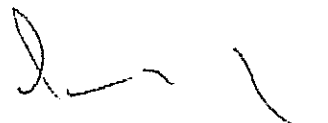
Date of document:	28 August 2009	
Filed on behalf of:	Plaintiff	
Bleyer Lawyers Pty Ltd		Ph: 9600 4224
Level 1, 550 Lonsdale Street		Fx: 9600 4225
Melbourne 3000		Code: 101385
Em: vanessa@bleyerlawyers.com.au		Ref: Vanessa Bleyer

I, **JILL REDWOOD**, of 6800 Bonang Rd, Goongerah in the State of Victoria MAKE OATH  
AND SAY as follows:

1. I am a member of the committee of Environment East Gippsland Inc ("EEG"). I make this affidavit on behalf of EEG and am authorised to do so. I make this affidavit from my own knowledge unless otherwise stated.

A. Standing

2. EEG is an incorporated association, incorporated in Victoria pursuant to the *Associations Incorporation Act 1981* (Vic). EEG is a community-based, non-profit association run by volunteers. EEG was active as an unincorporated association since 1982 under the name of



CROEG (Concerned Residents of East Gippsland). EEG was incorporated on 7 August 1991. On 19 August 2009, EEG instructed its solicitors to obtain an incorporated association extract for EEG. Now produced and shown to me and marked "JR-1" is a true copy of the incorporated association extract.

3. EEG's objects and purposes are as follows:

- *Promote conservation values and environmental awareness about East Gippsland;*
- *Promote sustainability in environmental, economic and social terms;*
- *Make representation to Government regarding land use and management;*
- *Undertake research relevant to the above;*
- *Adhere to and promote principles of non-violence, and*
- *Cooperate with other groups having similar objectives.*

4. Since its inception, EEG has consistently engaged in a large number of activities relevant to its objects and purposes. Some examples of EEG's activities in recent years are as follows:

- (a) carrying out threatened species surveys in State forest;
- (b) the production of quarterly newsletters. Now produced and shown to me and marked "JR-2" is a true copy of three such newsletters;
- (c) the production of articles published in Wild magazine which is distributed nationally, Living Now magazine which is distributed nationally and Park Watch magazine which is distributed in Victoria. Now produced and shown to me and marked "JR-3" is a true copy of the magazine articles referred to in this sub-paragraph;
- (d) being interviewed by newspaper journalists and reported in newspapers. Now produced and shown to me and marked "JR-4" is a true copy of an example;

The block contains two handwritten signatures. The signature on the left is written in dark ink and appears to be 'J. P. Shred'. The signature on the right is written in a lighter, more fluid script and is less legible, possibly reading 'L. - 1'.

- (e) being involved in radio interviews. Now produced and shown to me and marked "JR-5" is a true copy of the transcript of one such radio interview;
- (f) organising and running annual or biennial forest ecology camps named "Forests Forever" including in the critical habitat area which is the subject of this proceeding. Each camp is attended by over 100 people, with up to about 100 more turned away for lack of capacity. Attendees include members of the general public, families, students, inter-state and international visitors and bushwalkers. Leading botanists, ecologists and conservationists educate attendees about, among other things, natural history and threats to Victoria's forests. In particular, EEG leads attendees through an area of old growth forest called "The Walk" which covers two logging coupes in the critical habitat area which is the subject of this proceeding. Revenue raised through Forests Forever contributes to EEG's annual operating costs. Now produced and shown to me and marked "JR-6" is some material relating to some of the recent three Forests Forever camps;
- (g) making submissions to government including relating to:
- i. the Land and Biodiversity White Paper in 2007;
  - ii. the Environment Protection and Biodiversity Conservation Amendment Bill in 2007;
  - iii. the Garnaut Climate Change Review Issues Paper 1 on 15 January 2008;
  - iv. the Renewable Energy (Electricity) Amendment Bill 2009 on 20 February 2009;
  - v. the Victorian Bushfires Royal Commission in 2009; and
  - vi. comments on East Gippsland TRP 2009/10 – 2013/14.

Now produced and shown to me and marked "JR-7" is a true copy of the submissions referred to in this subparagraph;

(h) regularly being invited by various State and federal government departments and associated entities to comment on environment-related matters. Now produced and shown to me and marked "JR-8" is a true copy of some invitations that EEG has recently received; and


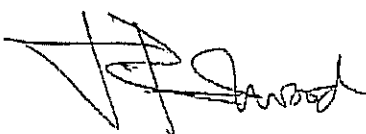
(i) sitting on government committees including the RFA Consultative Committee in 2002 and the CMA Snowy River Group (2004).

5. EEG has 420 members and over 500 people on its email list. EEG's membership includes scientists, politicians, conservationists, professionals, pensioners, students and other members of the community.
6. On 24 August 2009, EEG resolved to bring this proceeding against the Defendant.

**B. Relevant history and correspondence**

7. In the 1980's an area of forest known as Brown Mountain in East Gippsland, which is situated between the Errinundra National Park and the Snowy River and Alpine National Parks, was assessed and listed as an old growth National Estate area by the Commonwealth Heritage Commission. Now produced and shown to me and marked "JR-9" is a true copy of a map marking the area known as Brown Mountain in East Gippsland.
8. In or about 1989, approximately 300 people were charged for protesting against the then proposed logging of Brown Mountain.

9. A moratorium was put on the logging while the state government carried out a "Prudent and Feasible Study" into alternatives to logging National Estate listed forests.
10. Over a period of at least the last seven (7) years, local residents have marked out a walking track for tourism in the vicinity of the area known as Brown Mountain in East Gippsland, which is situated between the Errinundra National Park and the Snowy River and Alpine National Parks.
11. The walking track was named "The Valley of the Giants Old Growth Forests Walk" by local residents and EEG. Now produced and shown to me and marked "JR-10" is a true copy of a map showing the approximate location of the walking track.
12. The Australian Labor Party's 2006 election policy "Fact Sheet" stated that "a Labor Government will immediately protect remaining significant stands of old growth forests currently available for timber harvesting by including them in the National Parks and reserves system". Now produced and shown to me and marked "JR-11" is a true copy of the ALP's "Fact Sheet" dated 17 November 2006.
13. In early 2007, EEG objected via a formal public comment process to the logging of the Brown Mountain old growth forests, which had been put on the logging schedule for the 2007-08 year. Now produced and shown to me and marked "JR-12" is a true copy of EEG's objection.
14. In or about the end of October 2008, logging commenced in the coupe with ID number 840-502-0020 as marked on the map attached to the Timber Release Plan approved on 9 June 2009, and also described as "The Walk" ("the first coupe"). Now produced and



shown to me and marked "JR-13" is a true copy of the map attached to the Timber Release Plan.

15. On 10 November 2008, an article appeared on page 7 of The Age newspaper which stated that:

(a) bulldozers moved into Brown Mountain in far East Gippsland and began clearfelling;  
and

(b) seven (7) protesters were arrested in the 18 hectare logging coupe.

Now produced and shown to me and marked "JR-14" is a true copy of the article from The Age newspaper.

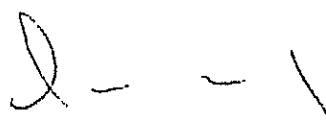

16. On about 10 November 2008, I went into the vicinity of the first coupe and I saw that the first coupe was being logged.

17. I am aware that there has been a high level of community concern in relation to the logging of Brown Mountain.

(a) I have heard a number of interviews and call back shows on ABC radio Gippsland in which callers expressed concern over the logging of Brown Mountain.

(b) I am aware that many people have written to the government opposing the logging of Brown Mountain, to which the government has issued a response letter. Now produced and shown to me and marked "JR-15" is a true copy of the government's response letter dated 30 December 2009.

(c) On 13 August, 7 November and 2 December 2008, there were protests about the logging of Brown Mountain on the steps of Parliament House.



- (d) I have read a number of letters to The Age newspaper which oppose logging of Brown Mountain.
- (e) During November to January 2008 many people protested against the logging of Brown Mountain in or near the first coupe, a number of whom were arrested.
18. By January 2009, I was concerned that VicForests proposed to log at least two (2) further coupes in the vicinity of Brown Mountain, those coupes having coupe ID numbers 840-502-0015 and 840-502-0019 because those two coupes were nominated as being scheduled for logging in the Timber Release Plan which was current at January 2009.
19. On 27 January 2009, I emailed a copy of a fauna survey to Stephen Henry and Anthony Mitchell, officers of the Department of Sustainability & Environment ("DSE"). My email said, omitting the formal and irrelevant parts:

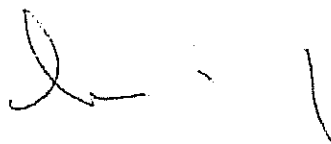

*"please find attached the survey we commissioned over the Australia Day weekend.*

*We feel the densities that were detected by Rohan Bilney in the Valley of the Giants are enough to warrant the DSE confirming these findings. Meanwhile we would ask that the plans for clearfelling these two proposed coupes be put on immediate hold until DSE surveys can confirm these densities.*

*We feel that spotlighting 8 Greater Gliders over a 750 mt length of track (the forest stand was not large enough to continue and the track ended at this point) then it should trigger an SPZ declaration.*

*The family grouping of 4 Greater Gliders were observed in a small area of half a hectare. As the guidelines in the FMP state that where over 2 individuals per ha occur, 100 ha of suitable habitat will be included in an SPZ.*

*I also understand that an email confirming that the most recent crayfish find on the weekend was a definite Orbost Spiny Crayfish, has been forwarded to you by Jo Edwards. This included detailed photographs of the specimen. We hope that you can start the process for having this specimen verified by carrying out your own surveys. It is extremely unfortunate that bulldozing has already occurred along the eastern tributary of Brown Mountain Creek very close to the stream where this crayfish was found. We would hope that further work will be halted immediately and restoration of the damage can be carried out to allow this scar to recover. Sassafras and tree*



*ferns have already been ripped out and shattered along the creek's edge well within the 100 metre buffer which is needed to protect this species.*

*I understand the specimen that was found was photographed well and returned to the same site.*

*Could you please let me know as soon as possible when you will be able to start the process of confirmation and what this will involve. There are many hundreds, if not thousands of people who are watching this with great interest and we would like to keep them updated."*

Now produced and shown to me and marked "JR-16" is a true copy of the email. Now produced and shown to me and marked "JR-17" is a true copy of the survey report.

20. In or about late January 2009, I was told by Steve Henry, officer of DSE, that there had been a moratorium put on the logging of Brown Mountain.
21. On 29 January 2009, I received an email from a group known as the Victorian forest alliance which said:

*"Logging on hold over species 'find'  
Adam Morton*

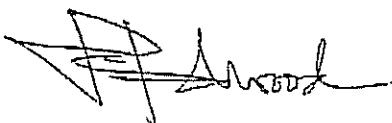
*January 29, 2009*

*ANTI-LOGGING campaigners have won a two-week reprieve in far east Gippsland after claiming to have discovered four threatened species in old-growth forest earmarked for harvesting.*

*Scientists working on behalf of Environment East Gippsland say a survey last weekend found endangered glider, owl and crayfish species in a coupe at Brown Mountain.*

*Australian Greens leader Bob Brown said it was outrageous that it was left to self-appointed "forest defenders" to survey the area for threatened species. "The Department of Sustainability and Environment must be hanging its head with shame ... these are fabulous Victorian wildlife and the Brumby Government is aiding and abetting their onrush towards extinction," he said.*

*Senator Brown called on the Federal Government to investigate whether Victoria had breached the Regional Forest Agreement by allowing rare and endangered species to be destroyed.*





*Bureaucrats responded by ordering logging be delayed for at least a fortnight while claims of a large population of greater gliders were investigated.*

*But VicForests, the state-owned commercial forestry business, cast doubt over some of the claims.*

*Its regional manager, Barry Vaughan, said a crayfish specimen presented by conservationists was not the endangered Orbost spiny crayfish, but the relatively common Bidawal spiny crayfish.*

*Despite this, a precautionary 100-metre buffer would be placed around a rainforest creek as a precaution, he said.*

*He said two owl species — the sooty and powerful owls — had access to "ample protected vegetation" in adjacent native forest. "The claims are worthy of investigation, but we are confident that harvesting will continue," Mr Vaughan said."*

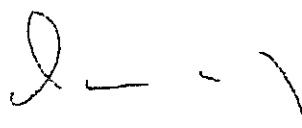
Now produced and shown to me and marked "JR-18" is a true copy of the email from Forest Alliance.

22. On 29 January 2009, EEG sent a letter to the Minister for Environment and Climate Change ("the Minister") which said, omitting the formal and irrelevant parts:

*"Environment East Gippsland ("EEG") requests that the Minister make an Interim Conservation Order pursuant to section 26 of the Flora and Fauna Guarantee Act 1988 to conserve the critical habitat of the Long-footed Potoroo (or Potorous longipes), the Spot-tailed Quoll (or Dasyurus maculates maculatus), the Sooty Owl (or Tyto tenebricosa), the Powerful Owl (or Ninox strenua) and the Orbost Spiny Crayfish (or Euastacus diversus), all of which are listed species under the Flora and Fauna Guarantee Act 1988, namely:*

- a) the area which is coloured purple and marked Goongerah North, being that area nominated by the Victorian Labor Government in November 2006 for protection "to link the Errinundra National Park to the Snowy River and Alpine National Parks and bid for World Heritage Listing" (the "Errinundra/Snowy River/Alpine National Park link promised area"); and*
- b) the area which is hatched and marked 1 ("Brown Mountain"); and*
- c) the area which is hatched and marked 2 (the "Goongerah extension"); and*
- d) the area which is hatched and marked 3 (the "Bonang extension")- ("the critical habitat").*

*The critical habitat forms an important habitat corridor between the Errinundra and Snowy River National Parks. EEG has retained Dr Charles Meredith to prepare a report on the ecological values of the critical habitat. That report will be provided in*



support of this application as soon as possible. It is likely to be available before the end of February 2009. When EEG provides that report to the Minister, it will also provide some further submissions about why the Minister should make an interim conservation order under s 26.

EEG requests that the Interim Conservation Order provide for the following:

- a) the conservation and protection of the above-named species within the critical habitat;
- b) the prohibition on logging within the critical habitat;
- c) the prohibition on creating roads within the critical habitat; and
- d) a requirement to undertake works to regenerate any previously logged areas within the critical habitat for the primary purpose of providing for the long-term survival of the above-named species.

There are two coupes identified in the relevant Timber Release Plan as 840-502-0019 and 840-502-0015 listed for logging in the area known as Brown Mountain, being part of the area which is the subject of this application. EEG requests that the Minister ensures that no part of the area which is the subject of this application is logged while this application is being processed.

EEG has also written to the Secretary of the Department of Sustainability and Environment requesting that the Secretary determine pursuant to section 20 of the Flora and Fauna Guarantee Act 1988 that the critical habitat is an area critical to the survival of the above-named species. In addition, EEG has written to the Federal Minister requesting that he determine the area the subject of this application critical habitat under the Environment Protection and Biodiversity Conservation Act 1999.

EEG requests that the Minister notify EEG of the decision in relation to this application as soon as possible after the receipt of Dr Meredith's report, and provide a statement of reasons as to that decision.

EEG is more than happy to provide the Minister with any further information it can to assist in the making of this decision. If the Minister has any questions regarding this application, please contact Jill Redwood on 03 5154 0145."

Now produced and shown to me and marked "JR-19" is a true copy of the letter.

23. On 23 February 2009, EEG received a letter from the Minister which said, omitting the formal and irrelevant parts:

"Thank you for your letter of 29 January this year regarding this matter.

I note that you intend to provide further information in support of your request that I make an interim conservation order under the Flora and Fauna Guarantee Act 1988.



*I also note that you have written to the Secretary, Department of Sustainability and Environment, regarding the determination of critical habitat in relation to the same areas.*

*I look forward to receiving this additional information and will respond to you following detailed consideration of this material by the Department of Sustainability and Environment.*

*Thank you again for raising this matter with me."*

Now produced and shown to me and marked "JR-20" is a true copy of the letter.

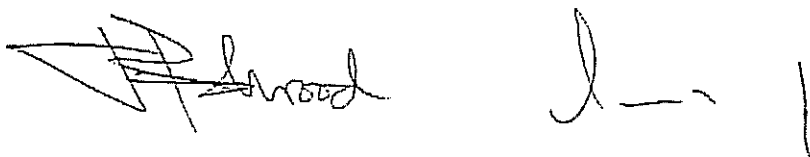
24. On 29 January 2009, EEG also sent a letter to the Secretary of the DSE which said, omitting the formal and irrelevant parts:

*"Environment East Gippsland ("EEG") requests that the Secretary determine, pursuant to section 20 of the Flora and Fauna Guarantee Act 1988, that the following area as shown on the plan attached is critical to the survival of all or any one or more of the Long-footed Potoroo (or Potorous longipes), the Spot-tailed Quoll (or Dasyurus maculatus maculatus), the Sooty Owl (or Tyto tenebricosa), the Powerful Owl (or Ninox strenua) and the Orbost Spiny Crayfish (or Euastacus diversus), all of which are listed species under the Flora and Fauna Guarantee Act 1988:*

- a) the area which is coloured purple and marked Goongerah North, being that area nominated by the Victorian Labor Government in November 2006 for protection "to link the Errinundra National Park to the Snowy River and Alpine National Parks and bid for World Heritage Listing" (the "Errinundra/Snowy River/Alpine National Park link promised area"); and*
- b) the area which is hatched and marked 1 ("Brown Mountain"); and*
- c) the area which is hatched and marked 2 (the "Goongerah extension"); and*
- d) the area which is hatched and marked 3 (the "Bonang extension")- ("the area of critical habitat").*

*The area of critical habitat identified in this application for listing as critical habitat forms an important habitat corridor between the Errinundra and Snowy River National Parks. EEG has retained Dr Charles Meredith to prepare a report on the ecological values of the area of critical habitat. That report will be provided to the Minister in support of this application as soon as possible. It is likely to be available before the end of February 2009. When EEG provides that report to the Secretary, it will also provide some further submissions about why the Secretary should make a critical habitat determination under s 20.*

*There are two coupes identified in the relevant Timber Release Plan as 840-502-0019 and 840-502-0015 listed for logging in the area known as Brown Mountain.*



being part of the area which is the subject of this application. EEG requests that the Secretary ensures that no part of the area which is the subject of this application is logged while this application is being processed.

EEG has also written to the Victorian Minister for Environment and Climate Change requesting that the Minister make an Interim Conservation Order to protect from logging the area of critical habitat which is the subject of this application. In addition, EEG has written to the Federal Minister requesting that he determine the area the subject of this application critical habitat under the Environment Protection and Biodiversity Conservation Act 1999.

EEG requests that the Secretary notify EEG of the decision in relation to this application as soon as possible after the receipt of Dr Meredith's report, and provide a statement of reasons as to that decision.

EEG is more than happy to provide the Secretary with any further information it can to assist in the making of this decision. If the Secretary has any questions regarding this application, please contact Jill Redwood on 093 5154 0145."

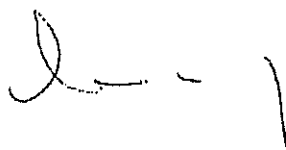
Now produced and shown to me and marked "JR-21" is a true copy of the letter.

25. On 29 January 2009, EEG also sent a letter to the federal Minister for the Environment, Heritage and the Arts which said, omitting the formal and irrelevant parts:

"Environment East Gippsland ("EEG") requests that the Minister, pursuant to section 207A of the Environment Protection and Biodiversity Conservation Act 1999 ("EPBC Act"), make a decision to list as habitat critical to the survival of both or either of the Long-footed Potoroo (or Potorous longipes, which is listed as endangered under the EPBC Act) and the Spot-tailed Quoll (or Dasyurus maculatus maculatus (SE mainland population)), which is also listed as endangered under the EPBC Act) the following area as shown on the plan attached:

- a) the area which is coloured purple and marked Goongerah North, being that area nominated by the Victorian Labor Government in November 2006 for protection "to link the Errinundra National Park to the Snowy River and Alpine National Parks and bid for World Heritage Listing" (the "Errinundra/Snowy River/Alpine National Park link promised area"); and
- b) the area which is hatched and marked 1 ("Brown Mountain"); and
- c) the area which is hatched and marked 2 (the "Goongerah extension"); and
- d) the area which is hatched and marked 3 (the "Bonang extension")- ("the area of critical habitat").

The area of critical habitat identified in this application for a critical habitat determination meets the criteria set out in Regulation 7.06 of the Environment Protection and Biodiversity Conservation Regulations 2000, and in particular meets



*criterion 7.06 (1)(e) because the area forms an important habitat corridor between the Errinundra and Snowy River National Parks. EEG has retained Dr Charles Meredith to prepare a report on the ecological values of the area of critical habitat. That report will be provided in support of this application as soon as possible. It is likely to be available before the end of February 2009. When EEG provides that report to the Minister, it will also provide some further submissions about why the Minister should make a critical habitat determination under s 207A.*

*EEG has also written to the Victorian Minister requesting that the Minister make an Interim Conservation Order to protect from logging the area of critical habitat which is the subject of this application. In addition, EEG has written to the Secretary of the Department of Sustainability and Environment in Victoria, asking him to declare the area the subject of this application critical habitat to the survival of, among others, the species referred to above.*

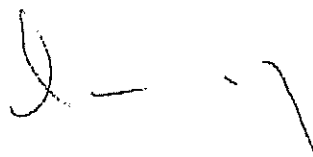
*EEG requests that the Minister notify EEG of his decision in relation to this application as soon as possible after the provision of Dr Meredith's report, and provide a statement of reasons as to that decision.*

*EEG is more than happy to provide the Minister with any further information it can to assist in the making of this decision. If the Minister or his Department has any questions regarding this application, please contact Jill Redwood on 03 5154 0145."*

Now produced and shown to me and marked "JR-22" is a true copy of the letter.

26. The same map was attached to each of the letters referred to at paragraphs 22, 24 and 25 of this my affidavit. Now produced and shown to me and marked "JR-23" is a true copy of the map.
27. On or about 24 February 2009, EEG provided to the Defendant a report dated 24 February 2009 titled 'Report on nocturnal survey for arboreal mammals and owl species' by Mr A Lincoln and Mr J C W Cop BSc. Now produced and shown to me and marked "JR-24" is a true copy of the report.
28. On 6 March 2009, EEG received a letter from the Secretary of the DSE which said, omitting the formal and irrelevant parts:

*"Thank you for your letter of 29 January 2009 regarding this matter.*



*I note that you intend to provide further information, in support of your request that I make a determination of critical habitat under the Flora and Fauna Guarantee Act 1988. I also note that you have written to the Minister for Environment and Climate Change regarding the making of an Interim Conservation Order in relation to the same areas.*

*I look forward to receiving this additional information and will respond to you following detailed consideration of this material by the Department of Sustainability & Environment.*

*Thank you again for your letter."*

Now produced and shown to me and marked "JR-25" is a true copy of the letter.

29. On or about 9 March 2009, EEG provided to the Defendant a report dated 9 March 2009 titled 'Report nocturnal survey for arboreal mammals and forest owl species' by Mr A Lincoln and Mr J C W Cop BSc. Now produced and shown to me and marked "JR-26" is a true copy of the report.
30. On or about 13 March 2009, EEG provided to the Defendant a report dated 13 March 2009 titled 'Report nocturnal survey for arboreal mammals and forest owl species' by Mr P Calle and Mr A Lincoln. Now produced and shown to me and marked "JR-27" is a true copy of the report.
31. On 16 March 2009, EEG sent a letter to the Minister which said, omitting the formal and irrelevant parts:

*"Environment East Gippsland ("EEG") sent you a letter on 29 January 2009 asking you to make an interim conservation order pursuant to section 26 of the Flora and Fauna Guarantee Act 1988 to conserve the critical habitat of the Long-footed Potoroo, the Sooty Owl, the Powerful Owl and the Orbost Spiny Crayfish. A copy of the letter is attached for your convenience.*

*In that letter, we told you that EEG has retained Dr Charles Meredith to prepare a report on the ecological values of the area of critical habitat, that his report will be provided to you and that it is likely to be available before the end of February 2009.*

*We advise that the report is now likely to be completed during the course of March 2009 and so provided to you by the end of the month."*

Now produced and shown to me and marked "JR-28" is a true copy of the letter.

32. On 16 March 2009, EEG also sent a letter to the Secretary of the DSE which said, omitting the formal and irrelevant parts:

*"Environment East Gippsland ("EEG") sent you a letter on 29 January 2009 asking you to make a decision to list specified habitat as critical to the survival of all or any one or more of the Long-footed Potoroo, the Spot-tailed Quoll, the Sooty Owl, the Powerful Owl and the Orbost Spiny Crayfish under section 20 of the Flora and Fauna Guarantee Act 1988. A copy of the letter is attached for your convenience.*

*In that letter, we told you that EEG has retained Dr Charles Meredith to prepare a report on the ecological values of the area of critical habitat, that his report will be provided to you and that it is likely to be available before the end of February 2009.*

*We advise that the report is now likely to be completed during the course of March 2009 and so provided to you by the end of the month."*

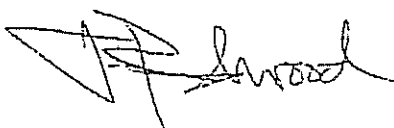
Now produced and annexed to this affidavit and marked "JR-29" is a true copy of the letter.

33. On 16 March 2009, EEG also sent a letter to the federal Minister for the Environment, Heritage & the Arts which said, omitting the formal and irrelevant parts:

*"Environment East Gippsland ("EEG") sent you a letter on 29 January 2009 asking you to make a decision to list specified habitat as critical to the survival of both or either of the Long-footed Potoroo and the Spot-tailed Quoll under section 207A of the Environment Protection and Biodiversity Conservation Act 1999. A copy of the letter is attached for your convenience.*

*In that letter, we told you that EEG has retained Dr Charles Meredith to prepare a report on the ecological values of the area of critical habitat, that his report will be provided to you and that it is likely to be available before the end of February 2009.*

*We advise that the report is now likely to be completed during the course of March 2009 and so provided to you by the end of the month."*



Now produced and shown to me and marked "JR-30" is a true copy of the letter.

34. On 15 April 2009, EEG received a letter from the Defendant which indicates that the DSE provided to Vicforests a copy of the reports referred to in paragraphs 19, 27, 29 and 30 of this my affidavit. The letter said, omitting the formal and irrelevant parts:

*"I refer to the four survey reports conducted for the Bungywar Road, Survey Road, Yalmy Road and coupes between the junction of the Yalmy Rive and Little Yalmy River provided to Vicforests by DSE's Director of Forests.*

*As you would be aware, Vicforests' timber harvesting operations and associated activities must be undertaken in accordance with all relevant legislation, the Allocation to Vicforests Order 2004 (as amended) and the Approved Timber Release plan (as amended). Harvesting therefore only takes place in areas considered by DSE to be 'available', which includes the coupes in which your nocturnal surveys have been undertaken.*

*I assume the purpose of these surveys is to demonstrate that the density of arboreal mammals has exceeded the trigger level outlined in the East Gippsland Forest Management Plan (EGFMP) and therefore these areas should be declared Special Protection Zones (SPZs).*

*It is important to consider the following points before such a decision is taken:*

- *The EGFMP has two main aims – the balanced use and care of State forest and most significantly, the provision of an environment in which native flora and fauna can flourish, while the region's timber industry can continue to invest and add value to its products. All the management strategies, the zoning scheme and other actions described in Plan are designed to fulfil these two main aims.*
- *Vicforests considers that the reservation of a comprehensive adequate and representative area for biodiversity conservation as outlined in the EGFMP to be a very effective method to provide both a high level of biodiversity protection as well as some certainty with respect to the area and volume available for timber production, and therefore to the industries and communities which depend on that area and volume.*
- *Regarding the implementation of 'Conservation Guideline for Arboreal Mammals' in the EGFMP, the contribution of national parks and other conservation reserves must be taken into account towards meeting the needs of threatened and sensitive species.*
- *The Plan also states 'Any refinements of management guidelines or to the zoning scheme must also be made in an objective, systematic manner to avoid disruption to the forward planning and conduct of timber harvesting. A multi-disciplinary approach is essential to this process'.*



- The EGFMP provides DSE with flexibility regarding refinements of amendments to the Plan's zoning scheme – in other words, DSE does not automatically have to create an SPZ if any triggers set in the Conservation Guidelines are met.
- The Regional Forest Agreement (RFA), to which the Victorian Government is a signatory, requires that if amendments to the Comprehensive Adequate and Representative reserve system are made, an equivalent area must be made available for harvesting.

Relating these points to the areas in question, Vicforests considers that the enormous area of parks and reserves in that part of the East Gippsland Forest Management Area (FMA), including much of the additional 41,000 hectares of icon areas and old growth forest to be added to the reserve system as part of the ALP 2006 election policy, to be more than sufficient for the long-term protection of the species listed in your surveys.

About 78% of the publicly-owned native forest in East Gippsland FMA will not be harvested, as it is either reserved or is unsuitable for timber harvesting. The remaining 22% of the forest is used to support the industry, workers and communities in East Gippsland and further afield, and an industry which produces carbon-friendly renewable products.

As DSE is responsible for the overall management of State forest, including the creation or amendment of forest zoning, any decision regarding the creation of new SPZs as a result of survey findings rests with DSE. In this case, Vicforests will, however, be arguing very strongly that there is no basis for creating of new SPZs in these areas due to the very large system of dedicated reserves nearby, reserves that contain significant areas of habitat similar to that found in the areas your surveyed. Vicforests will also argue that the Plan does not mandate the creation of additional SPZs, and that if an SPZ is created, the RFA requires that an additional area must be made available to the industry.

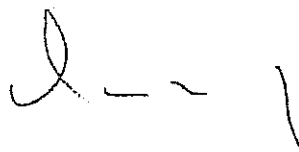
*If you wish to discuss this further, please contact me on (03) 9608 9533.*

Now produced and shown to me and marked "JR-31" is a true copy of the letter.

35. On 17 April 2009, I sent an email to the Minister which said, omitting the formal and irrelevant parts:

*"RE: Planned Brown Mountain coupe burn*

*This is a quick email to alert you to plans by VicForests to carry out a hot coupe burn over the contentious Brown Mountain area that was recently logged. This is*

*currently under moratorium pending a decision on the survey results for threatened and sensitive species. A logging burn would pre-empt any decision on its protection.*

*As this area is linked with the remaining unlogged stand of old growth forest, its management should reflect the ultimate decision. Therefore, the moratorium must apply to the total area. The decision on the site's management should be put on hold, as it could be possible to restore the area for conservation purposes. If an intensely hot burn is conducted, this destroys remnant vegetation, locking in its management for intensive commercial wood production.*

*We therefore request, as a matter of urgency, that you remind VicForests of the moratorium on this area.*

*Please see attached photo of the 550-600 year old tree - now a stump - starting to regrow. It shows the tree ferns in the background, all of which would be incinerated and killed should VicForests be allowed to carry out a burn. This tree could live on. The decision to kill this tree off totally, despite its attempt to regrow would be seen by the public as brutal bloodymindedness.*

*Please remind the Orbost VicForests manager to respect the moratorium."*

Now produced and shown to me and marked "IR-32" is a true copy of the email.

36. On 23 April 2009, EEG sent a letter to the Minister in response to the letter from the Defendant referred to at paragraph 34 above which said, omitting the formal and irrelevant parts:

*"EEG received a totally unsatisfactory response from Cameron McDonald of VicForests on the 15th April 2009 in response to the survey results in certain forests approved for logging.*

*It is not the role of VicForests to self-regulate on environmental law and it can hardly be seen as an authority on flora and fauna conservation.*

*It is DSE's legal obligation and responsibility to protect sensitive species. VicForests was established purely to be a commercially profitable entity.*

*The particular purpose of establishing VicForests is to create a statutory body to undertake the management and sale of timber resources in Victorian State forests on a commercial basis. (Victorian Government Gazette, 28 October 2003)*

*VicForests must adhere to the Code of Forest Practices (CFP) and the East Gippsland Forest Management Plan (EGFMP) but is clearly not taking its*



responsibility seriously, choosing to misinterpret its legal obligations and give unfounded opinions.

We therefore feel it is inappropriate that we deal with VicForests regarding the destruction of habitat of sensitive species which must be protected, including under prescriptions. There is no ambiguity regarding this. See Attachment A.

Cameron McDonald from VicForests is trying to use several points to claim that rich arboreal mammal sites need no protection despite the Act requiring adherence to the EGFMP and CFP and making it a criminal offence for failure to do so. The arguments he makes include:

- That the EGFMP aim was to achieve a balance between logging needs and conservation.

That is why the EGFMP included prescriptions for environmental protection. It is irrelevant that Cameron McDonald holds the opinion that this balance doesn't favour VicForests' needs.

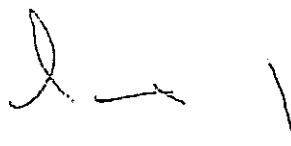
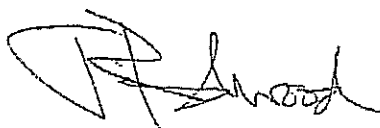
- Cameron McDonald believes that the existing reserves are adequate to meet the needs of threatened or sensitive species.

Cameron McDonald is not a fauna expert nor is there research information to back up this opinion. The parks and reserves were taken into account when the EGFMP was written. Instead of assuming species have greater protection now, it is much more likely that the fires this decade have made existing reserves less adequate for long term conservation objectives. This, coupled with the immense loss of hollow bearing trees since the FMP was written in 1995, is a clear argument that the arboreal species and owls are under more threat now than 14 years ago.

The recent State of the Environment Report makes it clear that there has been a major decline in surveys for wildlife in the last 10 years. Therefore, it is impossible to authoritatively claim that hollow dependent species are adequately protected.

- Cameron McDonald states that the EGFMP allows for any refinements to the zoning scheme to be made in a way that doesn't disrupt logging plans.

The VicForests annual report shows there are more than adequate volumes of timber available to be able to meet its commitments to customers. The EGFMP states it will be 'flexible and responsive to new information', that 'standards will be improved and maintained', and that where there is insufficient information available, that a precautionary approach will be taken (p7). Cameron McDonald's claim that existing reserves are adequate is merely an opinion with no scientific evidence. The EGFMP allows for a review process to adjust guidelines as new information is gathered; however this has not been carried out for arboreal mammals. The EGFMP states that it should apply a cautionary approach to conservation of sensitive or threatened



species (p4). This has to be interpreted as caution which favours the protection of species, not caution against the protection of species.

- Cameron McDonald claims that the RFA commitment to maintain timber volumes must be honoured.

Although there has been a clear breach of the RFA agreements regarding research into the impacts of clearfelling, monitoring and reviewing forest management practices, meeting milestones, annual reporting, five yearly reviews and establishing sustainability indicators, the selective commitment to timber volume only (which has since been proven was an overestimate) is hypocritical. The lack of adherence to many agreed points in the RFA seems irrelevant to VicForests but this lack of adherence means no one understands the impact that logging is having. This renders the plan obsolete and useless.

The RFA has not been legislated in Victoria and the government is not legally bound to adhere to any of it. Point 9 states that: This agreement ... (is) not intended to give rise to legally enforceable rights or obligations between the parties.

- Cameron McDonald's last claim on the RFA is without evidence. He states that if changes are made to the reserve system then equivalent areas must be made available to log.

This is untrue even if the RFA was the arbiter. In attachment 5 of the RFA it states that if changes are made there must be "no net deterioration in timber production capacity".

Our legal advice on this matter makes it clear that the government can ensure VicForests does not break the law and can alter allocation orders:

The Minister's allocation of timber to VicForests is discretionary (s 13 Sustainable Forests (Timber) Act 2004 (the Act)). Once timber is allocated to VicForests, the Minister has the power to vary the allocation (ss 17 and 18 of the Act). An allocation order must comply with the Code of Practice for Timber Production 2007 (the Code) (it is a condition in the allocation order under s 15(1)(c) of the Act). The obligation to comply with the Code precedes the allocation of timber to VicForests. VicForests must also comply with the Code as does anyone retained by VicForests to perform its logging (s 46 of the Act). It is noted that compliance with the Code includes compliance with other documents such as Forest Management Plans and Flora and Fauna Guarantee action statements.

If the Code (or any other document referred to therein), provides that certain areas are not to be logged for any reason such as to protect any threatened species, VicForests cannot log the protected areas for the purpose of meeting the targets in an allocation order. The allocation order does not override the protection provisions; it is to the contrary. If the Minister has allocated so much timber to VicForests that VicForests would need to log protected areas, then the Minister should vary the allocation to reduce the allocated timber.



*If VicForests undertakes logging in a way that fails to comply with the Code, the logging is unauthorised and constitutes a criminal offence rendering VicForests liable to a maximum penalty in excess of \$25,000.*

*Throughout all of the points Cameron McDonald makes, he neglects to acknowledge that already VicForests has committed an offence under the section 45 and 46(1) of the Sustainable Forests (Timber) Act 2004. This was done and is still being done by clearfelling the forests which have been found to support rare and sensitive wildlife (Delegate River headwaters and Stony Creek). The Act requires VicForests and the contractor to comply with the Code of Forest Practices (CFP) and consequently the EGFMP. This obligation is mandatory. (see Attachments B & C, the notices given to DSE manager Orbost and VicForests representatives at the Survey Road logging site).*

*However, Cameron McDonald is right in one regard - that SPZs are the responsibility of the DSE.*

*When the species were identified on Brown Mountain by a local biologist in January this year, logging was halted while confirmation surveys were carried out by DSE staff.*

*This precedent should be followed in other areas where similar values have been recorded. Resources can be made available to carry out confirmation surveys for sensitive or rare species. This is the role of DSE, not VicForests.*

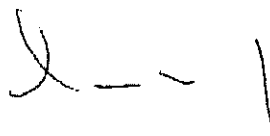
*On the 12th November 2008, Minister Jennings stated in parliament:  
I can confirm it is not inconsistent with the commitment made by the Labor Party in the lead-up to the last election and certainly will not be inconsistent with my intention, which is to deliver beyond the 33 500 hectares of old-growth forests that it was indicated would be added to the reserve system. It is my intention during my tenure as minister responsible for the environment to beat that number and actually have a higher number of areas of old-growth forest incorporated into the reserve system. That is something I am very happy to be measured by at the end of the term.*

*Question time - 12/11/08*

*This was a very welcome announcement and would appear to mean there is room to move. But curiously, it is VicForests that is dictating to government.*

*As VicForests is refusing to 'take appropriate action' and adhere to section 45 and 46 of the Sustainable Forests (Timber) Act 2004, we ask, as a matter of great urgency, that you force VicForests to take immediate action to halt logging in areas which have been shown to support rare or sensitive species. This cannot be left to their discretion.*

*We also ask that in the long term, serious reassessment be given to introducing prelogging surveys in areas planned for clearfelling, especially in light of the lack of*



*pledged surveys for wildlife under the RFA and the winding back of resources generally for conservation research. If the Spot-tailed Quoll were any indication, it would appear that even in its last stronghold in East Gippsland, it is not as extinction proof as people assume.*

*We ask that you treat this letter as a matter of urgency."*

Now produced and shown to me and marked "JR-33" is a true copy of the letter.

37. On 6 May 2009, I received by email a letter from Dr Peter Appleford, Executive Director Forests and Parks which said, omitting the formal and irrelevant parts:

*"Thank you for your email of 17 April 2009 to the Minister for Environment and Climate Change, the Hon Gavin Jennings MLC, regarding the pending regeneration burn to be conducted at the recently harvested Brown Mountain Creek coupe. The Minister has asked that I reply on his behalf.*

*I am advised by VicForests that a regeneration burn was conducted in coupe 840-502-0020 (The Walk) in late April and that no further regeneration burns are planned in the Brown Mountain Creek area this season."*

Now produced and shown to me and marked "JR-34" is a true copy of the letter.

38. On 17 July 2009, I sent an email to Steve Henry, officer of DSE, which said, omitting the formal and irrelevant parts:

*"Hi Steve,*

*1) can you tell me if the moratorium extends to all coupes in the Legge Rd/Errinundra Rd/Postmans Track section? That would include 840-502 - 26, 27 and 09.*

*2) Also - any news on the Yalmy Potoroo find yet and the protection of that prime habitat?"*

Now produced and shown to me and marked "JR-35" is a true copy of the email.

39. Subsequent to the email I sent referred to in paragraph 38 above, I had a telephone conversation with Steve Henry, officer of DSE, in which he told me that the answer to my email was "no", the moratorium only covered the two coupes that were surveyed.



40. On 12 August 2009, EEG sent a letter to the Minister which said, omitting the formal and irrelevant parts:

*"Environment East Gippsland ("EEG") sent you letters on 29 January 2009 and 16 March 2009 asking you to make an interim conservation order pursuant to section 26 of the Flora and Fauna Guarantee Act 1988 to conserve the critical habitat of the Long-footed Potoroo, the Sooty Owl, the Powerful Owl and the Orbost Spiny Crayfish.*

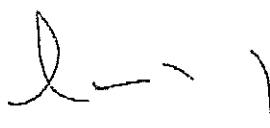
*In those letters, I told you that EEG retained Dr Charles Meredith to prepare a report on the ecological values of the area of critical habitat and that the report would be provided to you. Please find attached Dr Meredith's report, which supports a determination that an interim conservation order should be made.*

*EEG is concerned that area within the critical habitat is to be logged imminently. As a result, we urge you to prioritise this matter and make the decision expeditiously. Further, we understand it is within your power under the Sustainable Forests (Timber) Act 2004 to disallow the logging. We urge you to not allow the logging to take place and at least until you have made your decision regarding the making of an interim conservation order."*

Now produced and shown to me and marked "JR-36" is a true copy of the letter.

41. I instructed EEG's solicitors, Bleyer Lawyers, to hand deliver the letter referred to at paragraph 40 above and its enclosure to the Minister. I am informed and I believe that at about 10:00am on 12 August 2009, Sophie Bird of Bleyer Lawyers attended 8 Nicholson Street, East Melbourne in the State of Victoria to deliver the letter and its enclosure at which time Ms Bird was told that the Defendant was located at 50 Lonsdale Street, Melbourne in the State of Victoria. I am informed and I believe that Ms Bird then attended 50 Lonsdale Street, Melbourne at about 10:10am and delivered the letter and its enclosure.
42. On 12 August 2009, EEG also sent a letter to the Secretary of the DSE which said, omitting the formal and irrelevant parts:

*"Environment East Gippsland ("EEG") sent you letters on 29 January 2009 and 16 March 2009 asking you to make a decision to list specified habitat as critical to the*



survival of all or any one or more of the Long-footed Potoroo, the Spot-tailed Quoll, the Sooty Owl, the Powerful Owl and the Orhost Spiny Crayfish under section 20 of the Flora and Fauna Guarantee Act 1988.

In those letters, we told you that EEG retained Dr Charles Meredith to prepare a report on the ecological values of the area of critical habitat and that the report would be provided to you. Please find attached Dr Meredith's report, which supports a determination that the specified area is critical habitat.

EEG is concerned that area within the critical habitat is to be logged imminently. As a result, we urge you to prioritise this matter and make the decision expeditiously. Further, we understand it is within your power under the Sustainable Forests (Timber) Act 2004 to disallow the logging. We urge you to not allow the logging to take place and at least until you have made your decision regarding listing the specified habitat as critical."

Now produced and shown to me and marked "JR-37" is a true copy of the letter.

43. I instructed Bleyer Lawyers to hand deliver the letter referred to at paragraph 42 above and its enclosure to the Secretary. I am informed and I believe that at about 10:00am on 12 August 2009, Ms Bird attended 8 Nicholson Street, East Melbourne in the State of Victoria and delivered the letter and its enclosure.
44. On 12 August 2009, EEG also sent a letter to the federal Minister for Environment, Heritage & the Arts which said, omitting the formal and irrelevant parts:

"Environment East Gippsland ("EEG") sent you letters on 29 January 2009 and 16 March 2009 asking you to make a decision to list specified habitat as critical to the survival of both or either of the Long-footed Potoroo and the Spot-tailed Quoll under section 207A of the Environment Protection and Biodiversity Conservation Act 1999.

In those letters, I told you that EEG retained Dr Charles Meredith to prepare a report on the ecological values of the area of critical habitat and that the report would be provided to you. Please find attached Dr Meredith's report, which supports a determination that the specified area is critical habitat. In addition, given some content of the report, the specified habitat should be listed as critical to the survival of the Large Brown Tree Frog in addition or alternatively to the species referred to above.

EEG is concerned that area within the critical habitat is to be logged imminently. As a result, we urge you to give this matter priority and make the decision expeditiously.



*Further, if it is within your power to do so, we urge you to ensure that logging of any area within the critical habitat does not take place and at least until you have made your decision regarding listing the specified habitat as critical."*

Now produced and shown to me and marked "JR-38" is a true copy of the letter. The letter was sent by postal mail.

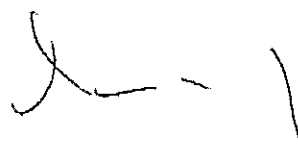
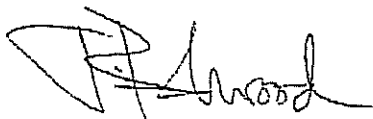
45. The reports of Dr Meredith attached to the letters referred to at paragraphs 40, 42 and 44 of this my affidavit comprise two different reports. The same report was sent to the Minister and to the Secretary of the DSE and is titled "Assessment of Critical Habitat for Six Species Under the Flora and Fauna Guarantee Act in the Bonang-Goongerah Area, East Gippsland, Victoria" ("the State Report"). Now produced and shown to me and marked "JR-39" is a true copy of the State Report.
46. The first page of the State Report indicates that the State Report is dated April 2009. EEG received an earlier version of the State Report. After EEG's receipt of the earlier version of the State Report, EEG instructed Bleyer Lawyers to send a letter to Dr Meredith which said, omitting the formal and irrelevant parts:

*"We confirm we act for Environment East Gippsland.*

*We have received your reports titled "assessment of critical habitat for six species under the Flora and Fauna Guarantee Act in the Bonang-Goongerah Area, East Gippsland, Victoria" and "assessment of critical habitat under the EPBC Act for three species in the Bonang-Goongerah area, East Gippsland, Victoria", for which we thank you.*

*Our client has perused the reports and makes the following comments:*

- (a) *in determining whether the subject area is critical habitat for each of the species, the recent Victorian bushfires have not been taken into account. Our client hopes the recent bushfires can be considered in respect of each of the species. We attach a report by Chris Belcher which was published in the Victorian Naturalist Vol 124, Issue 5, pp.313-315 in October 2007 which addresses the impact of the bushfires on the Spot-tailed Quoll; and*
- (b) *the Long-footed Potoroo has been found in the Brown Mountain and Stoney Creek areas, which form part of the critical habitat area. Our client is*



*concerned that these findings have not been included in the map in the reports which identifies areas of the Long Footed Potoroo habitat. We refer to the Victoria Wildlife Atlas which report these findings.*

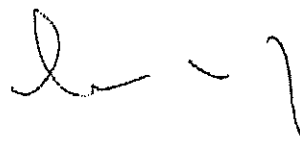
*We are instructed to request that you consider the matters set out at paragraphs (a) and (b) above and let us know whether there are further matters to comprise an addendum to your reports."*

Vanessa Bleyer of Bleyer Lawyers provided me with a copy of the letter and informed me and I believe that it was sent to Dr Meredith on 7 July 2009. Now produced and shown to me and marked "JR-40" is a true copy of the letter.

47. Seemingly as a result of the letter referred to at paragraph 46 above, an amended version of the State Report was produced by Dr Meredith, which is the final version of the State Report and the version referred to at paragraph 45 of this my affidavit. Ms Bleyer informed me and I believe that the final version of the State Report was delivered to Bleyer Lawyers on CD Rom on about 31 July 2009.
48. The report that was sent to the federal Minister for the Environment, Heritage and the Arts is titled "Assessment of Critical Habitat Under the EPBC Act for Three Species in the Bonang-Goongerah Area, East Gippsland, Victoria" ("the Federal Report"). Now produced and shown to me and marked "JR-41" is a true copy of the Federal Report.
49. The Federal Report is dated April 2009. The Federal Report was subject to the same process as the State Report referred to at paragraphs 46 and 47 of this my affidavit and so the final version of the Federal Report is that referred to at paragraph 48 of this my affidavit and the one that was delivered to Bleyer Lawyers on CD Rom on about 31 July 2009.

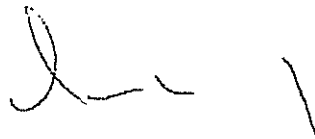
50. On 19 August 2009, EEG instructed Bleyer Lawyers to send a letter to the Defendant which said, omitting the formal and irrelevant parts:

1. *"We act for Environment East Gippsland Inc.*
2. *We refer to the letters that our client sent to you on 29 January 2009, 16 March 2009 and 12 August 2009, asking you to make an interim conservation order pursuant to s26 of the Flora and Fauna Guarantee Act 1988 ("the Act") to conserve the critical habitat of the Long-footed Potoroo, the Sooty Owl, the Powerful Owl and the Orbost Spiny Crayfish.*
3. *Our client is concerned that logging is imminent in the area known as Brown Mountain and in particular in the area marked number 1 in the map attached to our client's 29 January letter. In the absence of an Interim Conservation Order, our client fears that logging will shortly commence.*
4. *If logging occurs within the coupe, the critical habitat, which is the subject of our client's application for an Interim Conservation Order, will be destroyed and the opportunity for an Interim Conservation Order will be lost irrevocably. The failure to make an Interim Conservation Order before logging starts entails, as a matter of substance, a decision by you to refuse to make an order under s26 of the Act. Alternatively, you have failed to consider whether to exercise the power under s26.*
5. *The report of Dr Charles Meredith, provided to you under cover of our client's letter of 12 August, conclusively states that Brown Mountain is a critical habitat of the listed threatened species referred to in paragraph 2 of this letter and that logging would destroy that critical habitat. Other expert reports that our client provided to you in early 2009 make findings in support of Dr Meredith's conclusions. To the best of our client's knowledge there is no scientific or other evidence to the contrary.*
6. *In the circumstances, your decision to refuse an Interim Conservation Order, or alternatively your failure to consider whether or not to make such an order, is infected by legal error in that:*
  - (a) *the question of whether Brown Mountain is critical habitat is a jurisdictional fact for the purposes of s26. On the evidence, Brown Mountain is and forms part of critical habitat for the listed species referred to in paragraph 2 above, and where critical habitat of a listed species exists and is threatened, the Act, properly construed, imposes an obligation and/or duty to make an Interim Conservation Order. We note the obligation to act in accordance with the conservation values expressed in the objects of the Act in s4. You have failed to discharge that duty.*



- (b) *in making your decision to refuse an Interim Conservation Order, or alternatively to consider whether to make an Interim Conservation Order, you have failed to take into account relevant considerations including:*
- i. the identity of listed threatened species;*
  - ii. the risk to those species if logging occurs;*
  - iii. the Report of Dr Meredith; and*
  - iv. whether the logging of Brown Mountain will comply with the Code of Practice for Timber Production 2007.*
- (c) *the threatened logging is inconsistent with and/or in breach of the Code of Practice for Timber Production 2007 and/or coupe plan in that it would be logging that is contrary to, among other things, the conservation of biodiversity and the East Gippsland Forest Management Plan and so is not authorised under the Sustainable Forests (Timber) Act 2004.*
- (d) *alternatively, you have failed and or refused to perform the duty to consider whether or not to make an Interim Conservation Order in respect of the habitat on Brown Mountain.*
7. *In the circumstances, your failure to make an Interim Conservation Order or to consider whether to make such an order is unlawful. We seek an undertaking that you will:*
- (a) consider again whether or not to make an Interim Conservation Order in respect of the critical habitat at Brown Mountain; and*
  - (b) prevent logging on Brown Mountain until a decision is made by you on whether to make an Interim Conservation Order; and*
  - (c) notify us in writing of your decision and reasons for it.*
8. *In the absence of those undertakings, we request that you give us 14 days written notice before logging of Brown Mountain will take place in order that we can apply to the Court to review your decision to refuse an Interim Conservation Order or alternatively your failure to consider whether or not to exercise that power.*
9. *We require your response to paragraphs 8 and 9 of this letter by midday on Friday, 21 August 2009 failing which we are instructed to proceed to make the necessary application to the Court including for urgent interlocutory relief and this letter may be produced including on the question of costs."*

Now produced and shown to me and marked "JR-42" is a true copy of the letter which Ms Bleyer of Bleyer Lawyers provided to me.



51. Ms Bleyer informed me and I believe that at about 12:45pm on 19 August 2009, Brooke Caddell of Bleyer Lawyers attended 50 Lonsdale Street Melbourne in the State of Victoria to hand deliver the letter referred to in paragraph 50 of this my affidavit. Ms Caddell handed the letter to a lady who apparently worked with or for the Minister and who said her name is Zoe.
52. On 20 August 2009, Ms Bleyer informed me and I believe that Bleyer Lawyers received a letter from Kimberley Dripps of the DSE which said, omitting the formal and irrelevant parts:

*"Thank you for your letter of 19 August 2009 to the Minister for Environment and Climate Change, Gavin Jennings MLC, regarding the making of an Interim Conservation Order under section 26 of the Flora and Fauna Guarantee Act 1988. As this matter falls within my area of responsibility, the Minister has asked that I respond on his behalf."*

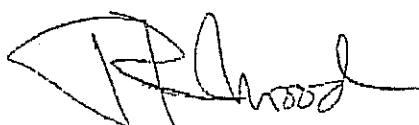
*The correspondence to the Minister from Environment East Gippsland Inc. regarding this matter was received by the Department of Sustainability and Environment late last week. It included the detailed report by Dr Charles Meredith to which you refer. It is currently under consideration."*

Now produced and shown to me and marked "JR-43" is a true copy of the letter which Ms Bleyer provided to me.

53. On 21 August 2009, EEG instructed Bleyer Lawyers to send a letter to Ms Dripps which said, omitting the formal and irrelevant parts:

1. *"We refer to your letter dated 20 August 2009 which acknowledges the Minister's receipt of our letter dated 19 August 2009 and wherein you say, among other things, that:*

*The correspondence to the Minister from Environment East Gippsland Inc. regarding this matter was received by the Department of Sustainability & Environment late last week. It included the detailed report by Dr Charles Meredith to which you refer. It is currently under consideration."*



2. *We understand the above extract from your letter to say that Dr Meredith's report is "currently under consideration". Please let us know that our understanding is correct or otherwise tell us the proper interpretation of that part of your letter.*
3. *Regrettably, your 20 August letter does not properly respond to our 19 August letter. In particular, we have not received any response to our request from the Minister for undertakings that the Minister will:*
  - (a) *consider again whether or not to make an Interim Conservation Order in respect of the critical habitat at Brown Mountain; and*
  - (b) *prevent logging on Brown Mountain until a decision is made by [the Minister] on whether to make an Interim Conservation Order; and*
  - (c) *notify us in writing of [the Minister's] decision and reasons for it.*

*(paragraph 7 of our 19 August letter.)*
4. *In addition, we have not received a response to our request that, in the absence of the undertakings referred to at paragraph 3 above:*

*[the Minister] give us 14 days written notice before logging of Brown Mountain will take place in order that we can apply to the Court to review [the Minister's] decision to refuse an Interim Conservation Order or alternatively [his] failure to consider whether or not to exercise that power.*

*(paragraph 8 of our 19 August letter.)*
5. *Our client is grateful to have received some correspondence arising from our 19 August letter. However, given the inadequacy of your 20 August letter, our client is not relieved from making the necessary application to the Court as referred to in paragraph 9 of our 19 August letter.*
6. *We are instructed to continue to prepare to apply to the Court and to do so within 7 days, to allow for a proper response to our 19 August letter. A lack of response or one that remains insufficient will:*
  - (a) *not be in the interests of justice or the Court as this matter might otherwise have been resolved, at least at this stage, without the need for litigation;*
  - (b) *not be consistent with the Model Litigant Guidelines in the State of Victoria including the requirement to "avoid litigation"; and*
  - (c) *cause us to rely on this letter on the question of costs.*

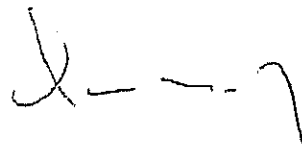
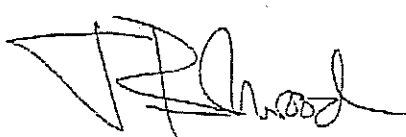
7. *We note that if any decision is made sooner than 7 days that is adverse to an interim conservation order before made in respect of any part of the subject area, we are instructed to apply to the Court for urgent interlocutory relief."*

Now produced and shown to me and marked "JR-44" is a true copy of the letter which Ms Bleyer provided to me.

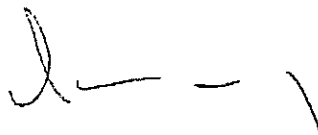
54. Ms Bleyer advised me and I believe that at the time of swearing this my affidavit no response has been received to the letter referred to at paragraph 53 above.

C. The decision to log and imminence

55. On 21 August 2009, the Minister produced a media statement that provides, among other things, that a number of contentious timber harvesting coupes around Brown Mountain Creek, to the east of Brown Mountain (namely those coupes which are the subject of this proceeding) would remain available to harvesting and that VicForests would be allowed to recommence timber harvesting at Brown Mountain under modified conditions. Now produced and shown to me and marked "JR-45" is a true copy of the media statement.
56. On Friday, 21 August 2009, I was on my property at 6800 Bonang Rd, Goongerah, looking at the road named Bonang Road. Logging trucks and trucks that move logging machinery frequently pass my property on their way to and from State forest in East Gippsland including Brown Mountain. I saw a low loader which is a type of truck that moves the heavy logging machinery driving on the road which takes you to Brown Mountain on Friday.



57. I regularly explore State forest in East Gippsland. I am aware through what I have seen myself that there is currently logging machinery in East Gippsland in the vicinity of Brown Mountain and that logging is taking place near Brown Mountain.
58. On 24 August 2009, I heard on ABC Gippsland radio an interview by presenter Celine Fernanda with the Minister. The Minister said words to the effect that:
- (a) he didn't have the compelling evidence to prevent VicForests from being able to undertake their contractual timber harvesting operations in that parcel of forest in the Brown Mountain area;
  - (b) there was no evidence within the survey [that was conducted by DSE] that they [the Long-footed Potoroo] were evident in this parcel of forests;
  - (c) he had seen that morning in the Melbourne papers that there was a photograph taken at 3am on Friday morning of a Long-footed Potoroo;
  - (d) he was pretty interested to know the authenticity of that photograph;
  - (e) all the surveys that the government has undertaken up until now have not produced evidence that there were Long-footed Potoroos in that site;
  - (f) he would expect VicForests to undertake surveys so that the community can have confidence about what the contemporary evidence of what fauna values might be within a certain location;
  - (g) he was very keen to know what those values are before timber harvesting takes place and he had reminded VicForests of that;
  - (h) having said that, the surveys that were undertaken this year do indicate that whilst some protection is warranted along stream side buffers the evidence wasn't such that



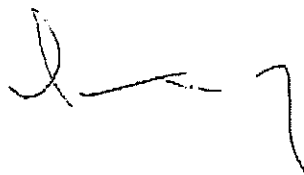


to indicate that it's not appropriate for VicForests to undertake its contracted obligations to provide timber.

59. On 24 August 2009, I had a telephone conversation with Mr Barry Vaughan, regional manager, VicForests. I asked him when VicForests was going to log Brown Mountain. He said words to the effect that:

- (a) the decision whether or not VicForests could log Brown Mountain was a matter in the hands of DSE;
- (b) logging of Brown Mountain was under a moratorium, that is, suspended until further notice;
- (c) despite the Government's media release, VicForests hadn't formally been given the go-ahead from DSE;
- (d) DSE will give the green light and then VicForests will schedule it in as part of an annual plan for a contractor;
- (e) the decision when to log Brown Mountain depends on the season and VicForests' annual wood flows;
- (f) VicForests hadn't got logging of Brown Mountain pencilled in for anything immediate; and
- (g) he would be reluctant to inform me when it will be logged, because doing so would result in protest activity.

60. On 25 August 2009, EEG instructed Bleyer Lawyers to send a letter to the Defendant which said, omitting the formal and irrelevant parts:



2. "We enclose Writ issued out of the Supreme Court of Victoria, by way of service.

*Undertaking sought*

3. The proceeding seeks injunctive and declaratory relief in relation to proposed logging operations in certain coupes on Brown Mountain, in Gippsland, Victoria being the logging coupes 840-502-0015, 840-502-0019, 840-502-0026, 840-502-0027, 840-501-0033, 840-501-0034 ("the coupes").

4. Our client is concerned that logging is imminent in the coupes and that if logging occurs the subject matter of the proceeding will be destroyed and the proceedings rendered nugatory. Accordingly our client seeks an undertaking that Vicforests will not log any of the coupes pending the outcome of the proceeding.

5. Please let us know by 4pm 27 August 2009 whether Vicforests will give such an undertaking. In the absence of an undertaking we are instructed to apply to the Court for urgent interlocutory relief and this letter may be produced including on the question of costs.

*Informal preliminary discovery*

6. Our clients are keen to progress this proceeding quickly. There are a number of documents that are relevant to the proceeding that are not publicly available and/or that we believe are in the possession, custody or power of Vicforests.

7. Please provide us with a copy of each of the following documents within 21 days:  
(a) the coupe plan for any or all of the coupes (including each part of any coupe plan which has been produced in parts);

(b) all documents produced or received by VicForests since June 2009 which are relevant to when any or all of the coupes will be logged (excluding the Timber Release Plan for the coupes which is already in the possession of our client);

(c) all documents relevant to the recent review by the Department of Sustainability and Environment ("DSE") to determine the need for a special protection zone to protect the habitat of the Greater Glider and Yellow-bellied Glider located near Brown Mountain Creek and referred to in the media release produced by the Minister for Environment and Climate Change on Friday, 21 August 2009 (excluding the DSE Survey report dated January - March 2009 which is already in the possession of our client);

(d) all documents relevant to the modification to the conditions that Vicforests is subject to when logging at Brown Mountain as referred to in the above media release; and

(e) the current map or plan showing all of the current special protection zones and special management zones in East Gippsland and the values protected by those zones.

8. If you fail to respond to paragraph 7 above within the specified time and/or to the satisfaction of our client, we will seek instructions to make an application for the production or discovery of these documents and this letter may be produced including on the question of costs.

Now produced and shown to me and marked "JR-46" is a true copy of the letter which Ms Bleyer provided to me.

61. On 27 August 2009, Bleyer Lawyers received a letter from Komesaroff Legal Pty Ltd which said, omitting the formal and irrelevant parts:

*"We act for VicForests.*

*We have been given a copy of your letter to VicForests dated 25 August 2009 to which a Writ issued out of the Supreme Court of Victoria is attached.*

*The court proceeding commenced by your client is misconceived and irregularly constituted.*

*In the circumstances, VicForests is unwilling to provide your client with the undertaking requested in paragraph 4 of your letter. Furthermore, VicForests is not prepared to provide your client with copies of those documents that are in its possession and that are referred to in paragraph 7 of your letter.*


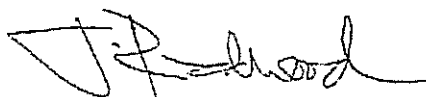
*By way of information, subject to weather conditions, VicForests intends to commence its planned harvesting next week.*

*Please note that we expect to be notified of any further applications made by your client in this proceeding. This letter may be produced on the question of costs."*

Now produced and shown to me and marked "JR-47" is a true copy of the letter which Ms Bleyer provided to me.

62. On 27 August 2009, EEG instructed Bleyer Lawyers to send a letter to the Minister, a copy of which was sent to the Defendant's solicitors, which said, omitting the formal and irrelevant parts:

*"We act for Environment East Gippsland Inc (EEG). This is an open letter.*



We confirm that we provided you with a copy of the Writ issued by our client against VicForests and a copy of the letter that we sent to VicForests serving the Writ on 25 August 2009.

We have been informed this afternoon by correspondence from the solicitor acting on behalf of VicForests that it intends to commence its planned harvesting next week, and that it will not give an undertaking to refrain from logging in the coupes on Brown Mountain identified in the Writ.

We ask that as a matter of urgency you make an interim conservation order under s26 of the Flora and Fauna Guarantee Act over the coupes identified in the Writ. There is ample basis for such an order taking into account the recorded footage of a Long-footed Potoroo, the DSE glider surveys, the surveys provided to you by EEG earlier this year and Dr Meredith's reports.

DSE informed us on your behalf last Thursday, 20 August 2009 that EEG's application for an interim conservation order remains under consideration.

In all these circumstances, the confrontational attitude of VicForests precludes any agreed interim position and we submit the precautionary principle demands that you act to stop VicForests from logging these areas. The Code of Practice and the Action Statements for the species involved simply do not allow for logging to occur in circumstances such as the present.

We ask that you respond in writing to our request by 5pm tomorrow, Friday, 28 August 2009.

Now produced and shown to me and marked "JR-48" is a true copy of the letter which Ms Bleyer provided to me.

**D. Listed threatened species**

63. The listed threatened species referred to in the letters to the Minister and in the State Report listed under the *Flora & Fauna Guarantee Act 1988* (Vic) are as set out in the table below and were listed on the dates identified in the table.

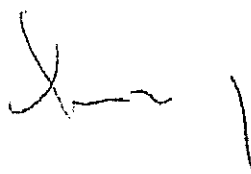
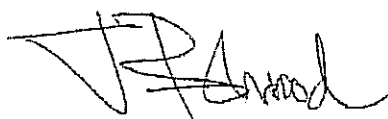
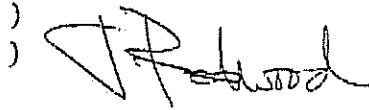


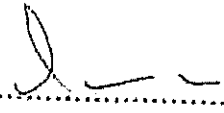
Table of listed threatened species

Item	Listed threatened species	Date listed
1	Long-footed Potoroo (or Potorous longipes)	29 June 2000
2	Spot-tailed Quoll (or Dasyurus maculatus)	29 June 2000
3	Powerful Owl (or Ninox strenua)	29 June 2000
4	Orbost Spiny Crayfish (or Euastacus diversus)	29 June 2000

Now produced and shown to me and marked "JR-49" is a copy of the listing of each of the listed threatened species referred to in the table.

Sworn at Geongerah in the State of Victoria  
this 28<sup>th</sup> day of August 2009

) 

Before me:  .....

Peter May School Principal  
Geongerah P-8 School