

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE

No. 8547 of 2009

COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST

BETWEEN

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

and

VICFORESTS

Defendant

## AFFIDAVIT OF CAMERON MACDONALD

Date Sworn: 2 September 2009

Filed on behalf of the Defendant

**HWL Ebsworth Lawyers as agents for Komesaroff  
Legal Pty Ltd**  
Level 21, 570 Bourke Street  
Melbourne · VIC 3000

Solicitor Code: 179

DX: 564, Melbourne

Tel: (03) 8633 7500

Fax: 1300 365 323

Ref: JAK:RVH:182227

Email: [jonathan.kramersh@hwlebsworth.com.au](mailto:jonathan.kramersh@hwlebsworth.com.au)

I, Cameron MacDonald of Level 7, 473 Bourke Street, Melbourne in the State of Victoria, make oath and say as follows:

1. I am the Director – Strategy and Corporate Affairs at VicForests, the Defendant in this proceeding and am duly authorised to swear this affidavit on its behalf.
2. I make this affidavit on behalf of VicForests. I make this affidavit from my own knowledge unless otherwise indicated. Where I depose to matters from information and belief, I believe those matters to be true.
3. I refer to the affidavit sworn by me on 31 August 2009 and filed on behalf of the Defendant (**First Affidavit**). The last exhibit referred to in the First Affidavit is marked **CM13**. As a result, the first exhibit referred to in this affidavit is marked **CM14**.

### **VicForests 2009-2010 Harvesting Plans at Brown Mountain**

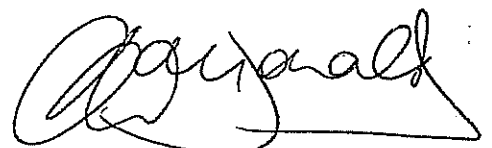
4. In high elevation areas similar to Brown Mountain, harvesting of timber is best undertaken between October and March each year. This is because, between the months of April and September, there is an increased likelihood of rainfall and snowfall.



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5. In addition, between April and September, there are shortened daylight hours which limits the number of working days available to operate within the parameters set out in the Code of Practice for Timber Production. The Code of Practice for Timber Production is referred to in the First Affidavit and is marked **CM10**.
6. Because of the matters set out in paragraphs 4 and 5 above, between April and September each year, there is a significant reduction in contractor productivity. As a result, VicForests's usual practice is to relocate contractors to lower elevation areas over the winter months.
7. In 2009, the East Gippsland area has experienced an unseasonably mild winter. This has presented VicForests with the opportunity to commence harvesting in September in coupes 840-502-0015 and 840-502-0019. In my experience, it would be in VicForests best interests to commence harvesting in September this year because there is always the prospect of a wet summer in the East Gippsland area due to the prevailing easterly weather patterns experienced in the region in December each year. VicForests's actual harvesting is already behind budget for the first two months of the financial year 2009 to 2010.
8. Each month-long delay shortens the available period available to VicForests to commence and complete harvesting. This, in turn, exposes VicForests to greater risks which are not in VicForests control – for example, prolonged bushfires would result in diverting contracting resources to suppression efforts and inclement weather conditions may mean that harvesting does not commence on time or at all. This would result in a production shortfall against VicForests's contractual commitments. In my experience, if VicForests has not met 50% of its contractual commitments by Christmas, then the contractual commitments will not be met at all.
9. During 2006 - 2007 a moratorium was placed on harvesting areas that were included in the November 2006 Australian Labor Party Election policy that committed an additional 41,000 ha of old growth forests to the formal reserve system. In December 2006, devastating bushfires in the Alpine National Park curtailed production whilst contractors were engaged in fire suppression efforts until the fires were contained in February 2007. The combination of both of these factors meant that sawlog production in 2006/07 was significantly below sales commitments which had major financial implications for VicForests and the local timber industry. Now produced and shown to me and marked **CM14** is a chart which sets out actual sawlog production figures from East Gippsland FMA for the last four financial years.
10. Now produced and shown to me and marked **CM15** is a chart which sets out VicForests monthly production schedule for the 2009 - 2010 financial year. In my experience, the months of September to November are critical in VicForests meeting its budgeted harvest. A delay of up to six months would mean that VicForests would not be able to meet contractual commitments. VicForests would also experience a loss of profits.



11. In the event that VicForests experiences a production shortfall against VicForests' contractual commitments, VicForests is unlikely to be able to make up the shortfall by harvesting lower sawlog yielding-forest in alternative production areas. There is no high sawlog yielding forest that could be harvested as an alternative to coupes 840-502-0015 and 840-502-0019. This is because VicForests schedules a representative sample of coupes in the Timber Release Plan across all forest contained in an Allocation Order. This is done in order to ensure sustainability and to ensure that VicForests does not seek to maximise short term gains by harvesting the highest sawlog yielding coupes. Now produced and shown to me and marked **CM16** is the Timber Release Plan for the East Gippsland area for the years 2009 to 2014. A significant proportion of high yielding coupes are planned to be harvested from the Brown Mountain Area. In my experience, a Timber Release Plan requires at least six months to prepare and requires significant consultation with the Department of Sustainability and Environment. Seeking approval to harvest alternative coupes and the harvesting of alternative coupes would not be achievable before the end of this financial year.
12. Now produced and shown to me and marked **CM17** is a table I have prepared which sets out the increase in loss of profit over the periods of two weeks, one month, three months and six months. The first table is calculated by comparing coupes 840-502-0015 and 840-502-0019 to available alternative coupes should harvesting not commence this financial year. The second table is calculated by taking the budgeted yield for coupes 840-502-0015 and 840-502-0019 and discounting that yield by reference to projected yields over a two week, one month, three month and six month period. Exhibit **CM17** contains commercially sensitive information that is not in the public domain. Accordingly, I request that this Honourable Court order that this exhibit be kept confidential and that access to it be restricted to the external solicitors and counsel acting for the parties.

### Sooty Owl

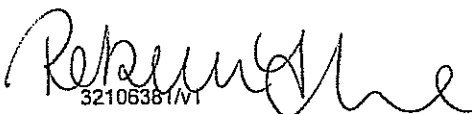
13. For convenience, I note that Chapter 3 of the East Gippsland Forest Management Plan (the **EGFMP**) (exhibit **VEB 11** to Vanessa Bleyer's affidavit sworn on 24 August 2009) relevantly reads:

*Powerful, Sooty and Masked Owls. Good-quality habitat to support at least 100 pairs of each species will be maintained in the FMA. The target of 100 pairs will be apportioned to Geographic Representation Units, according to the amount of suitable habitat in each unit (see Appendix J). Conservation reserves and State forest will both contribute to conservation of owl habitat. Areas that count towards meeting the target include:*

*\* known owl localities in conservation reserves;*

*\* parts of the SPZ and SMZ designed around known owl localities in State forest; and*

*\* a conservative estimate of the extent of habitat in conservation reserves, or in larger parts of the SPZ and SMZ (based on other features such as old-growth forest).*

  
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*Good quality habitat for a pair of each species is defined as follows (the home ranges of different species can overlap):*

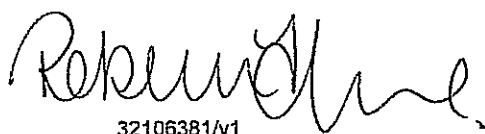
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*Sooty Owl habitat – approximately 500 ha of forest dominated by old trees and generally comprising Lowland, Damp and Riparian Forest, and Warm Temperate Rainforest. Where the SPZ or SMZ is based on a known owl locality the 500 ha is to be located within a 1000 ha area that includes the detection site.*

14. There are 131 Sooty Owl Management Areas (**SOMAs**) in the East Gippsland Forest Management Area equating to 26% of the state-wide target for this species and 10,986 km<sup>2</sup> of forested land (see Table 1 on page 4 of the Action Statement for the Sooty Owl which is exhibit **VEB16**).
15. Now produced and shown to me and marked **CM18** is a copy of Appendix J to the EGFMP.
16. I note for convenience that on page 126 of Appendix J it states that there is a Special Protection Zone (890/06) in the Gap Scenic Reserve.
17. In addition, VicForests will be marking habitat trees for retention with the assistance of DSE Biodiversity Officers to ensure that optimal trees are retained in the affected coupes. The 100m buffer along Brown Mountain Creek, where high densities of arboreal mammals were recorded will therefore retain suitable foraging habitat for the Sooty Owl which feed on these animals.
18. I note for convenience that VicForests' intention to mark habitat trees for retention was the subject of correspondence with the DSE (see exhibit **CM 11** to the First Affidavit).

#### **Large Brown Tree Frog**

19. To my knowledge and experience, large brown tree frogs are usually found in deeply forested stream gullies.

  
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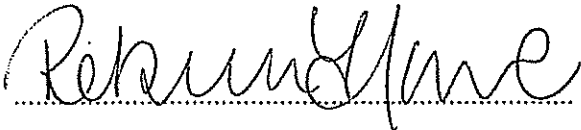
**The Meredith Report**

20. I have made enquiries of all relevant staff within VicForests about the Meredith Report and as a result of that believe that the first time VicForests received the Meredith Report was when it was served with the affidavit material in this proceeding.

SWORN at MELBOURNE

on 2 September 2009

Before me:





.....  
Cameron MacDonald

**Rebecca Veronica Howe**  
Level 21, 570 Bourke Street, Melbourne  
An Australian Legal Practitioner  
(within the meaning of the  
Legal Profession Act 2004)