

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
VALUATION, COMPENSATION AND PLANNING LIST

S ECI 2021 01527

BETWEEN:

ENVIRONMENT EAST GIPPSLAND INC
(ABN 30 865 568 417)

Plaintiff

- and -

VICFORESTS

Defendant

ORDER

JUDGE: The Honourable Justice Richards

DATE MADE: 11 November 2022

ORIGINATING PROCESS: Writ filed 11 May 2021

HOW OBTAINED: At trial

ATTENDANCE: Mr J Korman with Dr K Weston-Scheuber for the plaintiff

Mr P Solomon KC with Mr O Ciolek and Ms H Douglas for the defendant

OTHER MATTERS:

A. These Orders are made to give effect to the Court's **judgment** in *Environment East Gippsland Inc v VicForests (No 4)* [2022] VSC 668.

B. In these Orders:

Code means the *Code of Practice for Timber Production 2014 (as amended 2022)*;

Standards means Schedule 1 to the Code, titled *Management Standards and Procedures for timber harvesting operations in Victoria's State forests*;

The following terms have the meaning set out in the Glossary to the Code:

- a. **coupe**;
- b. **timber harvesting operations**;
- c. **waterway**;



East Gippsland FMA means the area covered by the East Gippsland Regional Forest Agreement between Victoria and the Commonwealth, shown in Figure 1 at [48] of the judgment;

Hostile Habitat means land cleared of forest or intensively logged less than 50 years ago and other vegetation types such as heathland, shrubland, woodland, or dry sclerophyll forest;

suitable habitat means habitat that is not Hostile Habitat; and

Suitable Habitat principles means the ten principles set out in Annexure A to these Orders.

THE COURT DECLARES THAT:

1. For the purposes of both the management action for the greater glider and the management action for the yellow-bellied glider in the East Gippsland Forest Management Area in Table 13 of the Standards, a protection area of 100 hectares of suitable habitat should be designed having regard to the Suitable Habitat principles.
2. For the purposes of the management action for the greater glider in the East Gippsland Forest Management Area in Table 13 of the Standards, a substantial population in isolated habitat is at least 20 greater gliders located within 100 hectares of suitable habitat that is surrounded by at least 100 metres' width of Hostile Habitat where any corridors of suitable habitat traversing the Hostile Habitat are less than 100 metres wide.
3. For the purposes of the management action for the yellow-bellied glider in the East Gippsland Forest Management Area in Table 13 of the Standards, a substantial population in isolated habitat is at least two family groups of at least three yellow-bellied gliders located within 100 hectares of suitable habitat that is surrounded by at least 100 metres width of Hostile Habitat where any corridors of suitable habitat traversing the Hostile Habitat are less than 100 metres wide.

THE COURT ORDERS THAT:

1. VicForests must not, whether by itself, its servants, agents, contractors or otherwise, conduct timber harvesting operations in any coupe in the East Gippsland FMA unless the coupe has been surveyed using a reasonably practicable survey method that is likely to:



- (a) detect any greater gliders that may be present in the coupe and, so far as is reasonably practicable, locate their home ranges; and
- (b) detect any yellow-bellied gliders that may be present in the coupe and identify their feed trees and hollow-bearing trees in the coupe.

This Order does not apply to a coupe that has been clear-felled since 1939.

2. VicForests must not, whether by itself, its servants, agents, contractors or otherwise, conduct timber harvesting operations in any coupe in the East Gippsland FMA in which greater gliders have been detected unless:

- (a) it excludes the greater gliders' located home ranges from timber harvesting operations; and
- (b) it excludes from timber harvesting riparian strips at least 100 metres wide located along all waterways in the coupe, with an exclusion area at least 50 metres wide on each side of those waterways; and
- (c) it retains at least 60% of the basal area of eucalypts in the harvested area of the coupe.

3. VicForests must not, whether by itself, its servants, agents, contractors or otherwise, conduct timber harvesting operations in any coupe in the East Gippsland FMA in which yellow-bellied gliders have been detected unless:

- (a) it excludes from timber harvesting riparian strips at least 100 metres wide located along all waterways in the coupe, with an exclusion area at least 50 metres wide on each side of those waterways; and
- (b) it retains at least 60% of the basal area of eucalypts in the harvested area of the coupe, including all identified feed trees and hollow-bearing trees within the coupe.

4. Orders 1, 2 and 3 of these Orders do not restrain VicForests from:

- (a) felling or cutting trees or parts of trees in order to address a serious risk to human safety or as otherwise advised, ordered or directed by a responsible



authority, including the Department of Environment, Land, Water and Planning or Parks Victoria;

- (b) removing and/or selling timber already felled as at 11 November 2022;
- (c) felling trees or parts of trees for the maintenance of any road;
- (d) cutting limbs of trees for the purposes of seed collection;
- (e) regeneration activities after permitted logging; or
- (f) undertaking any work within a coupe to manage or prevent environmental degradation, whether on the instruction, recommendation or direction of the Department of Environment, Land, Water and Planning or as otherwise required to comply with the Code.

5. VicForests has liberty to apply:

- (a) by 25 November 2022, to vary Order 4 of these Orders including, to the extent necessary, to reopen its case in relation to that Order; and
- (b) otherwise, in the event of a material change to the law.

6. The following Orders made in this proceeding are vacated:

- (a) Order 1 of the Orders dated 31 August 2021;
- (b) Orders 1, 2 and 3 of the Orders dated 22 December 2021; and
- (c) Order 1 of the Orders dated 17 August 2022.

7. VicForests is released from the following undertakings:

- (a) the undertaking provided to the Court, by its counsel, as set out in paragraph C of 'Other Matters' section of the Orders dated 24 May 2021; and
- (b) the undertaking provided to Environment East Gippsland Inc. in the letter from Johnson Winter & Slattery (solicitors for the defendant) to Oakwood Legal (solicitors for Environment East Gippsland Inc.) dated 17 September 2021.



8. VicForests is to pay the plaintiff's costs of the proceeding, including any reserved costs, on the standard basis, to be assessed by the Costs Court if not agreed.

DATE AUTHENTICATED: 11 November 2022



M. Richards

THE HONOURABLE JUSTICE RICHARDS

ANNEXURE A – SUITABLE HABITAT PRINCIPLES

In these principles, **gliders** means greater gliders (*Petauroides volans*) and/or yellow-bellied gliders (*Petaurus australis*).

Principle 1 (Precaution, prevention and future proofing). Choice of location, composition, boundaries and management of the protection area should always be guided by the location of populations of the glider to provide greatest opportunity for persistence.

Principle 2 (Presence of gliders). A protection area should include all recent verifiable records of gliders in the immediate vicinity.

Principle 3 (Habitat components). A protection area should include structurally diverse forest, evidenced by (for example) large, mature trees and records of other mature forest dependent species, with few or no signs of previous intensive logging activity.

Principle 4 (Vegetation type). A protection area should include suitable mature forest of appropriate overstorey tree species composition for gliders.

Principle 5 (Size and shape considerations). A protection area should have minimum edge effect (i.e., be round or square, rather than linear) wherever edges are hostile, and maximum distance from edges to glider records.

Principle 6 (protection areas in fragmented landscapes). In extensively and intensively modified zones (i.e., > 50% modified or proposed to be modified to hostile habitat within 1 km of a coupe centre), any remnant of mature forest within 1 km of this point connected to habitat including a threshold number of gliders, regardless of fire history, is to be designated as a protection area.

Principle 7 (Logging history). A protection area should be mature forest and include no hostile habitat and a minimum area (<15% as a continuous block) of immature (50-100 years-old) regrowth.

Principle 8 (Fire history). A protection area can include up to 15% of mature forest impacted by recent intense wildfire where other conditions are met. Once gliders have again established, the entire protection area can be habitat of a single age-since-fire.

Principle 9 (Boundary context). The boundaries of a protection area should be suitable habitat. Therefore, secure reserved mature forest should be prioritised as protection area boundaries.

Principle 10 (Boundary conditions). The boundaries of a protection area should not act as a passageway or be likely to act as conduits for weed invasion, erosion, pest animals or pathogens, and be of mild slope and distant from streams.