

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



S CI 2016 00503

BETWEEN:

ENVIRONMENT EAST GIPPSLAND INC

Plaintiff

- and -

VICFORESTS

Defendant

ORDER

JUDGE: The Honourable Justice Riordan

DATE MADE: 23 December 2016

ORIGINATING PROCESS: Writ filed 12 February 2016

HOW OBTAINED: By minute of consent dated 22 December 2016
provided to the Court on 22 December 2016

ATTENDANCE: No appearance



OTHER MATTERS:

The Court notes that VicForests has deposed, in the Affidavit of Lachlan Raymond Spencer, made 22 December 2016, that:

1. VicForests will not conduct timber harvesting operations, within the meaning of s 3 of the *Sustainable Forests (Timber) Act 2004* in coupe no. 830-507-0020 (known as Webbed Feet) until:
 - (a) the outcome of the second verification survey for Yellow-bellied Gliders conducted by or on behalf of the Department of Environment, Land, Water and Planning ('DELWP') (as described in Exhibit EJH-28 to the Affidavit of Edward Hill, made 22 November 2016) and, in the event that the second verification survey leads to any amendment to the Forest Management Zone scheme ('FMZ'), shall conduct any further timber harvesting operations in accordance with any such amendment;
 - (b) the application of timber harvesting exclusion areas of at least 20 metre diameter width around any Blackfellow's Hemp individuals located in or within 20 metres of Webbed Feet coupe, including the Blackfellow's Hemp detections in the report of Stephen Mueck dated 6 October 2016 that was submitted to DELWP on 13 October 2016 (contained at Exhibit JDA-124 to the Fourth Affidavit of Jeremy Allen made 25 November 2016), and in the event the identification or verification



- of Blackfellow's Hemp in Webbed Feet results in additional management action required by DELWP (including amendment to the FMZ), shall conduct any further timber harvesting operations in accordance with such additional management action and FMZ amendment;
- (c) the notification by DELWP of any FMZ amendment in response to the *Euastacus* Crayfish detections referred to in the email from DELWP to VicForests dated 20 October 2016 (contained in JDA-115 to the Third Affidavit of Jeremy Allen, made 28 October 2016);
 - (d) the completion by or on behalf of DELWP of the investigation into rainforest in Webbed Feet (case reference 2016-0015), and the implementation of any management actions required by DELWP in accordance with the *Code of Practice for Timber Production 2014* ('Code') and *Management Standards and Procedures for timber harvesting operations in Victoria's State forests 2014* ('Management Procedures') as a result of that investigation, including the application of buffers, within the meaning of the Code, consistent with clause 4.4.9.1 of the Management Procedures in respect of all rainforest in and within 40m of Webbed Feet, including any stands of rainforest not previously identified by VicForests;
 - (e) the preparation of a Forest Coupe Plan for Webbed Feet that is consistent with the FMZ amendments, buffers and exclusion areas made to date and as a result of the matters referred to in paragraphs 1(a) to (d) above;
 - (f) the completion of clear marking in the field to exclude timber harvesting operations from any established SPZ, buffer or exclusion area set out in the Forest Coupe Plan prepared in accordance with paragraph 1(e) above.
2. VicForests will not, whether by itself, its servants, agents, contractors or otherwise, conduct timber harvesting operations in coupe number 830-507-0023 (known as Tin Shed) unless a future regeneration stocking survey undertaken in accordance with Section 9.1.1 of the Management Procedures determines that all or parts of the harvested area has not met the stocking standards at Section 9.1.1 of the Management Procedures.
 3. VicForests will provide to the Plaintiff:
 - (a) within 14 days of its final sanction by VicForests, the Forest Coupe Plan for Webbed Feet; and
 - (b) 28 days written notice of the commencement or resumption of any timber harvesting operations in Tin Shed, Webbed Feet and coupe number 830-507-0021 (known as Drop Bear).
 4. The order is made 'on the papers' pursuant to rule 59.07 of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic) and a signed minute of consent has been placed on the court file.
 5. This order is signed by the Judge pursuant to rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic).

THE COURT ORDERS BY CONSENT THAT:

1. Subject to determination of the question of costs, the Plaintiff has leave to discontinue the claims in the proceeding.

2. The proceeding is listed for hearing on the question of costs on 8 February 2017, on an estimate of two days.
3. The Plaintiff shall provide an electronic copy of the Court Book to the Court and to the Defendant by **4.00 pm on 16 January 2017**.
4. The parties shall file and serve any further evidence upon which they intend to rely on the question costs by **4.00 pm on 25 January 2017**.
5. The parties shall file and serve submissions on the question of costs by **4.00 pm on 31 January 2017**.
6. Costs be reserved, including the costs of the hearing on 21 December 2016.
7. There be liberty to apply.

DATE AUTHENTICATED:

23 December 2016

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THE HONOURABLE JUSTICE RIORDAN

