

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



S ECI 2022 01719

BETWEEN:

GIPPSLAND ENVIRONMENT GROUP INC

Plaintiff

v

VICFORESTS

Defendant

ORDERS

JUDGE: The Honourable Justice Ginnane

DATE MADE: 30 November 2022

ORIGINATING PROCESS: Writ filed 13 May 2022

METHOD OBTAINED: At hearing.

ATTENDANCE: Mr J Korman and Dr K Weston-Scheuber of Counsel for the Plaintiff.
Mr P Solomon KC and Ms H Douglas of Counsel for the Defendant.

- OTHER MATTERS:
- A. This order is signed by the Judge pursuant to Rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*.
 - B. The plaintiff by its counsel undertakes to abide by any order that the Court may make as to damages, in case the Court should hereafter be of opinion that the defendant shall have suffered any loss by reason of this order which the plaintiff ought to pay.
 - C. The plaintiff by its counsel undertakes to consent to further orders in this proceeding which give effect to any modification of the Orders dated 11 November 2022 in proceedings S ECI 2021 01527 and S ECI 2021 04204 (the **11 November Orders**) as the result of an application made by VicForests pursuant to the liberty granted in paragraph 5 of the 11 November Orders.
 - D. 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.**

Gippsland FMAs means the area covered by the Gippsland Regional Forest Agreement between Victoria and the Commonwealth, shown in Figure 4 on page 28 of the Code.

THE COURT ORDERS THAT:

1. Until further order, VicForests must not, whether by itself, its servants, agents, contractors or otherwise, conduct timber harvesting operations in any coupe in the Gippsland FMAs 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. Until further order, VicForests must not, whether by itself, its servants, agents, contractors or otherwise, conduct timber harvesting operations in any coupe in the Gippsland FMAs 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. Until further order, VicForests must not, whether by itself, its servants, agents, contractors or otherwise, conduct timber harvesting operations in any coupe in the Gippsland FMAs 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 30 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. Orders 1, 2 and 3 of the Orders made in this proceeding on 27 May 2022 are vacated.
6. Liberty to apply.
7. Costs reserved.

DATE AUTHENTICATED: 1 December 2022



THE HONOURABLE JUSTICE GINNANE