

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 Plaintiff
(ABN 30 865 568 417)

- and -

VICFORESTS Defendant

ORDER

JUDGE: The Honourable Justice Richards

DATE MADE: 22 December 2021

ORIGINATING PROCESS: Writ filed 11 May 2021

HOW OBTAINED: Return of plaintiff's summons filed 15 November 2021, and plaintiff's amended summons filed 29 November 2021

ATTENDANCE: Mr J Korman for the plaintiff
Mr P Solomon QC for the defendant

OTHER MATTERS: The plaintiff, by its counsel, undertook 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.

THE COURT ORDERS THAT:

Interlocutory injunction

1. From 23 December 2021 until further order the defendant must not, whether by itself, its servants, agents, contractors or howsoever otherwise, conduct timber harvesting operations within the meaning of section 2 of the *Sustainable Forests (Timber) Act 2004 (Vic)* (**Timber Harvesting Operations**), in any coupe in East Gippsland, being the area set out in the map at page 26 of Exhibit KAL-2 of the Affidavit of Kwabena Adjei Larbi affirmed 23 November 2021, where there has been a sighting of a Greater Glider in, or within 240 metres of that coupe, known to the defendant.



2. Order 1 does not prohibit the defendant from:
 - (a) felling or cutting trees or parts of trees in order to address a serious risk to human safety; or
 - (b) removing and/or selling timber already felled as at 22 December 2021.
3. Order 1 does not restrain the defendant from conducting Timber Harvesting Operations in any of the coupes identified in the table at paragraph 58 of the Affidavit of Monique Dawson affirmed 24 November 2021 which are located in East Gippsland. For clarity, the coupes in East Gippsland in which the defendant is not restrained from conducting Timber Harvesting Operations are:
 - (a) 833-507-0010 (Rolly)
 - (b) 891-512-0007 (Silver carp)
 - (c) 871-503-0015 (Sharpcorner)
 - (d) 874-512-0010 (All Aboard)
 - (e) 889-506-0021 (Telecom Spur).

Pleadings

4. Any defence to the second further amended statement of claim is to be filed and served by **4:00 pm** on **28 January 2022**.
5. Any reply is to be filed and served by **4:00 pm** on **11 February 2022**.

Trial of separate questions

6. By **4:00 pm** on **17 January 2022**, the plaintiff is to provide the defendant with a statement of each fact that it proposes be an agreed fact for the purposes of the Court's determination of the separate questions.
7. By **4.00 pm** on **18 January 2022**, the plaintiff is to provide the defendant with a document that states, in respect of each expert witness the plaintiff intends to call at the hearing of the separate questions:
 - (a) the area of expertise of the expert witness;
 - (b) the questions that the expert witness will be asked to address; and
 - (c) the facts and assumptions provided to the expert witness.
8. By **4:00 pm** on **28 January 2022**, the defendant is to make discovery of documents created since 1 January 2020 relating to:
 - (a) the methodology for conducting cross-country spotlighting arboreal mammal surveys (spotlighting arboreal mammal surveys wholly or partially not conducted over a pre-existing road or track) applicable



in the East Gippsland Forest Management Area (**Cross-country Surveys**); and

- (b) handling of occupational health and safety issues affecting staff and/or contractors in relation to Cross-country Surveys,

but not documents relating specifically to individual coupes.

9. By **4:00 pm** on **28 January 2022**, the parties are to provide the Court any statement of agreed facts, setting out each fact that the parties agree will be an agreed fact for the purposes of the Court's determination of the separate questions.
10. By **4:00 pm** on **28 January 2022**, the plaintiff is to file and serve:
 - (a) any further lay witness affidavits to be relied upon on the hearing of the separate questions;
 - (b) any further expert reports upon which it will rely on the hearing of the separate questions; and
 - (c) list of all lay witness affidavits filed in this proceeding upon which it intends to rely on at the hearing of the separate questions.
11. By **4.00 pm** on **16 February 2022**, the defendant is to file and serve:
 - (a) any further lay witness affidavits to be relied upon on the hearing of the separate questions;
 - (b) any expert reports upon which it will rely on the hearing of the separate questions; and
 - (c) list of all lay witness affidavits filed in this proceeding upon which it intends to rely on at the hearing of the separate questions.
12. By **4:00 pm** on **28 February 2022**, the plaintiff file and serve:
 - (a) any lay witness affidavit by way of reply upon which it will rely at trial; and
 - (b) any expert report by way of reply upon which it will rely at trial.
13. By **4:00 pm** on **2 March 2022**, each party advise the other in writing of:
 - (a) the deponents of any affidavits, and the experts, if any, that the party seeks to cross-examine at the hearing of the separate questions; and
 - (b) any objections to evidence, including objections to expert evidence.

Submissions

14. By **4:00 pm** on **28 February 2022**, the plaintiff file and serve:
 - (a) a written outline of submissions limited to 15 pages;
 - (b) a list of authorities relied upon.



15. By **12:00 pm** on **3 March 2022**, the defendant file and serve:
 - (a) a written outline of submissions limited to 15 pages;
 - (b) a list of authorities relied upon.
16. By **4:00 pm** on **4 March 2022**, the plaintiff file and serve a written outline of submissions in reply limited to 7 pages.

Authorities and court book

17. By **4:00 pm** on **28 February 2022**, the plaintiff serve on the defendant a draft e-court book, being a PDF document containing all the documents, in chronological order, on which the plaintiff intends to rely, with index.
18. By **4:00 pm** on **2 March 2022**, the defendant serve on the plaintiff a modified draft e-court book, being the draft e-court book served by the plaintiff with any additional documents, inserted in chronological order, on which the defendant intends to rely, with amended index.
19. By **4:00 pm** on **3 March 2022**, the plaintiff file and serve:
 - (a) the agreed e-court book; and
 - (b) a list of authorities combining the amended lists served by each party pursuant to Orders 10(b) and 11(b).

Liberty to apply and costs

20. There is liberty to apply.
21. Costs are reserved.

DATE AUTHENTICATED: 22 December 2021



THE HONOURABLE JUSTICE RICHARDS