

**THE APPLICANT'S RESPONSE TO THE
RESPONDENT'S FURTHER OBSERVATIONS**

What the applicant asserts:	The respondent's observations	The applicant's response:
<p>[5] "[The BTSB] is particularly susceptible to logging operations ... and fire, then by a dramatic change in the site characteristics owing to the loss of forest canopy and finally the long term reduction in the coarse woody debris with it needs to survive."</p>	<p>There is no evidence for this assertion. There is no evidence that the BTSB is 'particularly susceptible to fire and can not survive logging operations and/or fire. Indeed there is evidence that it can recolonise or survive in forest that has been harvested using clearfell burn and sow silviculture (see T 809 1 1-36). A BTSB was found in such a coupe by Dr Michaels.</p>	<p>Paragraph [5] of the applicant's submissions must be read in its entirety.</p> <p>The evidence supporting the submission is from Dr McQuillan at CB 120 – 121; and as to the BTSB's susceptibility to fire is at T429.18 and T706.43.</p> <p>Dr Michaels <u>did</u> find one beetle in one coupe on one occasion after one fire. Subsequent sampling was unsuccessful.</p>
<p>[26] "...it is likely that all unlogged coupes within the production zone will be logged.. ."</p>	<p>The respondent reiterates is previous submissions that provisional coupes are just that - provisional. An excellent example of how provisional coupes, or areas with the Production Zone can be reserved can be seen from Figure 1 and Figure 2 in the affidavit of Mr Ellis at CB Vol 2, p 786, which demonstrates that large areas of State production forest can be transferred into reserves or out of the Production Zone at any time.</p>	<p>Figure 2 shows pre and post RFA reserved areas: see [16] and [17]. It is not an example of any discretionary reservations initiated by the respondent. It does not show a transfer "at any time" but rather the outcome agreed by the RFA.</p> <p>In 2006, in the context of the RFA reserve system being in place, the respondent's provisional coupling makes, on the evidence, no allowance for further discretionary reservations.</p>
<p>[28] "As Mr Wilkinson confirmed the rate of applications to clear native forest and replace it with plantation forest has been increasing in the lead up to the cessation of all such clearing in 2010 on public land and 2015 on private land." (T7175)</p>	<p>The applicant has misquoted Mr Wilkinson's evidence. Mr Wilkinson actually said:</p> <p><i>"And that had lead, has it not, to an acceleration of plans for conversion of native forest to plantation since it was announced?--- We haven't got the definitive data for that, but I think that I could confirm that there has been a trend of more applications being brought forward for conversion.</i></p> <p><i>And you would not expect that trend</i></p>	<p>There is no difference between the submission and the evidence.</p>

	<p><i>to abate between now and 2010 in relation to public land? --- I - well, I - that would be speculation. I don't know what the plans of Forestry Tasmania are in relation to their conversion program. It could cease at any time." (T7175 line 1-9).</i></p>	
<p>[164] "At the time he gave evidence, Mr Kennedy did not know about Exhibits CP and CQ (nor did the applicant's representatives, or the Court). The evidence contained in those documents has been withheld by the respondent from the Court, and from the applicant in discovery, and the explanation is plain when the documents are examined. Their contents wholly support the applicant's case, and the evidence of his experts, about the swift parrot."</p>	<p>This is another example of the applicant attempting to give evidence through his final submissions. There is no evidence to support any of the allegations made in this paragraph.</p>	<p>This is a submission.</p> <p>This paragraph has been corrected. Subject to those corrections, the applicant submits the court can draw the inferences set out in this paragraph.</p>
<p>[174] "Mr Mooney . . . is an author of both the 2002 study and the 2005 revision and endorsed both reports in oral evidence.</p>	<p>Mr Mooney was an author of the 2002 study. There is no evidence that he was an author of the 2005 revision, rather Dr Bekessey has included his name on a draft manuscript. Mr Mooney did not give evidence of having been an author of the revision. Dr Bekessey gave evidence that Mr Mooney provided her with some data, but did not elaborate on what that data was, nor the extent of it. Mr Mooney did not endorse the studies. In fact he was of the opinion that the modelled results would not eventuate (T p 781,1 5).</p>	<p>In fact the 2002 study and the 2005 revision are the same work. The 2005 revision has further refinements detailed at CB 633-634. Mr Mooney's contribution to both works was the same: he contributed to the habitat model (T 996 l 30) the impact of 1080 poison (T 1001 l 26; 1005 l 6), the impact of nest disturbance (T 1004 l 45); the number of chicks produced per year (T 1008 l 46). In cross-examination Dr Bekessy said she deferred to experts like Mr Mooney for advice (T 1029 l 46) , and when asked about her draft manuscript (the 2005 revision) at T 1044 – 1046 she explained that Mr Mooney provided the habitat model (T1046 l 6). At T 1098 l 20 Dr Bekessy refers, in cross-examination by Mr Gunson about her draft manuscript (the 2005 revision), to Mr Mooney as a co-author.</p>

		The respondent did not cross-examine Mr Mooney or Dr Bekessey to suggest that Exh AB (the 2005) manuscript was false in having Mr Mooney as an author.
[202] "It became apparent during the course of the cross-examination that the affidavit was a creation from a number of unacknowledged sources and cannot be said to be entirely, or even primarily Dr Whittington's evidence."	The fact is that Dr Whittington, a senior public servant, utilized the assistance of his staff to prepare his affidavit. That does not mean that it is not his evidence. The fact is that Dr Whittington swore the affidavit, confirmed its truth in the witness box and gave evidence in relation the matters asserted in it. He is responsible for the content of the affidavit that he swore and it is <i>his</i> evidence.	The evidence discloses that Ms Craven collaborated in the preparation of this document and Mr. Whittington adopted it (T1590). The process of its preparation may explain why Mr Whittington could not answer questions about detail. The reliability of the assertions in his oral evidence is thereby affected.
[292] "According to this theory, the beetles that are in dry forest may be <u>the</u> most important genetic stock."	There is no evidence whatsoever to support this contention. Indeed there have been no genetic studies conducted to ascertain even whether the Wielangta BTSSB population is genetically different to the Maria Island BTSSB population. The assertion is mere unsubstantiated speculation without any factual foundation.	At CB 113 Dr McQuillan says this: <ul style="list-style-type: none"> • <i>Individuals occurring in drier forest types are arguably more important to the gene pool than those in wet forest because they may be genetically adapted to drier conditions.</i> Dr McQuillan's opinion as to the likely genetic difference between the Maria Island and Wielangta populations of the BTSSB is at CB 124. Dr Michaels' opinion is to the same effect: CB 95 [24].
[297] "No matter whether the harvesting technique undertaken be clear-felling or partial harvesting, the impact of forestry operations on the beetle habitat is devastating."	There is no evidence to support this assertion, nor the remainder of the paragraph which is largely unreferenced to any evidence.	The evidence is at CB 113 and 117 – 119.
[300] "Common sense alone is sufficient to suggest that even partial logging, involving the removal of mature trees which in the future would have, at some stage, provided coarse woody debris and hence potential beetle habitat, shall lead to a long term degradation of the suitability of a	There is no evidence to support this assertion and is no more than mere speculation. There is no evidence of the concept of 'cumulative impact' in respect of the BTSSB. The assertion is also contrary to the finding of a BTSSB by Dr Michaels in a coupe that was previously subjected to clearfell burn and sow	The evidence is at CB 117 – 119.

<p>site to sustain beetle populations."</p>	<p>silviculture (see T 809,1136).</p>	
<p>[312] "DPIW's evidence makes it plain that no inferences at all can be drawn that swift parrots are still found in the range of areas where they have historically been recorded."</p>	<p>Exhibit CP does not say what is asserted at all. The phrase "DPIW's evidence" elevates Exhibit CP to something that it is not. It is not DPIW's evidence. The author is not known, the qualifications and expertise of the author are not known. The author was not called to give evidence. The document is untested by cross-examination</p>	<p>The first part of Exhibit CP comprises a request from the respondent <i>“that the relevant experts at DPIWE comment as outlined below and supply requested data...”</i></p> <p>The court should find the opinions in Exh CP persuasive:</p> <ul style="list-style-type: none"> • It was tendered without objection during Dr Shields’ cross-examination. • The respondent made no application to call the author(s) or otherwise test the opinions contained in it, despite the document being wholly unfavourable to the respondent’s case. • The respondent did not re-examine Dr Shields to elicit any contrary opinions from him to those in Exh CP. • The respondent obviously had sufficient regard for DPIW’s expertise in Swift parrots, to warrant it seeking advice the advice it did. • The respondent cross-examined Mr. Kennedy, asserting DPIW’s expertise: T90.27ff. • Dr Whittington described DPIW as a source of expert advice to the FPA and others (CB 2313 [78]).
<p>[341] "Of course, the respondent's own evidence makes it abundantly clear that the permanent/temporary loss which Dr Shields sought to draw in his report is an artificial and irrelevant one because these coupes, once harvested, are scheduled to be harvested again in 80 years time - well before the formation of hollows suitable for swift parrot breeding habitat."</p>	<p>There is absolutely no evidence that the coupes are "scheduled to be harvested again in 80 years time" or at all.</p>	<p>In his evidence Mr Neyland stated the logging rotation for the relevant coupe was 30 years plus (T 1462 1 32). See also Mooney T756.14ff, CB64 at [130].</p>

<p>[350] “The area of state forest within the Wielangta forest block is right in the centre of the best swift parrot breeding habitat in that part of mainland Tasmania.”</p>	<p>There is no evidence for this assertion. The applicant has adduced no evidence providing a qualitative assessment of the quality of swift parrot habitat within Wielangta or (presumably) the east coast of Tasmania. The only evidence which even approaches supporting this statement is the evidence of Mr Brown to the effect that the area seen in WT019D was some of the 'finest' swift parrot habitat that he had seen. The Court will recall on the view, the sign at the Three Thumbs Reserve which suggested that the Three Thumbs Reserve to the north of the Wielangta State Forest contains swift parrot habitat. There is no evidence as to whether the potential swift parrot habitat in the Wielangta State Forest is any better or worse than the swift parrot habitat contained to the immediate north in the Three Thumbs Reserve. Logic would suggest, it is submitted, that the quality of the reserved habitat would be similar to the Wielangta State Forest.</p>	<p>The evidence for this assertion is in the report of David James, annexure MKM 19 to the affidavit of Mr Miller, at CB 1511. Mr James, who conducted a survey <u>only</u> within State Forest in 2001 says: “<i>Surveys have revealed the Wielangta forests are extensively used by the Swift parrot. These forests are perhaps the breeding stronghold for the species, a suggestion supported by Brown (1989) and Brereton (1997).</i>”</p> <p>Brown (1989) is Exhibit E. Brereton (1997) is Exhibit CJ.</p> <p>Mr. Brown’s evidence to which the respondent refers is reproduced in [351] of the applicant’s submissions. See also Kennedy at CB395, 400 and 415, 405-406.</p>
<p>[364 “the respondent's management prescriptions.. .”</p>	<p>The evidence is that management prescriptions are not "the respondent's". Rather management prescriptions are delivered through the FPA via the TFA and TFM, and where necessary involve specialist advice.</p>	<p>The prescriptions are in Forest Practices Plans prepared by the respondent, certified by the respondent and applied by the respondent (<i>Coote v. FT</i>). If there is a breach, the respondent is responsible.</p>
<p>[375] "Prescriptions operate in a context of inevitability about logging taking place. They represent a compromise between what those charged with protecting threatened species think should be retained (again, in the context of an inevitable logging operation) and what those responsible for logging want to get out of a coupe by way of timber”</p>	<p>Prescriptions do not operate in a context of inevitability of logging taking place. Prescriptions are applied in accordance with those delivered by the TFA and TFM. For example, coupe WT042D was removed from the harvesting schedule because the combination of special values constraints (which includes prescriptions) made the harvesting of the coupe economically unviable (see affidavit of Mr Miller at CB Vol 4, p 1407)</p>	<p>Dr Michaels evidence was that upon recommending there be no logging at Wielangta because of the threat to the BTSEB, Mr Wapstra had said to her “That is not an option”. CB 91 at [12]. See also Mooney T772.13 (re what industry will tolerate) and Brown T381 (re “compromise”).</p> <p>The conclusion which [375] invites was also apparent in Mr. Miller’s evidence about the reduced amount</p>

	<p>Additionally, the assertions made by the applicant ignore the evidence of the applicant's own witness, Mr Brown: <i>"If there was a threatened species issue, and the swift parrot is one of many, then there are discussions on how best to protect that threatened species within the forestry operations and it was a matter of negotiation very often to obtain the best outcome which we thought would be suitable for the conservation of that species but it was a matter of negotiation."</i> (T p381,125).</p>	<p>of swift parrot habitat which as protected: see the applicant's submissions at [502].</p>
<p>[386] "The four recommendations made by DPIW as far back as May 2005 ..."</p>	<p>There were no recommendations made by DPIW in May 2005. The applicant refers to Exhibit CQ which is a draft, incomplete, paper in the process of preparation by Mr Webb of DPIW. The applicant did not tender the final paper (if one has even been produced).</p>	<p>The document speaks for itself and clearly makes recommendations. Dr Shields generally agreed with Mr Webb's opinions and recommendations.</p> <p>If there is a further version of this report, it is the respondent and not the applicant who should have produced it, especially bearing in mind Mr. Wapstra's approach to this subpoena: Exh BA.</p>
<p>[423] "The results of disturbance can be dramatic. Mr Mooney gives an example at CB 431, [39] - 27 nests only producing w fledglings."</p>	<p>The CB reference is wrong. It should be CB Vol 1, p 42 [39]. The applicant has also selectively quoted Mr Mooney. Mr Mooney actually wrote: <i>"The area is a mosaic of forestry activity and other disturbance with 27 nests surveyed, 10 of which showed signs of advanced activity but only produced 2 fledglings."</i> (CB Vol 1, p 42 [39]).</p> <p>Contrary to the applicant's assertions, of the 27 nests surveyed, only 10 of those nests showed advanced activity and from those 10 nests two fledglings were produced. It is inferred that the other 17 nests were inactive.</p>	<p>The applicant accepts there is a typographical error in the CB reference. The evidence supports the submission made.</p>
<p>[439] The applicant submits that forestry operations in the Wielangta forest block, both present (eg WT017E) and planned</p>	<p>The applicant's submission is contrary to the evidence of Mr Mooney. The respondent notes that Mr Mooney was shown Exhibit BQ</p>	<p>Mr. Mooney's opinion on significant impact was given in the context of this opinion being restricted to impacts arising</p>

<p>(eg WT019D), the coupes marked for harvesting on Exh BQ and the coupes marked for harvesting on Exh C will have a significant impact on the eagle because they form part of the well established cumulative impact of native forest harvesting in Tasmania on the eagle. For the reasons set out in paragraph 273 above, the phrase “significant impact” in s 18 should properly be construed as extending to and including the concept of a cumulative impact.</p>	<p>prior to preparing his report to the Court, however, he still formed the view that logging all provisional coupes at Wielangta would not have a significant impact on the wedge-tailed eagle.</p>	<p>directly from logging in Wielangta. He was not asked to, and did not, consider cumulative impact. In oral evidence he agreed that there is a cumulative effect of forestry operations on the eagle: applicant’s submissions [441]—[443].</p>
<p>[444] "What the Bekessey 2002 model shows for Bass is local extinction, which means Bass will become a sink for the eagle. Mr Mooney’s evidence is that once you have more sinks than sources there is total extinction."</p>	<p>Mr Mooney did not say what the applicant asserts he did. Rather, Mr Mooney said:</p> <p><i>“once you have in a net fashion more sinks than sources, you have total extinction.”</i> (T 781,1 20). The added emphasis is, the respondent submits, extremely important, because the wedge-tailed eagle is a landscape animal which has a range across the entirety of Tasmania; and because the PVA models were 'closed' models in that they did not model the entirety of Tasmania and therefore excluded immigration and emigration.</p>	<p>Mr Mooney himself linked the PVA result in Bass, the area becoming a sink, and the ‘more sinks than sources’ comment: T781.6ff—T781.36.</p>
<p>[448] "There is no basis in the evidence for the Court to resist finding that the results of the 2002 and the 2005 revision would apply in substance to the Derwent district."</p>	<p>This assertion by the applicant attempts, it is submitted, to reverse the onus of proof. It is for the applicant to satisfy the Court that the results of the PVA(s) could be transferred to the Derwent district. Dr Bekessy's opinion is not explained or justified sufficient (sic.) to enable the Court to make such a finding. Additionally, the respondent again refers to Mr Mooney's evidence to the effect that the predictions would not eventuate (T p 781,15 ff).</p>	<p>Mr. Mooney (at T781.15ff) simply points out that the model predicts local extinction. Dr Bekessy’s opinion about the applicability of her results to Derwent was not seriously tested in cross-examination and Dr Read was not called to challenge it in substance.</p>
<p>[482] "Any land set aside in the Wielangta area under the CAR process will protect those areas for</p>	<p>There is no evidence of surveys being undertaken to ascertain how many swift parrots will use the areas</p>	<p>Mr. Kennedy’s evidence at CB 405-406 contradicts the respondent’s submission. Nothing</p>

<p>Swift Parrots for the long term only if they are used by them. Only a small part of the population is likely to use these areas."</p>	<p>reserved under the CAR reserve system. Reserves in the Wielangta area include Three Thumbs, Ringrove, Razorback and Blue Gum Spur, which were areas of important nesting sites (CB 1983-70). Applying the same logic, it is submitted, that it can equally be said that only a small part of the swift parrot population are likely to use the couped areas of Wielangta.</p>	<p>at CB 1983 is evidence supporting the submission made here.</p>
<p>[502] "... the respondent's officers were determined to "make sure" as much of the habitat Mr James had identified was available for logging as possible, while paying lip service to the requirement in the prescriptions for some swift parrot habitat."</p>	<p>This statement misrepresents the process that actually occurred. The respondent submits that Mr Miller's evidence should be accepted. The respondent notes that the relevant FPPs were certified after specialist advice had been obtained from the FPA and those prescriptions were imposed.</p> <p>Mr Miller said in cross-examination in relation to this issue:</p> <p><i>"Which are for what? - Which - it was one survey in one year, one breeding season. my manager considered that we did not wish to get to the level of putting these areas into protection until such time as we could undertake further surveys to determine: one, if there were more areas there that were missed and; secondly, if some areas were more important than others, therefore attracting a higher level of protection." (T 2035, 127)</i></p>	<p>The applicant maintains his submission.</p>
<p>[509] "What the respondent failed to tell the Court, and what the applicant's representatives discovered only through Mr Kennedy's inquiries of people at DPIW, was that such a survey was being carried out during the 2005/2006 breeding season at Bruny Island."</p>	<p>There is no evidence:</p> <p>(a) That the respondent was responsible for carrying out the survey (the evidence is that DPIW was carrying out the survey and the respondent is not a part of DPIW) .</p> <p>(b) That the respondent knew that the survey was being carried out.</p> <p>(c) That the respondent had any involvement with the conduct of the survey at all.</p>	<p>If (a)-(b) are <u>true</u> (as opposed to being the subject of no positive evidence), and the respondent is prepared to tell the court so, then in the context of this case these facts disclose more than any other the respondent's breathtaking disregard for and disinterest in the nesting habitat of the swift parrot.</p>

<p>[522] "...the respondent received research information from David James in 2001 highlighting the nesting habitat and the need for further research, and the respondent largely ignored it."</p>	<p>The respondent in fact commissioned Mr James' survey after swift parrot activity was observed in the area. Contrary to the applicant's assertions, the respondent arranged for a subsequent survey to be undertaken in 2002. The evidence of Mr Miller explains that the respondent did not ignore Mr James' work. Rather Mr Miller's evidence explains how the results of Mr James' survey were incorporated into the MDC system by designating areas identified as having swift parrot habitat on Mr James' map (MKM-20) into Special Management Zones; and that follow up work by Karen Ziegler and Raymond Brereton resulted in determining how to manage such areas. For example, WT042D was excluded from harvest and other areas were incorporated into the informal reserve network.</p>	<p>There was no subsequent survey in 2002. The James survey was for nesting habitat. Karen Ziegler and Raymond Brereton considered, over 2 days, how to manage the areas David James had identified (Miller, T 2047).</p> <p>WT 042D may have been excluded, but identified swift parrot habitat in many other coupes was either largely (eg WT 013D – Exh BP), or partly, logged.</p>
<p>[526] "In fact, in relation to the year 2000, Mr Wilkinson admitted that his office [the FPA] does not have the audit data."</p>	<p>Mr Wilkinson quite properly explained the lack of such data. He said:</p> <p><i>"... We don't have the data. I beg your pardon?---We don't have the data. Who does?---It's a very good question. The officer who collected the data was Bill Manning. He did not provide that data to us. We have repeatedly asked him to provide that data. This is an important research project. He has not to date provided that data.</i></p> <p><i>Do you say that somehow or other he caused it to disappear from your system?---Mr Manning was in possession of the data. As I understand it he did those surveys. He was requested to provide those to the supervising scientist and for some reason he has not provided</i></p>	<p>The fact asserted by the applicant remains correct and all Mr. Wilkinson's evidence discloses is one request to Mr. Manning to produce it, with no evidence of any follow-up since 2002.</p>

	<p><i>those data.</i></p> <p><i>When did he leave the employ of the authority?---I think it was 2002 about September." (T 1720,134 to T 1721,13).</i></p> <p>The lack of data is explained, is beyond the control of the FPA, and no sinister connotations attributable to the respondent are, it is submitted, open. The reality, on the undisputed evidence, is that a former employee of the FPA, who was dissatisfied with several aspects of the FPA and the Forest Practices Code, who had been the subject of disciplinary action by his employer and who suffered a mental illness, is responsible for the unavailability of such data (see T 1691,1 13 to T 1692,121).</p>	
[527] "It is also open to serious doubt whether the results reported by the FPA audit reports serve any useful purpose given that they accord equal weight to FPC compliance issues as disparate as the appearance of sediment on a landing on the one hand and the destruction of an eagle nest on the other."	<p>The applicant, it is submitted, selectively quotes the evidence. Of importance, Mr Wilkinson gave evidence in relation to this issue:</p> <p><i>"In this analysis any major breach of course is reported separately in the annual report under investigation into serious breaches." (T 1724,117)</i></p>	Mr Wilkinson's evidence is that all audit observations have equal weighting for presentation of the summary results in the annual report. For this purpose, chopping down an eagle's nest has equal weight with sediment on a landing (T 1724, 24-36).
[535] "However, TFA management prescriptions were altered in March 2002 by the FPA but no endorsed by the TTSSAC."	The applicant cites the evidence of Mr Wilkinson in which he said that he did not know if the prescriptions were endorsed or not by the TTSSAC. That is not, it is submitted, proof of the fact now asserted by the applicant. Additionally, this is outside the scope of the applicant's case as pleaded or as contained in the amended agreed list of issues.	Mr Wapstra's affidavit says that the TFA was endorsed by the TTSSAC at its meeting on 28 June 2001 (CB 1953-54 [61-62]). He goes on to say that, subsequently, the FPA has 'continually reviewed the recommendations in the TFA on a regular basis' and the current version delivers recommendations dated 13 March 2002 (CB 1955 [66]). The facts are as the applicant has submitted.
[537] "That interpretation includes ignoring the Specialist FPA recommendations, as desired."	The respondent repeats its submissions made at para.82 of these submissions.	
[542] "There is no evidence of a	The respondent submits that this	Paragraph [542] – to which the

<p>regular review schedule or, apart from work done in response to this action, of provision to assess the efficacy of the prescriptions."</p>	<p>assertion is wrong. The respondent refers the Court to Exhibit MW-9 (CB Vol 5, p 2040) which demonstrates the contrary.</p>	<p>response is made - relates specifically to the BT SB. Exhibit MW-9 lists 'Projects monitoring the effectiveness of threatened fauna provisions' in Table 6 (CB 2056). There is no project to assess the effectiveness of BT SB prescriptions in MW-9.</p>
<p>[547] "The populations of the beetle are so far apart and so small that destruction of any component population will have important consequences for the beetle."</p>	<p>There is no evidence to support this proposition. There is also no evidence which could satisfy the Court that there are two discrete populations of the BT SB – one at Wielangta and one at Maria Island. There have been no successful studies conducted to determine whether there is a genetic difference between the two populations.</p>	<p>See McQuillan : “The animal is so rare and at such low densities that all individuals are important in the breeding pool”. (CB 113 [19])</p> <p>With respect to the Wielangta and Maria Island populations, see par [288] of the Applicant’s submissions, and the response to par [292] above.</p>
<p>[548] "Any parrots currently breeding in the coupes will be unlikely to do so in future years."</p>	<p>This assertion is not referenced, and is not supported by the evidence. If swift parrots are breeding in a coupe, the nest trees will be identified and protected in accordance with the prescriptions provided via the TFA and TFM (see affidavit of Mark Wapstra [I341 (CB Vol 5, p 1975) and Exhibit MW-13 (CB Vol 5, 2072), particularly recommendation 5.</p>	<p>The evidence is --</p> <ul style="list-style-type: none"> • An estimated 80% of potential swift parrot nesting trees are removed in logging operations similar to that in 17E (Kennedy, CB 395 [18]). • It is extremely difficult to find nests so trees with suitable hollows will not reliably be identified before logging (e.g. Kennedy, CB 399 [19.11]. • Prescription 5 only protects known nest sites (CB 2074). <p>It is therefore likely that nest trees will be logged and unlikely that parrots will breed there 100 years post-logging (Kennedy, CB399 [19.12].</p>
<p>[553] “One prescription developed for the protection of a known nest site was for no roading within 15 metres of a nest. Mr P. Brown entirely rejected the adequacy of that prescription.”</p>	<p>The rationale behind the particular prescription is explained in the affidavit of Mr Wapstra at [171] (CB Vol 5, p 1984) and Exhibit MW-18 (CB Vol 5, p 2090). That was not contradicted by the applicant and it is submitted that it should be accepted. Additionally, Mr Brown acknowledged that he did not know the circumstances</p>	<p>In fact, Mr Wapstra recommended that the road should be located to avoid the nest tree ‘by as far as topographic constraints will allow (as a guideline, a minimum of 30-50 metres between the road and the nest tree is desirable)’ (MW-18 CB 2091; see also Wapstra [171] CB 1984).</p>

	surrounding the prescription (T 380, 1 35-43).	
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