

**APPLICANT'S RESPONSE TO
OBSERVATIONS ON APPLICANT'S ATTRIBUTIONS OF EVIDENCE TO FACTUAL SUBMISSIONS**

Substance of submission or proposition as per the Applicant's written submissions	Location in Applicant's submissions	Observations	Applicant's Response
<p>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 such clearing in 2010 on public land and 2015 on private land.</p>	<p>Page 10, footnote 7 referring to T1715</p>	<p>Mr Wilkinson said that there is no definitive data. He said there is probably a trend of more applications being brought forward, but it was speculation only whether this trend will continue to 2010. He does not mention the 2015 timeframe for private land.</p>	<p>Mr Wilkinson stated at 1714.46 that clearing to plantation would continue on private land until 2015.</p> <p>The applicant submitted and maintains that Mr Wilkinson's evidence was that there has been (i.e. in the past) an increase of clearing to plantation. Mr Wilkinson agreed with this at T1715.4: MR TREE: And that has led, 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 there has been a trend of more applications being brought forward for conversion.</p>
<p>Decisions in which the precautionary principle "must" be taken into account include the assessment of significant impact of an action under s 18 of the EPBC Act ...</p>	<p>Page 26, paragraph 97</p>	<p>Not supported by the legislation</p>	<p>This observation does not relate to the evidence</p>

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Dr McQuillan is, by Mr Meggs' own admission, the leading expert on the life history characteristics and biology of the beetle	Page 33, paragraph 125 referring to T537.35	Not what the evidence suggests – as the preceding questions make clear, Mr Meggs was saying that “at the time” i.e. 1999 Dr McQuillan was the “best source of knowledge” about the species. Mr Meggs agreed that in terms of “life history characteristics” he remained so. The evidence does not support the proposition that Mr Meggs agreed that Dr McQuillan is the “leading expert” in relation to BSB biology.	The applicant disagrees with the Commonwealth's interpretation of Mr Meggs' evidence. When the evidence is set out fully, it is clear that Mr Meggs agreed to the proposition put to him by counsel for the applicant, that Dr McQuillan remains the best source for biological detail (as distinguished from ecological knowledge, which Mr Meggs gave evidence was the nature of his knowledge) of the beetle: MR TREE: In relation to biological detail about the beetle he remains the best source does he not?---In terms of life history characteristics, yes, I'm not - - - Where you have made specialist studies in relation to habitat and range?---Yes, more ecological type studies.
That Exhibit CE demonstrates Dr Roberts' intention not to act as an independent expert	Page 35, paragraph 138	The exhibit does show that she was involved in FT's preparation – as she freely agreed (see eg T2213.7) - but does not on any reading show an intention not to act as an independent expert. At T2215-6 she said that she had not found it difficult to maintain objectivity.	Clearly Dr Roberts was, despite her denials, part of a team of scientists intent on performing a “hatchet job” on Dr McQuillan.
That Dr Shields has been employed within the forestry industry since 1979	Page 39, paragraph 156	According to Dr Shields' CV (CB2535) he spent a number of years lecturing in the period since 1979. The statement at page 39 that the applicant “does not seek to impugn to [sic] integrity of Dr Shields” is contradictory of the submissions at [113] that his evidence was unreliable, evasive, that he avoided making concessions that were plainly proper etc	Dr Shields reveals that he was a part-time lecturer from 1983 to 1987, and a lecturer from 1987 to 1990 [sic]. It also reveals that he was employed by State Forests of New South Wales from 1979 to 1993, presumably while also employed as a lecturer. Accordingly, the Commonwealth's criticism is baseless.

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That Dr Shields agreed with every statement taken from Exhibit CP which was put to him	Page 39, footnote 71 referring to T2483ff	This is not the case – on most occasions, Dr Shields said words to the effect that he had no basis on which to disagree – which is an important difference	The Commonwealth's criticism is only partly correct. Dr Shields agreed without reservation to criticisms contained in Exhibit CP at T 2481.7, 2481.1ff, 2483.31-39, 2483.47. The other statements taken from Exh CP he had no basis on which to disagree. That part of the evidence, while not being supported by Dr Shields, was not contradicted by him.
Dr Shields made a sweeping statement based on nothing more than the observation of one nest on his only visit to Wielangta	Page 40, footnote 74 referring to T2487.17-31	Contrary to the characterisation of the evidence in the submission for the Applicant, Dr Shields specifically disagreed with the suggestion that he had based his statement on one observation of one tree hollow	<p>The applicant maintains his criticism of Dr Shields. As the transcript discloses:</p> <p>MS MORTIMER: And you base that, as I understand it, on your one observation of one tree hollow?---I used that one observation, I didn't base the statement on it, but I used it.</p> <p>Dr Shields continues on to talk about size of tree hollows but not the DBH of trees in which trees nest. Despite being invited to comment on the basis for his opinion, and in the face of a proposition from Counsel for the applicant that all of the evidence is contrary to his opinion, the only source disclosed relating to the evidence, i.e. DBH of trees in which swift parrots nest, was his single observation – everything else referred to at that point by Dr Shields related to another matter entirely.</p>
That FT "retained" Drs Bekessy and Wintle for an earlier study and thus it could not seriously be suggested that they do not have "the relevant expertise"	Page 43, footnote 83 referring to T1018	Apart from the obvious non-sequitur in the proposition put, T1018 simply does not suggest that FT "retained" Drs Bekessy and Wintle. FT was described as one of several industry partners for the relevant research, the majority of the funding came from the Commonwealth and Melbourne University was named as the other participant	At T1011.25 Dr Bekessy agrees to the proposition from counsel for the respondent that there was a contract between the University of Melbourne and Forestry Tasmania, under which Dr Bekessy performed her work on the PVA model: MR C GUNSON: Were you aware of a contract between Forestry and the University of Melbourne for the conduct of the 2002 PVA?---An ARC contract. I think there has to be one.

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That [at T1972.25] Ms Thompson admitted that it is not the case that nearly every eagle's nest in Tasmania has already been found and that this was an example of the glib generalisations in the DVD being exposed	Page 45, footnote 88	See T1971.29-T1972.24. Ms Thompson agreed that eagle nests are still being found; she agreed with the statement from the DVD that almost every eagle nest is now identified and protected in State forest before logging operations begin – the DVD did not however state that nearly every eagle's nest in Tasmania has been found – indeed the DVD had to be replayed when Senior Counsel for Senator Brown misstated the evidence in relation to this – the evidence appears to be misstated again in the submission.	The Commonwealth's submission is misconceived as is clear from the evidence of Ms Thompson at T 1972.15ff: [MS MORTIMER:] But you agree still, I think, Ms Thompson, that that is perhaps an exaggeration because the searching process is ongoing and you are still identifying and protecting nests before logging operations?---That's correct, the process of identification continues.

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Dr Whittington acknowledged in cross examination that he has only been in his position since the end of 2004 so he lacks both practical knowledge of the TSU and experience in supervising it	Page 48 para 203(d) referring to T1587 and T1596	It is simply not open on the evidence to conclude that Dr Whittington lacks practical knowledge and experience in circumstances where he has been in his position since late 2004 and it was never put that he lacks practical knowledge or experience	<p>Dr Whittington conceded in cross-examination that his managerial role meant and recent appointment put many matters the subject of the litigation outside the scope of his knowledge. E.g. – the process of negotiation of prescriptions T1593.15ff; T 1596.30-45; T1597.35-T1598.2.</p> <p>Further, at T1600.20-22: MR TREE: You will appreciate of course - or perhaps you are unaware - coupes 12F and 15D are not the subject of this litigation. Are you aware of the coupes that are the subject of this litigation or not?--- I don't engage in that level of detail with coupes that come across my - in fact they don't come across my desk. I manage a process.</p> <p>And at T1605.7-13: MR TREE: Now, this is, as you know, the larger plan, was a plan drawn by one of the specialists employed by the Threatened Species Unit and yet we can see that as translated into the coupe plan for coupe 17E it has been virtually wholesaley ignored, has it not?---I just don't have the knowledge to answer that question. I don't know the context between this being constructed and the final plan. It's well before my time and it's an operational level of detail that I, frankly, never encounter in my day-to-day business.</p>
That [at T1719] Mr Wilkinson like other representatives of statutory bodies was reluctant to accept that the FPA had responsibility for the protection of threatened species	Page 50, footnote 101	Mr Wilkinson said that it was a shared agency responsibility	Precisely.

Substance of submission or proposition as per the Applicant's written submissions	Location in Applicant's submissions	Observations	Applicant's Response
That [at T1635] Dr Whittington was reluctant to accept that the FPA had responsibility for the protection of threatened species	Page 50, footnote 101	Dr Whittington said that it was a shared agency responsibility	Precisely and also see T1636.20 to T1637.21.
That Mr Wapstra did not give a clear indication of the total amount paid to him by the FPA in relation to the proceedings	Page 51, paragraph 213	Mr Wapstra was asked how much he had been paid to date "without being absolutely precise" to which he responded, approximately 7½ thousand dollars, He was asked how much more he would be getting, and he said approximately 2½ thousand dollars. He was never asked for a clearer indication or an exact figure.	The \$10,000 was payment from Forestry Tasmania. The point being made by the applicant is that he was being paid something by the Forest Practices Authority in addition to this amount (T1922.14-15), and accordingly, the point remains that he was paid a substantial sum in assisting the respondent and the FPA (which has assisted the respondent) in preparing for this proceeding.
That [at T2053-56] Mr Miller's evidence demonstrated a lack of independence	Page 55, footnote 113	The evidence given by Mr Miller in this passage was simply a discussion of the process by which the reserved area was changed for coupe 13D; there was nothing that might suggest lack of "independence" in any relevant sense. It appears that this reference to Mr Miller's evidence is what the applicant relies on to support the surprising submission at [114] that Mr Miller was unreliable, evasive, avoided making concessions that were plainly proper and showed a disinclination to give any evidence that would be harmful to the respondent.	The applicant maintains that the inference about Mr Miller's independence is open and should be drawn. This is a submission made on the evidence was given by Mr Miller. The Commonwealth is simply arguing about the interpretation of that evidence.

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That [at T1717] Mr Wilkinson described the increased rate of conversion of native forest to plantation as doubling, and over the next 12 months will exceed 15,000 ha per year	Page 64, footnote 135	Mr Wilkinson did not say that the conversion rate was doubling; he said that conversion has been 7,000 to 11/12,000 ha. per annum since the RFA was signed, <i>may</i> exceed 15,000 ha. in the next 12 months and <i>would not</i> exceed 20,000. He agreed that it would "do no more than double".	Agreed (and the applicant's submissions have been amended accordingly)
In table 1 to Mr Miller's affidavit [at CB1418] it is clear that the majority of most coupes are logged	Page 64, footnote 137	It is not clear what 'the majority of most coupes' is meant to refer to. The table gives a sample of coupes from Wielangta to show actual harvested area compared with planned (couped) area in a number of selected coupes. There is no evidence to support a finding in relation to "most coupes" in Tasmania.	The table demonstrates that (at least for those coupes listed) most areas which are provisionally couped are logged, and the majority of the area within those provisional coupes is logged, but subject to some area discount. The applicant does not suggest that this relates to most coupes in Tasmania because this proceeding is about logging of coupes in State forest in Wielangta.
The low density of the beetle within its range means that the potential of the WHCs or streamside reserves to provide the beetle with an opportunity to breed is particularly limited	Page 68, footnote 148, referring to Meggs at T456	Mr Meggs simply did not say this – to the contrary he said that the evidence from his research indicated that BTSBS can breed when socially isolated in small areas.	Mr Meggs' evidence about the utility of WHCs was undermined by his concession at T455.30 that a WHC might only contain, 3 beetles (based on maximum estimated density) and a class 4 streamside reserve would need to be 500m long to capture 30 beetles (and at the lower density may only contain 5). This submission is also supported by Dr Michaels (which is cited at the same footnote) whose evidence should be preferred. Mr Meggs' evidence was exposed in cross-examination to have assumed unrealistic outcomes, such as survival by the beetle of high-intensity burns (T458.22-31) – which was necessarily an underlying assumption in his comment about survival outside WHSs and streamside clumps.

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That Mr Meggs' rejection of the Maria Island theory of Drs Michaels and McQuillan [at T420] being genetically distinct was 'fanciful' because it was based on research from 1910	Page 68, footnote 150	Mr Meggs said that the 1910 research should be relied on until overturned by subsequent peer reviewed published science and that this was the currently accepted description of the species and should be relied upon in the absence of genetic research	The Commonwealth misstates the applicant's submission.
Log-rolling and trapping may not locate beetle specimens in areas where it is known that colonies of the beetle exist	Page 69, footnote 152 referring to Dr Grove's evidence at 2416	Dr Grove did not appear to accept that colonies of the beetle did exist in the areas which were searched	There is no evidence for the Commonwealth's assertion. It is a logical inference to draw that a site, searched three times, and being found to contain beetles on two occasions, but not at an intervening time did contain the rare beetle but that it did not fall into a trap during that search.
Mr Meggs had to concede that his theory that beetles found in dry forest were vagrants was not supported by research	Page 69, footnote 153 referring to T436	Mr Meggs said that there was nothing that suggested as between two alternatives, which was more likely; it was not put to him that his theory was not supported by research; he agreed that "a bit more research" would be helpful	The Commonwealth is splitting hairs. This is again an argument about interpretation of evidence, which is frankly unsustainable.
It does not appear to be contended that the CAR Reserve system provides any protection of a meaningful kind to the beetle and Mr Meggs conceded this openly	Page 70 para 293 referring to T446	Mr Meggs did not agree that the CAR reserve system does not provide any protection of a meaningful kind; he was of the view that management prescriptions and the CAR reserve system were supposed to compliment each other	At T447.19: Well, let us take it step by step. The current reserve system is inadequate to preserve the beetle, management prescription is essential, isn't it?--- That's correct.

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It was freely conceded by Mr Meggs that management prescriptions are unlikely to be sufficient to ensure conservation of the beetle	Page 70 para 294 referring to T413	Misstates the evidence; Mr Meggs said "no" to the proposition put to him (and repeated in the submissions as his evidence); he said that there are "data gaps" and that research may show that the management prescriptions are unwarranted; the substance of the evidence was that there is insufficient knowledge as to the efficacy of management prescriptions, not that they are unlikely to be sufficient	And then the evidence continued, with Mr Meggs agreeing at T413.44.
There is no research that supports current management prescriptions	Page 70 para 294 referring to T427	Misstates the evidence, which was to the effect that no research has yet been done in relation to the efficacy of the present management prescriptions	<p>The basis is at T 427.35: MR TREE: I am not misquoting you if I say that the substance of your evidence is that at the moment we are adopting, as a means to protect an endangered species, adaptive management, which not only do we not know whether it will work, but there is no means of assessing whether it is working?---There is as yet no means.</p> <p>MR TREE: So what I have just said is not an unfair characterisation of your evidence?---No, it's not unfair. On the evidence it is not open for the Commonwealth to suggest that notwithstanding that we don't know whether the prescriptions will work, or how to even determine whether they are working, that they are supported by research.</p>
That [at T441] Mr Meggs agreed that the greater light and exposure to wind in harvested areas dramatically changes the suitability of the habitat for the beetle	Page 72, footnote 168	Mr Meggs stated in this passage that more beetles are found where there was a greater canopy cover	Precisely.

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That [at T594] Mr Kennedy stated that swift parrots are only likely to compete with green rosellas and tree martins for hollows	Page 77, footnote 187	Mr Kennedy also said the parrot would compete with starlings (but not in Wielangta), possibly with owls, possibly with ringtails and possibly with gliding possums and sugar gliders	It is only competition within Wielangta that is relevant. Mr Kennedy's research indicated that ringtails would not compete with swift parrots, but the Commonwealth is correct that he admitted a possibility in relation to gliding possums and sugar gliders.
That [at T614.12] Mr Kennedy expressly rejected the suggestion that there are tracts of swift parrot nesting habitat in use by the birds which are not presently identified or known to those studying them.	Page 89, para 355, footnote 239	Mr Kennedy does not expressly reject as is apparent from the quote contained within the submissions. He says he does not know and then he says he imagines that "if there were nesting colonies of a reasonable size throughout its breeding range then we would have found at least some of those in all the extensive field work that has been done.'	Mr Kennedy expressly dismissed the possibility of such tracts existing.
That in his report [at CB 396], as well as his oral evidence, Mr Kennedy identified the lack of time and resources which Mr James had in his 2002 survey in Wielangta.	Page 90, para 358, footnote 243	In his report [at CB 396] Mr Kennedy comments that Mr James has a good knowledge of the species and that Mr James himself identified the difficulty in finding nests – took 2 weeks to find 8 nests.	Which is the same as saying if he had more time he would have found more nests.
That Mr Wapstra conceded [at CB 1982 [164] and 1988 [180]] the CAR reserve system is inadequate to protect the swift parrot.	Page 91, para 363, footnote 251	Mr Wapstra states that he accepts the statements made in Mr Brown's affidavit and Mr Kennedy's affidavit.	Yes, which stated that the CAR reserve system was inadequate to protect the swift parrot.
That the respondent's management prescriptions do not and are not capable of protecting the swift parrot.	Page 91, para 364, footnote 252	The references do not support the proposition. Mr Kennedy [at CB 398] says prescriptions achieve a less-severe decline in parrot populations. Mr Brown [at CB 1985] says the prescriptions will not protect, except for the purposes of feeding.	A less-severe decline does not amount to protection. Protection of feeding habitat does not amount to protection in circumstances where breeding habitat is being logged. It is breeding success which determines population numbers and recovery. The references support the submission entirely.

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The management prescriptions promote the retention of wildlife habitat clumps that are of little or no use to the swift parrot.	Page 91, para 364, footnote 253	The reference to Wapstra [at CB 1985] does not support the statement. He says that such a conclusion is conjecture.	The Commonwealth's selective quoting of Mr Wapstra's evidence is misleading. Mr Wapstra commences by saying that he "concur[s] with Mr P. Brown's conclusion that habitat clumps will have little value for breeding SPs."
That management prescriptions for the swift parrot do not protect the species because potential and actual nest sites are difficult to identify without a thorough survey in the year in which they present in the area.	Page 92, para 365(e), footnote 259	The reference to Kennedy [at T631.37] does not support this. He says that surveys have to be sufficiently detailed, and undertaken in a year of good parrot activity.	Same point, different expression of it.
That in the Tasmanian eagle population, the number of floaters is assumed to be low.	Page 100, para 393, footnote 279	Neither of the references given [Mooney CB49 [59] and CB 42 [44]] supports this proposition.	The Commonwealth is wrong. This is expressly stated in [59]: "An assumption for Tasmania (as observed in the Golden Eagle population with a similar pattern of empty territories and erratic replacements by adults) was that there were very few if any spare adults ('floaters')."
The process of locating nests does not lend itself to the identification of which nests are active, or ones that are the primary nests in a territory.	Page 101, para 397	The reference given is to Mooney [at T734]. Mooney actually says that you might have to look at the history as well to see where they were when they were first found etc – not that the process <i>does not lend itself</i> .	See also T735.16ff.
The eagle hunts in more open woodland and cleared land.	Page 102, para 403, footnote 286	Reference is to Mooney [at CB64]. He says that most of the eagle's hunting is done in old-growth dry-eucalypt forest and woodland. He makes no mention of cleared land.	The applicant accepts that this passage does not contain evidence that the eagle hunts on cleared land (and the applicant's submission has been amended accordingly).

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Mr Mooney [at T761] was not surprised by the fact that a couple of nests in Wielangta were not being used, because the nests were all in what he would characterise as 'disturbed areas', and this is typical.	Page 104, para 412	Mr Mooney does not state that it is typical, he merely states that he is not surprised that this is the case.	The evidence continues to say that he is quite familiar with that result. This part of the sentence the Commonwealth have chosen to omit.
That Mr Mooney's evidence was that there would, in 2006, be a smaller percentage of pairs breeding at a 60% success rate, as well as an increase of nests falling into the 'badly disturbed' area.	Page 105, para 418	The reference given is T738.42, but this reference only supports the second proposition: that Mr Mooney said there would be an increase of nests falling into the 'badly disturbed' area.	The paragraph referred to should be [419] of the applicant's submissions. Mr Mooney says at T 738.12-18 that the percentages would be similar (i.e. a 60% success rate in undisturbed territories) (and the applicant's submission has been amended accordingly).
That Mr Mooney's evidence is that: the eagle has not received priority to date in terms of areas reserved under the CAR reserve system [T754].	Page 108, para 436(a)	At T754 Mooney says that the eagle is one of a long list of endangered animals, and it is only sometimes a priority species. He discusses the layering system, and agrees that in that system the eagle is not an absolute priority all the time.	The Commonwealth is again arguing its preferred interpretation of the evidence.
Meggs CB 1266, para 105	Page 117, para 478, footnote 310	This reference seems unrelated to the statement in the paragraph.	This statement is taken from paragraph 105 of Mr Meggs' affidavit. The page reference is a typographical error and should read "1226" not "1266" (and the applicant's submission has been amended accordingly).

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That Mr Mooney's view was that it would be unfortunate for the eagle if the west, and those remote places like the west, were the only citadel left for the eagle because then there would be very small numbers, a very small source of young and a very big sink in the whole population	Page 119, para 490, footnote 326 referring to T764	At T764 Mr Mooney says that there is a pooling with the neighbouring areas and the whole state of Tasmania. He says: 'for all we know Wielangta may be a sink.' He says it seems there are a lot of birds in Wielangta, but 'we' do not know their productivity well at all.	Mr Mooney says at T 765.7ff: "What would be unfortunate for this species is if the west, and those remote places like the west, were the only citadel of this species left because then you have very small numbers, a very 10 small source of young and a very big sink of the whole population and that's to be avoided at all costs if we are serious about conservation." This is nothing more than a referencing error of the kind identified by the Commonwealth in Table 2 (and the applicant's submission has been amended accordingly).
That Mr Mooney considers that the carrying capacity of the eagle has to be very widely spread.	Page 119, para 491, footnote 327	The reference to T764 does not seem to support this statement.	This is nothing more than a referencing error of the kind identified by the Commonwealth in Table 2 (and the applicant's submission has been amended accordingly). Mr Mooney says at T 765.23-24: "[MS MORTIMER:] And with this species that means a carrying capacity that is very widely spread. Is that right?---Yes."
Misapplication may result in no prescription being applied if drainage lines in dry forest are excluded ...	Page 120, para 494, footnote 332 referring to T1875	This reference does not support the statement preceding it.	This is nothing more than a referencing error of the kind identified by the Commonwealth in Table 2. This should refer to T1914.8ff (and the applicant's submission has been amended accordingly).

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<p>That under cross-examination, Mr Wapstra conceded that the absence of prescriptions for other types of burning meant that reserves, including for the beetle, were not protected.</p>	<p>Page 120, para 495, footnote 336 referring to T1897 – 1899</p>	<p>At this point in the transcript, Mr Wapstra says that low intensity burning is acceptable, but should be avoided. He said that other types of burning are not dealt with in the prescriptions. He does not say this leaves the reserves unprotected.</p>	<p>The evidence went as follows: HIS HONOUR: Wouldn't someone picking up this plan read this and think, oh, no problems. Want to burn the sedgeland and skyline constraint, no big deal, that is fine?---Oh, that's one way you could interpret it, your Honour, yes. ... continuing at T 1905 [MR TREE:]And the sedge land and skyline restraint areas were expressly said to be available for inclusion in the burn?---That's correct, yes. The landing was deliberately positioned - I don't suggest deliberately with this in mind - but knowingly positioned over the site where the one beetle that had been located in the coupe had been found?---Yes, that's correct. There was no prohibition on burning the wildlife habitat clumps that were intended to provide continued species and environment for the broad-toothed stag beetle?---No, not specifically, no. There was no restriction on the time when any burn of those could be undertaken?---No. And in fact the placement of those clumps, wildlife habitat clumps, were clearly not optimised for capturing recognised broad-toothed stag beetle habitat?---At least in part, yes.</p>
<p>That no swift parrot surveys have been conducted in Wielangta since 2001 and that there are no current plans to conduct any further surveys.</p>	<p>Page 122, para 501, footnotes 346 and 347 referring to T1804.21 and T1851 – 1852.</p>	<p>Mr Wapstra says he is not sure whether there have been any surveys since 2001. At the cited reference [T1851 – 1852] Mr Wapstra never categorically says that there are no plans to conduct any further surveys.</p>	<p>There is no evidence of surveys. If they had been conducted, the respondent had ample opportunity to lead evidence of such surveys. The witness on behalf of the respondent most likely to be able to know if such surveys were carried out was Mr Wapstra and he didn't know. The inference therefore should be drawn that there have been none. And see T1857.36.</p>

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That the respondent's own expert said it is inadequate to link known nest sites with potential habitat, but conceded, in the face of inadequate or no surveys, it is the best predictor of potential habitat available [Shields T2474.25].	Page 123, para 504, footnote 351	At the relevant reference, Mr Shields merely agreed with counsel that in assessing information about habitat, one can only work with the information one presently has.	Which was an agreement to the proposition, not a refutation of it.
That, for the most part, adaptive management exemplifies a process that is reactionary and experimental.	Page 126, para 517, footnote 361	One of the two references does not support the comment. At T2401.35 – 40, Grove says that the need for interim prescriptions is a recognition that: 'whatever prescriptions we came up with as a first take will be just that. It's a part of adaptive management.'	The Commonwealth is again arguing its preferred interpretation of the evidence. Saying that prescriptions will be simply "a first take" is equivalent to saying that they are experimental, and implies that changes will be required to get them right.
That the respondents have acknowledged that the actions which have evolved out of the adaptive management system may provide at best a short term solution [Meggs 425.24 – 27].	Page 127, para 519, footnote 363	At this reference Meggs says that they provide a short term solution which can still be informed by further research.	The applicant maintains his submission.
That the research which informs the conservation management strategy for the beetle is seriously deficient.	Page 127, para 520, footnote 365	At T427.6, Meggs says that the research is yet to be done. He says effectiveness monitoring is an incredibly young science. At T882 Michaels says that further research is required.	The applicant maintains his submission.
That the respondent acknowledges that gaps in research were identified as far back as 1999 which even now have not been redressed.	Page 127, para 520, footnote 366	At the relevant reference [T497.39 – 48] Meggs agrees with counsel that he has been recommending further 'knowledge' for 6 years.	The applicant maintains his submission.

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That the work that has been done on the assessment of the viability of coupe 17E to provide coarse woody debris as a habitat for the beetle, was a direct response to these proceedings.	Page 127, para 520, footnote 367	At the relevant reference [T2406.13 – 31] Groves says but for the case they would have spent more time developing models for eucalypt forests before transferring them into dry eucalypt forests.	The applicant maintains his submission.
That it is open to serious doubt whether the results reported by the FPA audit reports serve any useful purpose given 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.	Page 129, para 527, footnote 376	At the relevant reference [T1724.9 – 18] Wilkinson explains that the data is provided as a summary and that any major breach is reported separately in the annual report; in any event the evidence does not support the proposition that there is serious doubt as to whether the audit reports serve any useful purpose.	The applicant maintains his submission.
That in relation to the parrot, it is the respondent's evidence that when the recovery plan last lapsed, it was substantially unimplemented in actions.	Page 130, para 530, footnote 381 referring to T1633 and T1637	At T1633.9 Whittington says that a number of recovery actions in relation to the parrot have been commenced or are currently undertaken. He agrees not all actions have been undertaken though. At 1637 he agrees more specifically that there were a number of actions not undertaken.	The applicant maintains his submission.

Substance of submission or proposition as per the Applicant's written submissions	Location in Applicant's submissions	Observations	Applicant's Response
That Mr Wapstra and Mr Blakesley both confirmed the management prescriptions database is no longer in use.	Page 130, para 533, footnote 383	At T1564 Blakesley agreed with counsel that updated hard copies of the database contents had not been made periodically available for comment. The exchange between Wapstra and counsel at T1950 does not deal with whether the database is still in use.	The applicant maintains his submission.
That the TFA is not easily available to the public and the public has not had an opportunity to comment on any of the changes to the prescriptions in the TFA for any species.	Page 132, para 539, footnote 391	At the reference cited [T1709.5ff], Wilkinson says it is not the intention to exclude public comment, but he agrees with counsel that there is an issue as to how publicly available the changes have been.	The applicant maintains his submission.
That there is no provision at all in the process of developing FPA specialist recommendations for public comment.	Page 132, para 540, footnote 392 referring to Mr Miller at T2044	The reference to Miller T2044 seems totally unrelated to this statement.	The applicant maintains his submission. The exchange demonstrates that negotiation is between the FPA and FT without public input: “[MR TREE:]So in other words if Forestry Tasmania isn't happy with the recommendation, the way the system works is it then goes and commences negotiations?---That would be fair.”