

TRANSCRIPT OF PROCEEDINGS

O/N 2389

FEDERAL COURT OF AUSTRALIA

TASMANIA DISTRICT REGISTRY

MARSHALL J

No TAD 17 of 2005

ROBERT BROWN

and

FORESTRY TASMANIA and OTHERS

HOBART

2.30 PM, MONDAY, 12 DECEMBER 2005

Continued from 9.12.05

DAY FIVE

**MR D. MORTIMER SC appears for the applicant,
with MR P. TREE SC and MR T. MITCHELL**

**MR D. GUNSON SC appears for first respondent, Forestry Tasmania,
with MR A. ABBOTT and MR C. GUNSON**

**MR N. O'BRYAN SC appears for the Commonwealth,
with MR A. BROADFOOT**

**MR P. TURNER appears for the State of Tasmania,
with MR M. DIXON**

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<CROSS-EXAMINATION BY MR D. GUNSON

5

MS MORTIMER: As your Honour please, I just want to briefly raise a matter about scheduling of witnesses.

10 HIS HONOUR: Yes.

MS MORTIMER: Your Honour, we are moving a little more slowly than one might have anticipated and one of the next witnesses on, I think, second from now is a Mr Kennedy, Mr Kennedy who was on the view with us this morning, he is from Queensland, your Honour, and we have now had him down twice in
15 anticipation of giving evidence and we would like to make sure that he gets on this week and accordingly I have discussed with my learned friends the prospect of asking your Honour to vacate the date appointed for Mr Mooney on Thursday to ensure that we have time to finish Mr Kennedy this week.

20

HIS HONOUR: How long will Mr Kennedy take?

MS MORTIMER: Well, your Honour, I will again be perhaps 45 minutes with him and after that it is up to my learned friend.

25

HIS HONOUR: Would it be safer to suggest or to have my personal assistant contact Mr Mooney and suggest February?

MS MORTIMER: In my submission that would be much safer, your Honour.

30

HIS HONOUR: And would there be any problem about perhaps indicating a definite time?

MS MORTIMER: No, your Honour, we could perhaps start with him to give him a definite time.

35

HIS HONOUR: Yes. Right. Well, we will see - my associate will speak to my personal assistant about this at the adjournment and we will see what his commitments are.

40

MS MORTIMER: Thank you, your Honour.

HIS HONOUR: Yes. Thank you.

45 MR D. GUNSON: The only other issues that really arises in terms of the time table, your Honour, and perhaps I could start by saying I think I will be with Mr Brown for most of the afternoon and possibly, given the time, going into tomorrow morning.

HIS HONOUR: Yes.

MR D. GUNSON: We have Mr Meggs scheduled for tomorrow morning.

5

HIS HONOUR: Yes.

MR D. GUNSON: As your Honour is aware Mr Meggs is from Canada. We would like to maintain that arrangement if at all possible. I am told by Ms Mortimer that Mr Tree is cross-examining. He thought he would be with Mr Meggs about a day. About a day could mean a little longer of course and I think Mr Meggs will be in-chief for about 45 minutes to possibly an hour.

10

HIS HONOUR: Yes. Thank you.

15

MR D. GUNSON: So could we - really what I am saying to your Honour is can we stay with Mr Meggs for tomorrow morning?

MS MORTIMER: Well, your Honour, I want to get some instructions. Mr Meggs is being interposed as a witness in the middle of our case and at the moment our witness schedule has been very disrupted and I want to get some instructions before I respond to that which currently have Mr Meggs scheduled for two days and my understanding is he does not fly out until Friday so he is actually here Tuesday, Wednesday, Thursday and I want to have an opportunity to take some instructions.

20

25

If my learned friend is now saying Mr Brown may be held over again that is highly undesirable. He has already been held over under cross-examination over the weekend. It is highly undesirable that he be held over again, in my submission, and I doubt that would be something by way of an application that I would be acceding to but I need an opportunity to take some instructions about those matters.

30

HIS HONOUR: Well, you need not do that until we break this afternoon.

35

MS MORTIMER: That is so, your Honour.

HIS HONOUR: Thank you. Does that matter, Mr Gunson, if that is not responded to until tomorrow?

40

MR D. GUNSON: Yes, your Honour. I should just say I have been handed a note by Mr McDonald to say that Mr Meggs apparently flies out on Thursday afternoon for Sydney and on Friday he leaves Sydney for Canada so the scheduling is a little more tight than I anticipated.

45

HIS HONOUR: Yes. Thank you. Well, perhaps you can continue your cross-examination of Mr Brown.

MR D. GUNSON: Mr Brown, on Friday you were asked some questions about the possibility of swift parrots feeding in plantations at transcript page 291, your Honour, this question was put. You have changed your mind and the answer was given:

5

Well, yes, because I'm concerned about the potential of them as a feeding resource and they're not particularly in a tightly grown context as a plantation. Generally eucalypts don't flower so readily as they do in an isolated - an open situation and also in my experience there have been very, very few records of swift parrots actually feeding in plantations. This is of concern to me. They are probably not of any great value. I have come to that conclusion since I wrote that.

10

That was your answer that you gave on Friday, wasn't it?---Yes, it was.

15

Are you familiar with an article published in Forest Practices News under the subheading Fauna, entitled Swift Parrot Established Foraging Habit at Gunns' Woolnorth Property?---No, I am not familiar with that.

20

Could the witness be shown this document please? I just ask you if you would take your time please to read that relatively brief article?---Yes, I've read it.

Have you read the article, and you know where Woolnorth is, don't you?---I do indeed, yes.

25

If you could tell his Honour where it is, please?---It's on the very far north west tip of Tasmania.

30

About as far to the north west as you can go, isn't it?---Yes. That's correct.

All right. And the article describes the establishment of a eucalyptus globulus orchard at Woolnorth, doesn't it?---Yes, it does.

35

And goes on to describe when that orchard was established; correct?---Yes. Yes.

40

And goes on to describe the reporting of swift parrots, initially in small numbers, from 1987 onwards through until 1997, when the parrot numbers have increased from approximately 100 to 150; correct?---That's correct, yes.

And it is a report, is it not, of parrots feeding, that is, swift parrots feeding in a eucalyptus plantation?---It is, yes.

45

Thank you. I tender that, your Honour.

HIS HONOUR: Any objections?

MS MORTIMER: No, your Honour.

HIS HONOUR: That will be exhibit 5.

5 **EXHIBIT #5 ARTICLE RE SWIFT PARROT ESTABLISHED
FORAGING HABITS AT WOOLNORTH**

10 MR D. GUNSON: Now, could the witness - sorry, I will just wait until that is
marked up. Could the witness be shown exhibit E, please? That is the article
entitled The Swift Parrot by this witness. Can I take you, please, to page 88,
Mr Brown? Your paper of course was written in - more correctly, published in
1989, wasn't it?---That's correct, yes.

15 And if we look at the bottom of that page you say there:

A breeding population of 1300 pairs, and in itself is not alarming.

20 And you would maintain that view today, I would imagine?---As a statement I
agree with that, and I did go on to say that we had no yardstick with which to
measure whether the population had increased or decreased.

25 Certainly. I was going to come to that. But you would stand by your statement
made in 1989 that a breeding population of 1300 pairs, in itself is not
alarming?---Yes. If I could just qualify that by saying that I agree with that
point, which I made then, so long as the habitat of the species, and the threats
which are facing the species are not overwhelming.

30 Overwhelming?---A species is capable of surviving in the long term with a
population at that level.

Thank you. You conclude that short paragraph, or concluded it, more
correctly, by saying:

35 *Unfortunately there is no yardstick with which it is possible to gauge
this population against its abundance in the past.*

?---That's correct.

40 Now, since you wrote that report in 1989 no information at all has emerged to
cause you to alter that opinion?---Well, there was a further survey undertaken
since then, in which the assumption was made that the population was
something like 900 - between 900 and 1000 pairs.

45 I am more concerned about the proposition that there is no yardstick by which
you could measure what the previous population had been?---No. I in summary
say no. Yes, that's correct.

Thank you. And you remain of the view expressed on page 89 in the last sentence that:

5 *The species is largely an opportunist vagrant and responds to fluctuating food supplies.*

?---I think that's fair enough. Vagrant - where did I say about the vagrant?

10 At the bottom of page 89:

It is an opportunist vagrant and responds to fluctuating food supplies.

15 ?---I'm not so sure that I would - in hindsight if I wrote that again I'm not sure that I would put vagrant in. But I would say it is an opportunist and does respond to fluctuating food supplies.

Thank you. On the following page, under the heading, Conservation Status, that is, on page 90, you said this:

20 *The fact that it is still at its most abundant during the breeding season around Hobart clearly indicates that the species is capable of co-existing with human intrusion, and indeed it shows evidence of benefiting in some ways in that it displays a distinct liking for feeding in solitary eucalypt globulus within suburban gardens, and exploits the*
25 *food resources offered by the introduced Western Australian pink gums.*

In 1989 that was the opinion you expressed. Is that still a valid opinion today?---Yes, it is. Yes, it is.

30 You go on to say it also enjoys ripening apricot and other fruit; correct?---Yes.

You continue then:

35 *The cost of enjoying the benefits of human development has increased mortality through accidents and killing by cats. It is most important to know the level of this increased mortality, to be able to determine just what impact the increased spread of subdivision and sprawl of dwellings actually has on the species, but at present this cannot be*
40 *assessed.*

Now, has that been assessed since 1989, to your knowledge?---Not to my knowledge, no.

45 So no studies have been done, notwithstanding the passing of some 16 years?---That's right.

On the following page, page 91, at the top of page you say this:

There is little or no evidence from Hobart of any decrease in numbers in recent memory.

5 And that is still the position, I suggest?---That could well be the case, but we don't know - my concern is we don't know to what extent the birds are drawn in. As I said before, I still am of the opinion that birds do have a liking for an urban environment, where there is a whole range of food sources which they can exploit. We don't know to what extent the birds might be drawn in from other areas into those urban environments for feeding and that's my great
10 concern.

15 But it is an issue that has been present for many years, isn't it, that they have been coming into the suburban areas for many, many years?---Absolutely, yes. Over 100 years.

And indeed you refer to that in the next sentence when you say that:

Wall -

20 referring to Wall -

does not consider that there has been any great change in the past 50-odd years that he has observed with parrots in the Hobart area.

25 ?---That's correct.

And again you would not deviate from what you wrote in 1989 in respect of that issue?---I really find it quite difficult to be dogmatic. I was probably a little bit dogmatic then but I find it very difficult to be dogmatic about it now to say
30 definitely yea or nay. Could I just make one point in relation to the survey I undertook, it was based on a single year and as I think I have mentioned before, blue gum is a prolific flowerer but it is not predictable to my understanding and every now and again, every number of years, probably seven or eight years, there is a massive flowering and apparently, I am led to believe, that that year
35 which I undertook my survey was one of those years of massive flowering and therefore the birds would be much more likely to be more widespread in their breeding and their distribution than they would under other years perhaps. I just wanted to make that point to clarify the situation.

40 What was your source of the information that that was a particularly prolific flowering year for blue gums?---Beekeepers. I did have discussions with beekeepers in relation to this.

45 All right. And you have said at the bottom of that paragraph:

Similarly the feeding areas in the foothills of Mount Wellington remain unscathed from the wholesale clearance and the local council now has a policy to retain creek-side vegetation in any subdivision proposals.

?--We're on page 91 are we?

5 We are, at the top of page 91?--Yes, okay. Yes, I understood what you were saying then and yes, I do agree with that.

And in that last paragraph you comment on the effects of development. You say this:

10 *The effects of development are clearly visible throughout the breeding range of the swift parrot from Recherche Bay in the far south through to St Helens and beyond in the north-east. Much of the coastal habitat of the swift parrot has been developed and altered in some way since*
15 *the early years of the 19th century. An example of this is North Bruny Island where land clearing was started by Captain James Kelly in 1819 with the help of 60 convicts. Clearances continued to this day but has been perhaps most dramatic since the Second World War when in the*
20 *years 1948 to 1983 in an area of 5840 hectares, 1390 hectare of forest was cleared for agricultural purposes.*

20 Citing from Brown, 1986. Now, those comments apply peculiarly to Bruny Island, don't they?--Mm.

25 Bruny Island is one of the birds feeding and nesting areas or breeding areas isn't it?--And has long been so, yes.

30 Yes, long been so and so it has been obviously reported since 1948 to 1983, some one-fifth of the area, if not a quarter, has been cleared completely, hasn't it?--Certainly a lot has been cleared.

30 And turned into pasture or grazing land?--In many instances, yes.

35 Yes. And that has not, to your knowledge, affected the swift parrot particularly on Bruny Island?--Well, swift parrots are still using the area.

35 That is right. And in reasonably large numbers?--Certainly this year there are reasonably large numbers, my understanding is.

40 Yes?--I'm not sure about other years.

40 And they are feeding there and breeding there?--Mm.

45 So it is reasonable to say that the clearing - an extensive clearing - of Bruny Island, that is the north part of Bruny Island, has had no impact on the parrots?--One might assume that but I don't think it is necessarily correct to be able to say that. We know - perhaps one of the areas you went today, it's a fairly extensive area of forest and I first discovered the birds using that area during my initial survey and although I haven't been back for a number of years

I understand they are still using the same area so my reading of that is that the birds are returning to an area which they have already bred in in the past.

5 Yes?---Now, I can't say what the other habitat was like which was adjacent the areas which have been cleared. I really don't know and I am not able to say yea or nay in relation to that.

10 I wonder if you would have a look at this photograph that is now handed to you please. It is an aerial photograph of Roberts Point on Bruny Island. Do you recognise that?---I just need a moment to get my bearings.

Certainly?---Yes, I think I am - I'm trying to pick up the roads. Okay. Yes, I think I'm reasonably comfortable. Go head anyway, yes.

15 Do you agree that the aerial photograph you have got there shows the Roberts Point area of Bruny Island where you went to this morning?---Yes.

20 Can you, from that photograph, identify whereabouts you went to for the purpose of looking - I am sorry, you weren't there. Sorry, I was under the impression he was. I am sorry. You have been to the area where the birds nest on Bruny Island?---I have, yes.

Can you identify that area from that photograph?---Yes, I can.

25 Thank you. May the witness mark the photograph, your Honour.

HIS HONOUR: To identify - - -

30 MR D. GUNSON: Yes, where he went to; where he believes the birds are normally found.

Perhaps if you just put a cross on the photograph, please?

35 MS MORTIMER: Well, your Honour, can I ask that the witness be asked to identify the areas to which he went. That is what he is able to give evidence about, in terms of where he found birds. That is all, in my submission, he is able to give evidence about.

40 MR D. GUNSON: Yes. I will certainly ask him to do that.

Would you mark the photograph, please, where you have been and where you have seen swift parrots?---So if I just put an X, but it's a broader area than the X generally.

45 Yes. I accept that. If that could be handed to me, please?---I'm - is that X - is more or less the centre of areas where I recall finding a number of nests.

Thank you. And how long ago was that, Mr Brown?---That was in the year I did my study, in 1987/88.

5 I will just wait until the photograph is examined, your Honour. I tender that, your Honour. Could I ask that once it has been marked as an exhibit could it then be returned to the witness?

HIS HONOUR: Any objection?

10 MS MORTIMER: No, your Honour.

HIS HONOUR: Exhibit 6.

15 **EXHIBIT #6 AERIAL PHOTOGRAPH OF ROBERTS POINT**

MR D. GUNSON: Your Honour, at 4.15 could we have leave to uplift that exhibit for the purpose of making copies of it for ourselves, and other counsel?
20 I am sure they would want them.

HIS HONOUR: Is there any problem about sitting on to 4.30?

MR D. GUNSON: Not at all. I renew my application for 4.30, your Honour.

25

HIS HONOUR: There is no difficulty about that?

MS MORTIMER: No, your Honour.

30 HIS HONOUR: No. Yes, you may have that leave.

MR D. GUNSON: We will do that, your Honour.

35 And if you could now look at that photograph, please. It is clear from that photograph, and, indeed, from your personal knowledge that surrounding that wooded area of Roberts Point that there is a large number of farms and general habitation; is that not correct?---Well, they've cleared land, yes.

40 Yes. A lot of cleared land?---Yes.

And it is used for general farming, and of course you have the - - -?---Oh, it's used for sheep farming, I think, or was in my day.

45 Yes. And of course there is the main road to the ferry terminal that runs past that area, isn't there?---Yes. With a whole lot of blue gums in which the swift parrots were feeding.

Yes. Thank you. That can be returned now, please, to the associate.

You said, taking you back to your report, please, at page 91, having referred to the clearing of forest on North Bruny Island, you said that:

5 *Despite this, North Bruny Island is still a most important breeding area for swift parrots, and will remain so, provided adequate food sources and breeding hollows remain.*

10 And that remains accurate today?---Well, I'm not entirely - not entirely comfortable with that, because I - from my perspective it's important to know whether the birds are returning to the same hollows on a regular basis. Now, I don't know whether you're trying to trick me up in relation to the - putting the X on the thing this morning. I don't know where the birds are nesting this year. But they are probably nesting through there. I think it's really important to
15 know whether they're using the same nest site, because unless we know that we don't know whether they are comfortable in that area. If you removed all the pre-existing nests, and they took other nests adjacent to that area, then I may feel more comfortable about it, but I really don't know that, and therefore I'm not comfortable in saying - in agreeing with what I said before, if you
20 understand what I'm saying.

But the work hasn't been done to determine that, has it?---I'd say I would agree with that, yes.

25 So you are speculating aren't you, really?---I'm just speculating, but so are you speculating perhaps.

30 Well, I'm really concerned about you. You are the witness, and you are the one who is, as you say - - -?---I accept that.

- - - speculating about these issues; is that correct?---I accept that, yes.

Thank you. And you continued:

35 *This same prognosis applies to the species throughout its range.*

And again with the caveat of speculation you would agree with that?---With the caveat of what I've just said, yes.

40 Yes. Correct?---Yes.

45 Yes. In many ways the species is advantaged in areas like Hobart, and even on North Bruny Island to a lesser extent, where land ownership is divided up into a multitude of titles. You would remain of that view?---For feeding resources, yes.

Yes?---For feeding resources.

Well, you don't say that there, do you?---No, I don't, but that's what I - that's what was intended, and the point I'm making is that isolated trees tend to produce a very prolific feeding resource.

5 Thank you?---So whilst I may not have said it certainly that was my intent. Otherwise I can't see any reason why I would say that for nesting resources why dividing up into a whole lot of different tenures would make any difference - would benefit the bird.

10 At page 92 you say this:

There has been a study that has shown that the limiting factor or major constraint on the population level is the distribution and abundance of eucalyptus globulus in Tasmania.

15

You went on and said:

There are no reasons to believe that there has been any great change in the overall range of the eucalyptus globulus in the State since settlement. It has not disappeared from any part of its existing range. In fact it is more widely distributed now than it was in the past. The eucalyptus globulus is a popular tree in gardens, nature strips, parks, etcetera, and is grown in many towns and cities beyond its normal range.

25

Well, that situation still exists, doesn't it?---It does, yes.

There has been no change since 1989, has there?---No change in its distribution, no.

30

No. And that of course, as we know from your earlier evidence, is one of the major feeding sources of this bird?---Yes.

35 At page 98, under the heading Management, and a sub-heading Forestry Industry, towards the bottom of the page, and in fact the second last sentence on that page, you said this:

The swift parrot may be better placed perhaps than many others for eucalyptus globulus recovers and generally seeds well in disturbed ground.

40

Now, you don't depart from that proposition, do you?---No, I don't.

45 It is also a rapid grower and it is capable of flowering when only at five or six years old; and you remain of that view?---I am, yes.

Yes. On the next page you said this:

This ability to grow quickly has been seized upon by the pulp millers and the species is widely used in plantations especially in the North of the State where some 2000 hectares of plantations occur.

5 I suppose we can stop there and say well, that figure has increased since 1989, has it not?---I would imagine so but I'm not - perhaps those other hectares have been harvested, I really don't know, but I accept your words.

All right. You continue:

10

Potentially there is a very substantial feeding resource once the trees reach sufficient maturity to flower substantially.

That takes us back to where we were earlier this afternoon?---Mm.

15

That was the view that you expressed in 1989?---Yes.

20 Do you still maintain that view particularly in light of what you were shown this afternoon?---Well, I was certainly very interested in what I was shown this afternoon. My opinion has rather changed over the years in that in most of the plantations - and discussions I've had, I can't actually pinpoint anything which sort of states categorically one way or another, but in general plantations which have been put in do not appear to be particularly attractive to swift parrots in general and I really can't base that on any particular factor, I wish I could, but
25 certainly what I saw before, the fact that there was this regular thinning which enabled the species to flower more prolifically maybe has helped them, I don't dispute that one little bit, but in general plantations don't appear to have provided the food source that we thought they might. In other words, what I'm really saying is they still prefer by far the old, traditional, if you like, food source
30 where you've got a mature to over-mature tree or a group of trees, they tend to be much preferred as a food resource.

35 Is it fair to say this, that you have never carried out any study to see whether or not the parrots are feeding in plantations?---Well, it's anecdotal, no, I do agree with that, and it's anecdotal information.

And the article that I showed you a little while ago would tend to suggest to the contrary, would it not?---Certainly in that case it would, absolutely.

40 Yes. And it is quite a detailed article saying that the birds started to feed in this plantation from 1987 through to 1997?---Yes.

It is really about a 10-year observation, isn't it?---Yes.

45 And it shows birds increasing in numbers, I think, from about 50 to 30 individual birds in 1987 through to over 100 to 150 in 10 years?---150.

Now, that would tend to suggest, would it not, that the birds were learning to come to that plantation for food?---As the food resource increased, certainly.

5 Yes?---But it was interesting that the food resource was available and they moved elsewhere. I mean, that is a particularly interesting point for me. I wonder why?

10 But nonetheless over 10 years you have got a very significant increase in the visiting birds, haven't you?---That's correct.

15 And birds learn where to go, don't they?---Yes, and I'm not always certain that it's to their benefit. If you're creating an artificial food resource outside the area where they would perhaps normally on a general basis feed it can be detrimental to the species and an example I quote is this situation at Spreyton where this lady was feeding the birds and attracting huge numbers to this particular food resource, and I'm not convinced that - certainly there was quite a bit of mortality in that area and I'm not convinced that was of great benefit to the birds and probably taking them away from their more natural areas which is where we would prefer them to breed

20 And the factors that would influence mortality in that situation in the suburbs would be such things as cats and so forth and windows, the various factors we discussed the other day?---Yes, well, and also the birds were becoming ill because of the - and lazy and fat because of the inappropriate food resource.

25 All right. The next paragraph you say this:

30 *It is unlikely that a plantation which cycles at less than 50 years will ever provide nest sites and so birds will have to breed elsewhere. The feeding resource however is almost certainly much more limiting the nesting habitat. Swift parrots feed on very few eucalypts during the breeding season but they will breed in any tree provided it has an adequate hollow.*

35 In respect to that proposition, they will breed in any tree provided it has an adequate hollow, you maintain that view?---I think I would temper that by saying in any eucalypt. I don't have evidence to suggest that they might breed in other trees. Most other trees of the sort of park-introduced type trees or native trees for that matter don't produce hollows like eucalypts do.

40 But what they want is a hollow, isn't it?---What they want is a hollow of the correct dimensions, absolutely.

45 And they are not particularly fussed whether it is a eucalypt or something else as long it is a hollow?---I would not necessarily agree with that.

Well, Bob Green reported them nesting in the Launceston City Park and in the Trevallyn dam wall, didn't he?---He did, he did, and I would say that's very interesting but it's aberrant behaviour.

5 Nonetheless they were there. You don't dispute Green, do you?---No, I don't.

A very, very well regarded ornithologist?---Yes.

10 And if I may say so a man probably of longer - - -?---I don't dispute that nest record at all, I just said to you I didn't dispute it, but I just think it's a very unusual behaviour. Lots of people have been looking at swift parrots for lots of years and that sort of situation never - to my knowledge has never risen again. So all I'm saying it's very uncharacteristic and unusual behaviour.

15 You have made some recommendations on the bottom of that page to ensure what you called a continuing supply of flowering eucalyptus globulus which will be available for the swift parrot in the future, and you have said:

20 *Management recommendations are also suggested to protect breeding habitat and these were first minimised clearance of eucalyptus globulus on the Eastern Tiers below 300 metres and especially on creek sides.*

25 Now, where are the Eastern Tiers?---It's the eastern slopes of the tiers running down the east side of Tasmania.

All right:

30 *Ensure that in the planning stages for successful clearance that at each linear five kilometre block of the tiers which contain eucalyptus globulus that at least 30 per cent of the species remains unlogged.*

?---Yes.

35 You maintain that recommendation?---Yes, I think that is perfectly adequate.

40 *In areas where eucalyptus globulus is being logged leave several trees uncut especially if over mature as this will provide immediate feeding and breeding habitat. Recommended five large, 10 medium trees per hectare.*

45 That was your recommendation back then. Does that remain your recommendation?---I think in general, yes, and I am referring to - I think subsequent information has shown that globulus is not especially important as a breeding habitat as it is a feeding habitat.

Yes?---In other words subsequent to that, for example where the birds are breeding Wielangta that are breeding almost, not quite, but almost beyond the realms of blue gums. Blue gums have tended to almost peter out by then but

the birds are breeding into Wielangta substantially so what I am really referring to is feeding habitat and it is something I have made a point of in my affidavit that the isolated trees in the long term have a great benefit for swift parrots as a feeding resource.

5

Thank you.

Retention of ridge top timber, especially if it is adjacent to areas of globulus forest.

10

?---Yes.

Maintain that?---Yes, I do. Although again subsequent studies have shown that - in the day when I did my study I was of the opinion that ridge top was the preferred nesting habitat. Subsequent work has shown that it is not necessarily just ridge top. It is other ones but ridge top are important because they are subject to the vagaries of fire and wind damage and all those sort of things which create potentially a lot of hollows, yes.

15

20 Which is a point you address at the top of the next page, is it not?---Yes, absolutely.

And then you say:

25

Encouragement of regeneration of globulus in plantations within the range of the swift parrot, consideration should be given to planting globulus which is a fast growing and therefore economically attractive species and yet it will provide an important food source for swift parrots. It is important to ensure that there is available over-mature forest within five kilometres.

30

So we return here to the plantation concept and here you are positively endorsing that concept as a food source in 1989. Is that correct?---I am, yes.

35

Yes?---And the reason for that is because it was the end of the first year of looking at this bird. Since then a lot of water has passed under the bridge, as it were, and I think we are entitled to change our opinions as we get more and more information and it just seems to me again, as I have said to you before, I don't have hard and fast data, other than that paper which I have just been shown now, of the value of globulus plantations. In general I think - my understanding of globulus plantations is that the intention is to harvest them within a period of under 20 years.

40

45 Would you accept that what you wrote in 1989 about them being an important food source for the parrot has probably proved to be correct particularly in light of what I have shown you today?---In the light of that publication I would agree, yes.

As a study though over some 10 years, albeit in a small article, nonetheless it goes from 1987 to 1997?---And at one particular site, yes.

5 Yes. And a site in the far north-west of the State where I think you said last week - you will correct me if I am wrong - birds don't normally appear?---Yes. And I think it is particularly interesting because clearly that is an area where there is not a particularly ample food resource and therefore if suddenly a large food resource is placed in an area where there isn't a particularly large one then obviously it would be particularly attractive.

10

Can I take you please to your affidavit and if the witness could be given a Court book please, I think it is volume 2. If I could take you please to page 468. Do you have that?---Yes.

15 You will see that you are asked a series of questions, question 16. The first is:

Does the impact vary depending on -

20 *(a)the area in which the forestry operations are conducted? If so, please explain.*

To understand that you have to go back to the previous question which is:

25 *What impact, if any, in your opinion do forestry operations in Tasmania generally have on the swift parrot population?*

Now, this is a general question about Tasmania and not Wielangta and you say this:

30 *Timber harvesting activities within the breeding range of the swift parrot has the potential to impact greatly on the swift parrot. Any food resource trees harvested reduces that resource and old growth forest harvesting reduces the nest sites available to all hollow nesters.*

35 And that is a reasonably sweeping statement covering the whole - - -?---It's a very general statement.

A very general statement about all methods of forestry operation ranging from the clearing of old growth forest, the clear felling to selective harvesting, doesn't it?---Yes.

40

It covers everything?---Yes.

45 And basically it comes down to this proposition that if you take out any food resource trees that must reduce the overall amount of food that is available for the bird. Correct?---Yes.

So we take one tree out or take 100 trees out or take 1000 trees out or 10,000 trees, every time you take one tree it must reduce eventual food supply?---Mm.

It doesn't look at the regeneration though does it?---No, it doesn't.

5 No. It doesn't consider regeneration either in the forests that have been cleared or in plantations as providing an alternative food source?---That's a fair comment.

10 Yes. Now, if we then go to paragraph 16 or question 16 and I will take you to 16(b), you are asked:

If there was impact, what type of forestry operation is going to have an impact?

15 And you have said:

Swift parrots are being shown to prefer to nest in areas of continuous forest and I believe that leaving individual trees, small clumps or copses, will not retain breeding habitat. Clear felling is worst. Selective logging may provide retention of food tree sources and in the
20 *mid to long term, some breeding habitat.*

25 And I imagine that you remain of that view that selective logging may provide retention of food source?---Selective logging, provided that appropriate aged trees or appropriate species are left then yes, I would agree with that.

Now, you went to Wielangta last week?---Yes.

30 And you observed the areas which comprise coupes 17E and 19D; correct? And you also went to 7A; is that right? That was the last one we went to?---Yes.

Yes. Now, you were informed, were you not, that 7A had been a selective logging harvest area?---That's the - in the first area we went to?

35 That is the last area we went to?---The last area we went to?

The last place we went to on the day. That is, the last area where we
- - -?---Yes.

40 - - - went to after lunch?---Yes. And we were shown a number of trees which had been retained, which we were told were approximately 50 years old?

45 Yes. And you were also shown a number of other trees, after we went from that area where the bunch of trees in the area of 50 years old were, we walked through the bush out on to another area, where a number of large old seed trees were. Do you remember seeing those?---Yes, I do.

And you would agree with me, would you not, that they would afford ideal swift parrot nesting areas, given the age of the trees?---Where individual seed trees had been left?

5 Yes. Those large ones?---If they're the ones I'm thinking of they have the potential to provide some nesting habitat in the very long term, but not in the immediate.

10 You say that - in question 17, the area at Wielangta is a largely clear fell operation. Can I read it to you:

15 *I have not sighted the maps of roading and harvesting for the next 10 years, and cannot at this stage comment on the question. As a general comment it is my understanding that forestry activities in this area are largely clear fell operations.*

Is that still your understanding today, particularly having been to Wielangta?---No, it has changed somewhat.

20 In fact, your opinion would have changed very significantly, wouldn't it?---Yes. In - - -

25 It is not a clear fell operation, is it?---In the days when I did my original work, there were some forestry activities going on and to my recollection they were all clear fell. And my - in writing this down it was based on that information.

Had you been to Wielangta before you wrote your report in response to the request from Senator Brown's solicitors?---Sorry, are you asking me a question?

30 Did you go to Wielangta before you wrote your report?---No, I didn't.

35 So what did you base your opinion that Wielangta was largely a clear fell operation on?---I based it - as I just told you, I based it on my previous experiences when I was doing my work in the 1980s, and perhaps - I visited the Wielangta area many times, so probably in the 90s as well. And to my recollection the majority of the operations, the forestry operations within Wielangta were clear fell then.

40 But not in that part that you went to the other day?---Not in that part.

Which is the subject of these proceedings?---No. This was further north.

Patently obvious to you that - - -?---Further south.

45 Yes. Patently obvious to you it was a selective logging operation?---It was a what?

A selective logging operation?---Yes. But I must admit I was rather surprised, because I've seen selective logging operations in other areas, and in general the other areas that I've seen selective logging at they tend to leave far more trees, and they tend to leave a lot older trees. Many of those areas in the selective logging area were little more than very spindly trees, and certainly to my opinion, in my opinion wouldn't provide habitat for the swift parrot for many, many years.

When you responded to question 17, did you have available to you the Forest Practices Plans for coupes 17E and 19D?---I had the Forest Practices Plan for two.

For those two coupes?---Yes.

Well, did you read them?---I read the relevant parts in relation to swift parrots prescriptions.

Yes. Who provided the two timber - or Forest Practice Plans to you?---They were provided with information from the solicitors.

Right. And you only read those parts that related, I understand it, to the swift parrot; is that correct?---In general, yes. I may have looked at other - I looked through them as well, but I really concentrated on the aspects in relation to the swift parrot.

Well, is it fair to say this, that when you wrote in your report that it was a clear felling operation to be carried out in each of those two coupes, that you did not refer to the Forest Practice Plans for coupes 17E and 19D, and look at the felling prescription guide?---No. I made a general comment there, and my general comment there was based on my understanding from previous work that I'd seen, and I - in answer to your question, I have to agree that I didn't determine whether they were clear felling or whether they were partial logging.

Did you not think it important to look at the Forest Practice Plan to determine - - -?---Well, I wasn't - - -

- - - precisely what the prescription was?---I actually wasn't really addressing that particular point. I was addressing a general point.

So you were prepared to assert they were clear felling operations - - -?---I said it was - I said it was - - -

- - - without even looking at the plans; is that right?---I said it was my understanding. I'm not being dogmatic about it. What I was saying, as I said, it is my understanding that forestry activities in this area are largely clear fell operations. Okay. You've now shown that they weren't, and I'm - I accept that.

But you don't think that you were a little incautious in asserting that there was a clear fell operation without looking at the plans - - -?---I said it - - -

5 - - - that were in your possession?---Well, I don't think it was being particularly incautious. It was a general comment.

You continued on in paragraph 17 to say this:

10 *Clearly the forestry operations in the area which is used for breeding by swift parrots will cause disturbance to them as such will reduce the quality of their habitat.*

15 By that you mean, because a tree or trees that are potential areas to nest in have gone, if they are taken?---And also there will clearly be an impact on birds which are breeding in forest adjacent to it.

But you continued:

20 *I am not able to say what impact the operations will have on the viability of this population. However, birds breeding in or adjacent will probably be forced to move elsewhere, most likely to sub-optimal habitat.*

25 Now, do you remain of that view?---It's - well, it's my view, and the reasons that I stated that particular point is because the birds that were breeding in that area, and will be breeding in that area are breeding in what they prefer as habitat. They may well be forced to move. The birds that were actually - birds may have been breeding in the areas that were cleared, and of course they would have to nest elsewhere. They either die or they go elsewhere. Now, my
30 argument is that they would have chosen those other areas to nest in. They would have nested in those other areas by choice if they had been particularly optimal.

35 And of course, do you know - I withdraw that. Do you know when logging for coupe 19D was scheduled for?---I think it was outside the breeding season but I'm not absolutely certain.

40 Yes. But the plain fact is you have no idea even today of when birds last bred at 19D?---I don't, no.

And when they did last breed there, whenever that might have been, you have no idea of the numbers that breed in coupe 19D?---Quite correct.

45 And similarly with respect to 17E, you have no idea when they last bred there?---No.

And no idea of the numbers that bred there?---No.

But we do know, when you did your survey back in 1989, that the numbers that were generally throughout Wielangta, and that is from Dunalley in the south to Orford in the north, were relatively low, having some 80 pairs?---Yes. But since then I have observed, and other people have found, large numbers of swift parrots throughout that whole area, in the Sandspit area, in the Ringrove area, in Chesterman's area and Marshweil area. Clearly that area is a particularly important area - - -

But they are not areas to be logged are they?---Pardon?

They are not areas that are going to be logged?---Absolutely not.

That is right?---No, well some of them are. I mean some of them have actually been logged.

That is right. And the parrots are still there?---Well, they are feeding there and I am talking about feeding principally because I haven't spent any great deal of time looking for nests but what I am saying is we know - I was shown a map earlier with something like 35 nest sites on it and I don't know the period of how many years those nest sites were located in that particular area but clearly that is an important breeding area for swift parrots and that is my argument, that we have the opportunity to determine whether those areas which are being potentially harvested are used by swift parrots and we are not doing that and that is my concern.

If I take you please to question 18?---Yes.

It concludes - it is a lengthy question:

If your opinion is that there is likely to be a significant impact on the swift parrot please explain in detail why you hold that opinion?

And you say?---

I would find it difficult to argue that forestry operations in individual Wielangta coupes would cause a significant impact on the swift parrot but accumulative impacts are ongoing particularly with harvesting throughout the area would, in my view, significantly impact on the species.

So if we understand your answer it is coupe by coupe provides no significant impact. Accumulatively, depending on the number of coupes, it may provide an impact?---Yes, and I was relating that to the Commonwealth legislation which the important issue is in relation to the significance - a significant impact. I mean I find it hard to determine whether the loss of one pair or two pairs or three pairs would cause a significant impact. I would find it hard to argue that but if there were large numbers of coupes and large numbers of birds lost their habitat and weren't able to move elsewhere then it would have an impact,

But they are able to move elsewhere, aren't they?---Do we know that?

Well, you know that as an ornithologist, don't you?---I don't know that.

5

If they don't turn up there for three or four years, surely they must move on if they arrive and there is nothing to nest in?---Yes, they will move there but what happens when that other place, which they have moved to, doesn't have a feeding resource. You would expect them to move elsewhere and have that other option available in, for example, a Wielangta area, and if that nesting resource were removed from them then that just removes another option.

10

When the gums flower in Wielangta, they generally flower throughout the entire Wielangta area, don't they?---No, I don't - they are an extremely sporadic species. It is really difficult to determine. Certainly I would agree that if you have a flower incidence you will tend to get a number of trees which are flowering, yes, but it seems to me whole areas will provide an important food resource and then they just won't be available in future - sorry, not in future but in the following year.

15

20

The plain fact is the birds have not reduced in numbers since 1989 when you reported?---I think that is a conclusion which I would be very difficult to say is absolutely right. I mean the appearance is that but we really don't know that. We really don't know that. All we know is - and the species has been raised from vulnerable on the threatened species and the Commonwealth list to endangered and as such I argue that if it is an endangered species you must do everything you can to maintain those populations which are in existence.

25

When you worked with DPIWE in the Threatened Species Unit did you provide any input to the Forest Practices Authority as it then was as to the requirements for swift parrots within various coupes?---Yes.

30

You provided recommendations?---Yes. We worked very closely with them in our particular unit.

35

And you provided a significant amount of advice to the then Forest Practices Authority?---Yes.

As to how the swift parrot should be managed in coupes. Is that correct?---Yes.

40

And would you agree with the proposition that the Forest Practices Authority and later the Forest Practices board adopted your recommendations?---Yes, by and large they did. Certainly there was some - we were operating from a position where conservation was our single concern and Forestry were operating from a position where timber harvesting was their principle concern and I don't say their single concern. Obviously we had a very good relationship and we worked very well with them but it was very much a compromise

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situation, if you like. How can we best maintain swift parrot habitat and yet allow harvesting to occur.

5 I think in fairness to you I put the authority and the board around the wrong way. It was the Forest Practices Board which later became the Forest Practices Authority. That is correct, isn't it?---Fair enough. And also with Forestry Tasmania. We also worked very closely with Forestry Tasmania as well.

10 And both the board and the authority acted on your recommendations. Correct?---In general. I find it hard because there were so many things we were dealing with and I really can't determine - certainly they wouldn't have flown in the face of clearly what was sound advice.

15 And you provided recommendations to Forestry Tasmania for management of the swift parrot?---Yes.

And those recommendations to your knowledge were acted upon?---Yes, and with the caveat that I just mentioned before.

20 Could the witness be shown please the affidavit of the applicant signed on 28 May 2005 which I think is volume 1. And if I could ask you to turn to RJB5, the Forest Practices Plan. Could you turn to page 350, Mr Brown?---That's the Forest Practices Plan?

25 Just bear with me. Have a look at page 357, please. Go back to the previous page you will see there is a subheading Conservation of Natural and Cultural Values. Do you have that?---Yes, the heading, yes.

30 First, we have flora, then it deals with the wedge-tailed and white-bellied sea eagle?---That's the fauna section.

Yes. And we come down to the swift parrot?---Yes.

35 Do you have that?---Yes, I do.

And it says swift parrot within the harvest area and these are the specifications set out:

40 *If a nest is discovered during the operation immediately cease all forest activity the nest site will be inspected by the Forest Practices Board senior ecologist and advice on appropriate further action will be provided as soon as possible.*

45 Now, you have seen that form of recommendation before, haven't you?---Yes.

And that accords with one of the recommendations that was given by you to the Forest Practices Board for management of the swift parrot; correct?---Probably.

Well, you are not going to argue that to the contrary, are you?---I'm not going to, no, I'm certainly not going to argue it, but I don't remember it specifically.

5 It sounds a sensible one though?---Indeed.

Location of the nest, stop operations, report, and assessment then will be made. Is that a fair comment?---Yes, absolutely.

10 All right. And then the next requirement is:

The road clearing will be located at least 15 metres away from any known nest tree.

15 It is a recommendation that emanated from the Threatened Species Unit?---Did it?

I suggest it is?---I don't understand that, I think I've discovered subsequently that there was some discussion in relation to that. I mean, nobody in their right mind unless there were special circumstances would site a road 15 metres away from a nest of a swift parrot.

A known nest. All right. So you disagree with that as a sensible recommendation?---Well, as a general - I find it appalling as a general case but I think there may have been certain circumstances which - and I don't understand what those circumstances are for that, there was some discussion anyway within the Unit and the Forest Practices Board.

25 So are you aware of some discussions within the Unit and the Board?---Yes, but I don't know the detail.

All right. Thank you?---But I would make the comment that I can't believe that I would ever agree to allowing a road to occur within 15 metres of a known nesting tree.

35 Wildlife habitat clumps:

5, wildlife habitat clumps are required. The approximate location of WHCs shown on the attached FPP map. A Forest Tasmania forest officer will mark the wildlife habitat clumps in the field with blue tape.

45 Now, do you regard the wildlife habitat clumps as being a sensible means to endeavour to protect this particular bird in the wild?---I consider that they're sensible to assist with feeding resources and in the very long term - in the very long term as a feeding - as a nesting resource.

Because of the 100-year issue you raised with us?---Because of the 100-year issue, yes, or thereabouts.

Also look at then - just bear with me, your Honour. If we continue on then, please, through the wildlife habitat clumps:

5 *A mix of wildlife habitat clumps should be selected, including one or more of where possible around habitat, trees, and rotting logs in the dry eucalyptus obliqua containing several old trees and trees of mixed age. Wildlife habitat clumps should contain at least two mature trees with hollows and a range of other trees, shrubs of various ages.*

10 Do you regard those as appropriate recommendations about habitat trees being maintained in WHCs?---Yes, I agree that they're very sensible but not specifically for swift parrots. And remember that we're talking about a whole range of - - -

15 A whole range of animals and birds can live in hollows?---Indeed.

20 But there is a possibility, though, that a parrot may select a hollow that it has left?---Yes, there's a possibility a parrot - as I think I have said before I think it unlikely that a swift parrot would, but a green rosella may well or a cockatoo may well.

25 But a swift parrot might?---But in my knowledge of swift parrots or my experience with swift parrots I find it extremely unlikely, but yes, okay, there are hollows there. It's better than having no hollows if you like. Well, I'm not so sure about that because I'm not sure that I would want to encourage swift parrots to nest in an area where they're likely to be targeted more readily than if they were in continuous forest.

30 But I do think it's important that those - I mean, I've had long discussions with both forestry and forest practices, in particular forestry, in relation to the availability of wild life habitat clumps. So they do have - I consider they have very substantial value.

35 Thank you. And trees will not be felled into or out of WHCs unless authorised by an FT officer for safety reasons, and that obviously speaks for itself?---No. Well, it's also for destruction reasons as well - - -

40 That is right?--- - - - because they destroy what's in the clump.

 Destroy what is going - actually within the clump when it falls?---Yes. That's right.

45 Machinery will not enter retained WHCs. Again, a sensible recommendation if you have got places where the birds might go?---Yes.

And then we are not worried about the balance compared to the beetle. Could I take you over, please, to the Forest Practices Plan for coupe 19D? If you could go to page 369, please. Do you have that there?---Yes, I do.

5 Thank you. And if you look under the sub-heading Fauna and go down to the swift parrots at the bottom of the page - - -?---Yes.

- - - again it deals with wildlife habitat clumps, and wildlife habitat strips in similar terms, does it not?---Yes.

10

And again an attempt is made to provide habitat for the bird?---And other things, yes.

15

Whilst you worked with the Threatened Species Unit of DPIWE did you assist in the production of the document called The Swift Parrot Recovery Plan?---Yes, I had an over-arching involvement in that. I didn't deal with the detail, but I certainly read it, and I support it.

20

Thank you. I want to take you now to the affidavit of Mr Shields. Have you read that affidavit?---I have, yes.

It should be volume 5, page 2492.

25

Do you know Mr Shields?---No.

Do you know of him?---I know the name.

30

And you would say the name from what, general work you have performed in the field?---From his wildlife management expertise, etcetera in New South Wales.

You know him to be an expert in wildlife management?---I think that's a fair comment, yes.

35

Thank you.

HIS HONOUR: It is Dr Shields, isn't it?

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MR D. GUNSON: Dr Shields. Yes, your Honour?---Dr Shields, yes.

Your Honour is quite correct.

And you know him to be an expert in that field of wildlife management?---Yes.

45

And have you read the whole of his affidavit?---I think I have, yes.

And have you had the opportunity to - - -?---Oh, I've probably - yes, I think I've been through it all, but I certainly concentrated on comments in relation to swift parrots in my affidavit.

5 All right. If I could take you, please, to paragraph 8 of his affidavit, which is page 2499. You will see that Dr Shields says there that he will perform three tasks for purpose of delivering his evidence:

10 *To first assess whether logging the two coupes 17E and 19D will have a significant impact on the swift parrot. (b) assess whether logging all the coupes in the Wielangta State Forest will have a significant impact on the swift parrot, and (c) assess whether logging native forest under the forest practices system in Tasmania will have a significant impact on the swift parrot.*

15 Now, did you perform all three of those tasks?---I certainly wasn't - I wasn't ask to assess those three things.

20 Right. So what do you think you did (a), (b) or (c), or just (a)?---I think (a) and (b) probably.

All right. And - - -?---In a general manner and more broadly in relation to the swift parrot conservation.

25 Thank you. And what criteria did you adopt in determining a significant impact? What was your definition of significant impact?---I consider that as the swift parrot is an endangered - is classified as endangered in both Tasmania and the Commonwealth and other States, that we have a responsibility to undertake as much - or do as much as we possibly can to ensure that this species is not
30 disadvantaged or less disadvantaged, or minimise any disadvantage to the species because of its status. And therefore in looking at the information available on Wielangta I became aware that there were a large number of birds which had been recorded breeding in that whole area. And based on my
35 knowledge of the species when I undertook my survey, and things that I've learnt since then, I was assessing whether, if those important breeding habitats were lost to the swift parrot, they would likely to have a significant impact on the conservation of this species. In general terms that was the way I was looking at it.

40 That is the way you approached it?---Yes.

Dr Shields says this:

45 *In assessing significant impact I've used the terms and definitions from other cases as precedent. The definition is most succinctly rendered as "an impact that is important, notable or of consequence having regard to its context or intensity".*

Now, would you disagree with that being an appropriate definition of significant impact from the point of view of assessing this bird?---I am not sure whether it is - I think it is - I am not sure whether it is the only one but it certainly sounds appropriate to me.

5

Is that the definition you applied in simple terms or do you return - - -?---In general terms, yes, I think it probably is.

Before we move on with Dr Shields' affidavit, I want to come back to the 100 years from harvesting issue that you raised on Friday and addressed a little while ago very briefly?---Yes.

Is it your belief that even allowing for partial harvesting of coupes with wildlife habitat clumps and wildlife habitat strips and retained single trees that coupes would not be a suitable habitat for the swift parrot for at least 100 years from harvesting?---Yes, I think in general terms, yes. Based on the information that the harvesting practices that I saw there I would be very doubtful whether those trees would develop adequate hollows in an appropriate time of forest within that period of time.

15
20

Doubtful?---Doubtful.

But no research has been done on this subject, has it?---It may have been done but I am certainly not aware of it. I mean for example, the examples that I took of those two trees, one was a nest tree which there was an estimate of 130 years on that tree and that was a relatively small tree. It is hard to say how long that hollow had been in there in that tree but it was a very small tree but our forester estimated it to be 130 years old and I'd accept that and the other trees we saw at the final coupe before we went back to the main road, they were quite small trees and they certainly have a long way to go before the develop appropriate hollows to my mind.

25
30

But within that area - sorry, I didn't mean to cut you off but within that area, beyond that patch of 50 year old trees there were large old trees, weren't there?---There were some, yes. That's right and some woods, which we were told were seed trees, had been retained.

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40

And which would no doubt almost certainly contain the hollows which are desirable for these birds?---They would contain some hollows, yes.

40

Are you aware that 17E was an area that has been selectively logged since at least the 1940s?---Not particularly, no.

Have you read any of the affidavits that have been filed by the respondent that deal with the history of the Wielangta forest generally and the harvesting that has gone on there?---No, but I was aware that forest harvesting has gone on in the Wielangta forest for many years, probably 100 years.

45

And of course driving into Wielangta you go through quite a few cleared areas that once would have been substantial areas of forest?---Are we talking about - are we talking from outside Wielangta?

5 Yes?---Yes.

As you go along the main W road, as it is called?---Yes.

10 You go through farming areas, don't you?---Yes.

And of course you have that area all cleared around what used to be the old Wielangta township?---I don't know.

15 All right. Are you aware that the Wielangta, as they describe it, coupled up State forest constitutes a very small proportion of the overall breeding habitat of the swift parrot?---Yes, I am.

20 Have you read the management prescriptions for the swift parrot that are discussed in Mark Wapstra's affidavit?---Yes.

Do you quarrel with any of them?---I can't recall them all. If you can take me to them we'll certainly discuss them.

25 Would you accept this proposition that:

The management prescriptions for the swift parrot have resulted in high quality breeding habitat being reserved during the strategic and operational planning stage process.

30 I would agree that areas have been set aside specifically for swift parrots and areas have been set aside which are considered good swift parrot habitat but I do come back to my - again, I am sorry but I have to keep coming back to this point that I consider that we should operate on what we know and we don't know the use of those areas sufficiently, I consider, before we make decisions on how they are - - -

40 But you would accept though, from your own knowledge, when you worked in the threatened species unit of DPIWE how the system works, that is when nests and potential nesting habitats are identified in the Wielangta coupe that the prescriptions are modified to retain more habitat and to reduce disturbance?---Fine, yes. I don't have an issue with it but what happens if there are no birds breeding in that year and the harvesting is going ahead?

45 The object under the - - -?---Potentially important habitat would be lost.

So your argument really comes down to this. Every tree that has a hollow in it may be a tree that ultimately may have a parrot nest in it and therefore it should stay?---No, I don't say that at all. I am saying that there is an opportunity to

find out more about what areas are used by swift parrots. You have probably heard me say this before but we haven't looked at these areas for long enough. We are taking snap-shots all the time.

5 What other course is there? If the birds haven't been to Wielangta since 2000, and I think that is your evidence, how can you determine whether they are breeding in that particular area if they are not returning to it? It is an impossibility isn't it?---But they are breeding elsewhere but we don't know - do we know that they haven't come back to that area since 2000?

10

I think that was your evidence last week on Friday?---No, it wasn't.

MS MORTIMER: Perhaps my learned friend can give us the transcript reference/

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MR D. GUNSON: I can't give it immediately. I will give it in the morning if necessary.

20 When do you believe the birds last bred in the Wielangta area in coupes 17E and 19D in particular?---I know that they bred there in 2001. I think in 2001 and then you went through the "Do you know they bred" and I said "No, I don't know" and we went on like that for some time but what I am saying is that we really need to take a snap-shot over a number of years to determine which areas are used by the birds and those areas really need to be given maximum
25 conservation attention. That's what I'm saying. Many of those areas which are earmarked for logging may well be habitat which aren't being used in a particular year.

30 And may not be used for any number of years?---May not have been used for some years. I don't know the number of years, but I think if you are looking over - say from the top of my head a five-year period, I think you would have sufficient information then to be able to determine what areas are important and what are not. And I think, I honestly think that more work needs to be done to determine how frequently they are likely to use other areas again.

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Yes. In fact the page reference for the transcript is 300, your Honour. They were there in 2001 the witness said, and I accept that.

40 So they were there in 2001. You don't know whether they were in 2002, 2003, 2004; is that correct?---I don't, no.

And they are not there in 2005?---They are certainly not there in 2005.

45 No. So we have got a fairly large gap, haven't we, since they were last there breeding?---Well, you say that. I don't know that.

What do you suggest should be done in respect of a prospective coupe in Wielangta? Is it necessary for people to go and look at every tree, examine

every tree that may be a potential nesting site, perhaps go into a tree and check whether it is a former nesting site of a swift parrot or whether something else has nested in there, if they can determine that?---No, absolutely not. I don't say that at all. I consider the term - and you have seen swift parrots this morning I understand; would that be correct?

No, I wasn't there actually?---Oh, I beg your pardon. But swift parrots are very noisy, agile birds and they are easily detected when they are active in a particular area. I am suggesting that it would not be too difficult a task to over a period of a number of years, and be it four or five years, to examine the areas which are coupes for the next say 10/15 years over a brief period to determine the use of those areas by swift parrots. Now, I have no truck if swift parrots are not found within that period of time. I say okay, clearly it's probably not an important area and therefore from a swift parrot perspective I probably don't have anything against harvesting. But it seems to me because in the original surveys which were done through the RFA process, swift parrots were found in a whole number of areas and under Commonwealth requirement they said that a maximum effort should be made to conserve those areas where swift parrots are found breeding. And a number of areas were identified and those areas were set aside from harvesting. That is fine, but I would like to know how much further we went because within the Wielangta area it now appears that we have suddenly found a whole lot of - we have suddenly got records of a whole lot of breeding areas within those areas which are coupes up. And I think it's negligent from a conservation perspective for an endangered species to allow harvesting to go ahead in those areas where they have been identified as breeding.

What do you understand as adaptive management techniques?---In general terms?

Yes?---It's to manipulate areas of habitat for management to suit the individuals that you are trying to protect.

And in this case the prescription for those two coupes provides for precisely that, doesn't it? It provides for adaptive management techniques so if you find the nest while you are harvesting, stop operations and let the situation be re-assessed for the purpose of whether or not logging will continue in the vicinity of that nest?---Yes.

And that is an appropriate thing to do?---It certainly is, provided - and I still come back to that, I am sorry to appear a ball but there are years when the birds aren't found there and we can't say that it's not important unless we have investigated them.

And if we come back to your view about 100 years, you would as a scientist no doubt say that such a view would need to be supported by research?---In relation to the use of the areas again?

Yes?---Yes, but I didn't - I wasn't categoric about that. It was my opinion and you were asking my opinion and I gave my opinion on that.

5 It is not supported by research?---It is not supported by research.

Not supported by reference to published data?---No.

10 Not supported by reference to published papers?---No. But it is supported by a long involvement in conservation observation. It is my personal view.

It is your personal view?---Yes, that's absolutely correct.

15 And you certainly haven't attended any seminars, I suggest, with the topic or the issue that you advance as being discussed by qualified scientists?---I haven't, no.

No?---But I think it is a bit presumptuous of you to say that.

20 What do you understand - how many coupes do you understand will be harvested in Wielangta in the next 10 years?---Well, if I could have a look at the map I would be able to - - -

So you would need to refer to that?---Yes.

25 All right. I won't delay you now. And what was your total - sorry, what was your understanding of the total area to be harvested in coupe - well, was harvested in coupe 17E?---I couldn't tell you off the top of my head.

Do you understand it to be a very significant area, a very large area?---Yes.

30 What are we talking, hundreds of hectares?---No. No, I think we are talking 50-some hectares, aren't we?

Forty-seven hectares?---Okay.

35 Similarly, what is your understanding about the total area to be harvested in 19D?---Sixty-odd hectares.

40 All right. You don't oppose logging or forestry activities per se; is that correct?---That's correct.

But you support the Forest Practices system that is in operation now?---Yes, in general I do.

45 The system that operates through the Forest Practices Authority?---Yes.

And the issuing of the Forest Practice Plans?---Yes.

And no doubt you are a supporter of Adaptive Management Process for the reasons we have already discussed?---Yes.

5 And you would accept, would you not, from your knowledge of the operations of Forestry Tasmania that it has in place positive, adaptive management processes?---Yes.

10 And through research and additional information being obtained that process is developed, isn't it?---Indeed.

So it is an ongoing process at all times, isn't it?---Yes.

15 As more is learnt about the area where they are operating information goes into the system and its plans are capable of being changed?---Quite right.

Yes. Have you read the affidavit of Michael Kenneth Miller, it has been sworn in these proceedings?---I had a quick look through it, yes.

20 All right. And you would be aware, would you not, that he is a planning co-ordinator in Forestry Tasmania's Derwent district?---Yes.

25 All right. Just bear with me. Volume 4, 1389, your Honour. Page 1401, please, Mr Brown, if you would go to that. Could I first ask you, do you know Mr Miller?---Yes, I've met him.

You have known him for some years?---Yes.

30 And you met him, presumably, when you worked for the Threatened Species Unit at DPIWE?---That would be right, yes.

Did you have very much to do with Mr Miller during the course of your work with - - -?---No, not a great deal.

35 All right. Now, have you read his affidavit in any detail?---Yes, if you'd refer me to the things which you want me to discuss?

Yes, you see the heading at the bottom of page 1401, Strategic Management of Potential Swift Parrot Nesting Habitat in the Wielangta State Forest?---Yes.

40 And can I take it that you have read those relevant paragraphs?---Yes.

45 And you will see that he says - and I will just paraphrase this, that surveys conducted in 2001 and 2002 indicated the importance of sections of the Wielangta forest for swift parrot nesting habitat. He says:

In Spring 2001, a Forestry employee observed high numbers of swift parrots in the Wielangta forest near coupe 42D. An observation of the

high swift parrot activity in this coupe in October 2001 resulted in a notification and subsequent reply from Ray Brereton at DPIWE.

5 Now, who is Ray Brereton at DPIWE?---He was the threatened species zoologist.

All right. And he says:

10 *He believes this event was the catalyst for the November 2001 strategic swift parrot survey by David James.*

You know David James?---Yes.

15 He is a consultant for DPIWE, or was a consultant for DPIWE; correct?---Yes.

And Mr Miller says:

20 *He surveyed five locations in Wielangta for swift parrot breeding activity, Mount Walter, Mount Jacob, Cone Hill, Wielangta Hill, and Mount Ruben. Eight new nest sites and seven locations of juvenile activity were identified. In addition, areas of high quality swift parrot nesting habitats were also identified.*

25 Then he refers to a report. Have you read the report?---I haven't, I've read a report by David James in relation to his findings, I'm not sure whether that is the report that is referred to. Maybe it is.

All right. Well, we will move on. He says:

30 *There was a meeting in December 2001 between himself and other persons concerning the parrot and Peter Brown from TSU, DPIWE.*

Now, do you remember that meeting?---I think I do, yes.

35 And they then discussed the outcomes of David James' 2001 report?---Yes.

40 Now, do you have any memory of that meeting at all?---I remember - if it's the one I'm thinking of - a large number of maps or a map was produced with areas where Mr James had identified the parrots and then there was some discussions as to what the appropriate areas might be to be set aside for swift parrots.

All right. Can I take you first, please, to exhibit 19 of that report. Just wait a minute, Mr Brown, I will get the page number for you.

45 MS MORTIMER: Your Honour, I think this is the affidavit where the exhibits were attached in reverse order. So you need to go the other way.

MR D. GUNSON: Page 1510. It is headed Swift Parrot Habitat Survey, November 2001?---Yes.

Now, you have seen that document before?---Yes.

5

And have you read it recently?---Yes, within the last two or three weeks.

Thank you. And that is the report that was discussed at the meeting in December 2001, is it not?---Yes, that and the findings from it, yes.

10

All right. Now, a map was being marked as a survey map for the presence of the parrot within that particular Wielangta area, was it not?---Yes.

15

Do you have a large map forming part of the Court book, Mr Brown?---I don't think so.

All right. Perhaps the witness can be shown this document?

20

MS MORTIMER: Could we have an exhibit number?

MR D. GUNSON: Yes. Sorry, I thought I had given it to you, 20.

MS MORTIMER: Thank you.

25

MR D. GUNSON: And Mr Miller says in respect of that:

It was agreed that nominated areas of high swift parrot breeding activity marked as green on the survey map would be excluded from future operations.

30

Is that correct?---If that is his recollection. I know we were certain there were a number of areas set - I haven't seen this map since those days and I don't think I have actually seen this map at all before. It's a different - - -

35

Perhaps if you just take a few minutes because Mr Miller says that you were present, you:

Discussed David James' 2001 report and it was agreed that the nominated areas would be excluded from future operations.

40

Now, just take your time and please have a look. Does your Honour have that map?---What page was Mr Miller's affidavit on? The appropriate - - -

45

I was referring?---I have got it. Section 44?

1402 was the affidavit and the report was 1510?---And this is exhibit MKM20 is it?

MKM20, that is correct?---Thank you. I presume we are just looking at the three top ones are we?

5 Well, I want to make sure - look at the whole of the map and tell me whether or not it accords with your memory of the areas that were identified back in 2001 as the areas that would be excluded from future operations?---I am afraid it is testing my memory. I really can't - I know that we did have areas - we agreed on areas to be set aside but as to the actual location of them I am afraid it's something I just can't recall.

10 All right. Thank you. If I could have that document back again please. You are not going to dispute Mr Miller's account that they are the areas that were identified?---Not at all, no.

15 Right. Thank you?---If Mr Miller said those are the areas that had been, I am sure they were the areas that were identified but it is very hard to recall the actual detail.

20 Now, Mr Miller goes on to say that:

25 *Following this meeting internal correspondence with Forestry shows that the Derwent district supported a different approach and green areas marked on the survey map would not be placed in the management decision classification as protection of forests but would be identified as special management zones.*

Were you aware of that working at DPIWE at the time?---Yes, I think I was.

30 Right. And:

It would be identified as special management zones for swift parrots until further information and a formal swift parrot management plan could be developed.

35 Does that accord with your memory of what occurred?---In general, yes. I honestly don't recall the detail but yes, I do remember those sort of discussions.

All right. And they were reasonable at the time?---Yes.

40 Quite reasonable decisions to make. Would you agree with that?---Yes.

Because they afforded the swift parrot protection?---That's right. Additional protection, yes.

45 That is right. And he says:

It would be expected that the presence of the swift parrot special management zones within close proximity to any planned operation

would require the forest planner to both consult with the threatened fauna adviser for swift parrot recommendations and develop prescriptions in consultation with the Forest Practices Board senior ecologist.

5

Now, you wouldn't quarrel with any of that, would you?---No, that all sounds. That's how the system works, yes.

And that was an appropriate way in which to move at that time?---Yes.

10

The swift parrot special management zones provided protection for the birds. Correct?---In the areas that we had identified, yes.

Kept operations away from them?---Yes.

15

And then further work would need to be done in conjunction with the forest planner consulting a threatened fauna adviser for recommendations and then developing prescriptions. Correct?---Yes, okay.

20

And that is the role of the Forest Practices Board senior ecologist, isn't it?---Yes.

None of this is new, is it? It is the standard procedure?---No, this is something that has been developed over a number of years.

25

That is right. And it is not just developed with respect to swift parrots but all threatened species that might be found in any area where logging is to take place?---That's right.

30

And it is a fairly highly developed practice now, isn't it?---Certainly had a lot of work on it.

All right. Now, it goes on to say on 23 December 2001:

35

The district received a reply in relation to that coupe 13D as a result of a notification sent to the Forest Practices Board prior to the 2001 swift parrot survey and set out a number of recommendations and areas identified of high swift parrot breeding activity in accordance with James' report of the previous year or early that year, in adjacent coupes would be excluded from any future operations.

40

Sensible recommendation?---Yes. I did have one concern over that thing and I was involved in this so I suppose I can't really sort of claim - in hindsight the survey took place fairly late and there were young birds around. They could well have left the nesting areas. That was a concern that the nesting areas might have been left and therefore the birds which were identified may well have been outside their areas where they are actually bred and as a consequence the actual

45

nesting areas might not have been identified. That was just my one concern over that whole - - -

5 Did you raise that concern at that time?---No, I didn't. This is a subsequent concern. This actually has sort of occurred since I have been able to focus a little more on this issue.

10 At the time you were content with those recommendations?---At the time I was quite comfortable that we were having a substantial gain for the swift parrot.

15 Yes. And similarly with the next recommendation that two areas of high swift parrot breeding activity at the northern boundary of 12F and 13D were also to be excluded from future harvest operations?---Yes.

And as head of the Threatened Species Unit at the time you accepted those recommendations?---Yes.

20 And regarded them as good, sound, valid judgment?---I was actually personally involved in some of those issues, as a rule.

Right. And if those recommendations were met - Mr Miller continued on the next page:

25 *13D could be selectively harvested, provided that (1) the size of the wildlife habitat coupes were increased in size. That is, each clump should contain four to six mature trees with suitable swift parrot nesting hollows, and marked in conjunction with the swift parrot specialist.*

30 Now, was that you at the time?---No.

Who was it?---Raymond Brereton.

35 All right. And secondly:

40 *Any roading through the retained areas as described above was conducted in accordance with the prescriptions employed for roading through wildlife habitat strips.*

Now, you were aware of those recommendations at the time?---Broadly. Broadly. I'm a little bit concerned about suitable hollows, swift parrot nesting hollows.

45 But as - - -?---As a general prescription that's not bad. That's not bad, but I still maintain that they are unlikely to be taken up for many, many years.

5 But as the then person in charge of the Threatened Species Unit you were content with those recommendations?---I was comfortable with them. I mean, I would have probably preferred that we - that harvesting was excluded from the coupe altogether. But it's a matter of consultation. It's a matter of compromise in the end.

And at the end of the day in discussions those recommendations were decided upon?---That's correct.

10 They weren't some unilateral decision imposed on you, were they?---No.

No. And you took part in those consultations, and at the time were perfectly happy with them?---I was - yes, I was reasonably happy with them. I wouldn't have agreed with them if I wasn't reasonably happy with them.

15 You certainly didn't object to them, you didn't write any criticism of them?---I do recall - I do recall in our discussions that we did have quite a lot of discussion about the extent of area to be set aside, and certainly Forestry Tasmania weren't going to give us everything we wanted in the initial stages. I recall having discussions about boundaries over a length of some time. So we did reach a compromise, and it was a matter I suppose of give and take on both sides.

25 And there is no evidence to suggest that as a result - - -?---And as a result of that I was reasonably comfortable with the outcome.

All right. And the logging went on in 13D?---I assume so.

30 And there is no evidence to suggest that the swift parrot suffered one iota as a result of logging being conducted under those conditions?---I wouldn't agree with that, because I don't know.

You just don't know, do you?---No.

35 And you have made no attempt, having read Mr Miller's affidavit, to try and find out what the position might be?---I'm not certain. Other things may have been followed up by Mr Brereton, but I'm not aware of those.

40 In paragraph 49 Mr Miller says:

45 *During the breeding season of 2002 a strategic review of nesting habitat was conducted. This review was undertaken by Karen Ziegler, Forestry Tasmania Derwent District, Ray Brereton, Senior Zoologist, Forest Practices Board, and Tony O'Malley, Applied Kinetics, over two days, the 14th and 20 November 2002. Areas identified by David James in 2001 are assessed to evaluate potential management options.*

Now, were you aware of that review of the nesting habitat?---I don't think I was, no.

All right?---I think I have seen Karen Ziegler's report.

5

Well, that is the next - - ?---Somewhere.

Yes. Well, if you go to - - ?---But I don't think I - I don't think I was - I may have been made aware of it, but I'm certainly - I certainly wasn't aware of the detail.

10

All right. Then if you go to exhibit MKM23, which is page 1501?---Yes.

You will see there Karen Ziegler's brief report. Did you see that when you were working at the Threatened Species Unit?---I don't recall it.

15

You said a moment ago you thought you had - - ?---But I wouldn't necessarily - I wouldn't necessarily have had to have seen it.

All right. I think you said a moment ago you thought that you had seen it somewhere. Do I interpret from that - - ?---No, no. I've seen this individual document in some of the papers.

20

That you were given to consider for this hearing?---Yes.

25

Is that a fair comment?---Yes.

Thank you. Did you read it?---Yes.

And what did you conclude from it?---I concluded that certainly there were areas set aside.

30

All right?---I'd be interested to know - 14th and 20 November. I don't think there was any actual mention of actual swift parrots. I'd be interested to know if there were swift parrots present, and I don't see anything which indicates there were. On 14th and 20 November if they'd been they would have been there. Perhaps another indication of how these areas are not necessarily used on an annual basis.

35

All right. And you will see that following that report by Karen Ziegler a detailed management decision for special management zones and the changes required for the MDC mapping were carried out?---Yes.

40

And it concludes by saying:

45

Known nest trees within the high quality nesting habitat as identified by David James were included in the MDC system as informal protection forest.

Now, what do you understand to be the MDC system?---The management decision system in relation to areas which are used for harvesting or not harvesting.

5

And what did you understand to be as an informal protection forest?---Well, it's an area of forest which is not formally protected through an Act of parliament. In other words, decisions can be made to unreserve an area without going to parliament, but I think somewhere we have in the system - somewhere in the system there is an agreed procedure whereas an informal reserve is not declared redundant without agreement from - in conservation areas, without agreement from the Department of Primary Industries.

10

What it means, basically, at the end of the day is that protection was put in place for those nests that had been identified and isolated; correct?---Yes, that's right. They're protected from harvesting.

15

That is right. So as a result of what was done in the way in which has been described by Mr Miller, there has been a desirable outcome, hasn't there, that the nests have been identified and protected?---I think on the basis of the system that is in place yes, the process was adhered to and decisions were made and outcomes were achieved.

20

And those decisions were appropriate?---Those decisions were reasonably appropriate.

25

And the outcomes - - -?---Well, I'm saying yes, they - I find it very hard in this discussion we're having, in relation to this, because they're not necessarily my total desired outcome from these, it was a matter of negotiation and it was a matter of a compromise, and whilst it probably wasn't Forestry's desired outcome, it certainly wasn't necessarily my ideal outcome. So yes, some protection is afforded for the swift parrot but perhaps not the best protection that could be provided.

30

Very significant protection was provided?---Yes.

35

Yes?---I'd go along with that.

You don't quarrel with that, do you?---No, I don't.

40

And you did not, as it were, protest the decisions or the outcomes in any way at all?---I may have protested them in the discussions that took place at the officer level.

Once the decisions had been made and had been implemented you certainly did not suggest anywhere within Government that the wrong decisions had been made?---No.

45

Didn't write any criticisms?---Not that I recall.

No. And you were quite content to let the situation be as it had developed?---Yes.

5

Yes. Because at that time you believed quite properly that very good protection had been afforded to these birds by what you and your colleagues had done?---I believed we were getting a reasonable outcome, yes.

10 Yes. And if we look then at the management of potential swift parrot habitats in the coupes that are identified there, 12B, 12E, 13B, 13D, and 42D, you will see that Mr Miller says:

15 *The final fauna natural and cultural evaluation sheets completed for 12B and 13B indicated there were no suitable swift parrot foraging habitat present.*

He said:

20 *In addition, based on the described wet forest vegetation types I assume these areas were deemed unlikely to support swift parrot nesting habitat.*

25 Does that accord with your memory?---I'm sorry I didn't pick up where we were.

Sorry, the bottom of page 1403?---Number 52?

30 Yes. Does that accord with your memory or simply do you have no memory now of discussing - - -?---I have no memory of that, but I just say that I would like to have seen it tested.

35 Right. When you say you would like to have seen it tested, by?---Well, we say that no suitable swift parrot foraging habit was present. I'm not sure upon - certainly, it was probably almost certainly based on the knowledge of the senior zoologist.

Ray Brereton?---Raymond Brereton, yes.

40 Yes?---And it was his assumption, but you know - - -

45 If Raymond Brereton had assessed the area as being unsuitable for the swift parrots, it would be a reasonable conclusion from him with his experience and background, wouldn't it?---Yes, I certainly have faith in his ability. Confidence in his ability.

If that was his conclusion it would be - - -?---But life is full of surprises and - - -

5 If that was Ray Brereton's conclusion and it was reported to you as being his
conclusion you would be hardly likely to go rushing out to coupe 13B and
coupe 12B and challenge his assertion, would you, you would rely upon
it?---Not unless I didn't - no, not unless I didn't trust him, but I do trust him,
yes, and I in general am happy with his findings.

10 Right. So if he has reported no suitable swift parrot foraging habitat was
present it would be reasonable to accept his opinion, wouldn't it?---Yes, I
accept that.

15 And similarly with respect to coupe 13D at paragraph 53 if Brereton had
reported that in response to the identification of high quality swift parrot nesting
habitat, you would expect that to be the case; correct?---High quality. I am
just hesitating over that word, the high quality.

20 Probably means a nest with a view. I withdraw that?---It probably means what
is in other people's opinion the optimal nesting habitat however that is assuming
that we know everything about what is required by the swift parrot's nesting
habitat and whilst I am very comfortable with other people's views I am not so
sure that they know everything and, as I said before, life is full of surprises and
in some of the places I have seen swift parrots breeding I would have thought
other areas may look better at some times so, you know, it is hard to assume, to
be absolutely categorical that you say this is a prime nesting habitat and that is a
25 not so prime habitat. Unless it is put to the test then it is very difficult to be
absolutely certain.

30 You said a moment ago some of the places you have seen swift parrots breeding
or nesting, I got the impression from what you said that there was some element
of surprise in some of your findings?---Well, I have found swift parrot nests in
relatively small trees. I know that as a general rule, point 8 of a metre is - or
points between point 6 and point 8 of a metre is the generally accepted diameter
at breast height for swift parrot nesting trees but they can be smaller but not
necessarily younger.

35 Yes. And Green, as we know, found them nesting in the Launceston City Park
and in the Trevallyn dam wall ?---So you keep reminding me.

40 MS MORTIMER: Your Honour, we have had that question about four times
and my learned friend ought to move on.

45 MR D. GUNSON: That makes the point though, doesn't it, that they are an
unpredictable bird as to where they will nest?---Yes, but I don't think they are
unpredictable. I mean the nest you refer to in the Trevallyn dam is very much a
one-off and, as I said before, I consider that aberrant behaviour.

I think it would be - in fairness to Green's report to you was of birds nesting. You had the impression that there were a number there?---I didn't have that impression at all.

5 All right?---We often refer to birds nesting as a pair.

I just take you then to the recommendations that are set out in paragraph 54 of the affidavit by Mr Miller and I simply ask you this, to read those to yourself and tell me whether you think that the recommendations that were made to
10 accommodate the fact that the parrots were nesting in this area were appropriate recommendations?---What was your question again?

Would you accept that the recommendations that were made following the finding of "high quality swift parrot nesting habitat" were appropriate
15 recommendations?---Yes, I do.

And you in fact were at that meeting, were you not?---I was at the first meeting, yes.

20 Yes. Is that a suitable time, your Honour.

HIS HONOUR: How much longer do you think you will be?

MR D. GUNSON: Probably about an hour, your Honour.
25

HIS HONOUR: Have you finished with this particular topic or are you moving on?

MR D. GUNSON: I was going to move on to another coupe, your Honour,
30 but I would be - - -

HIS HONOUR: Yes. Well, it is probably a convenient time.

MR D. GUNSON: Yes.
35

HIS HONOUR: We will adjourn now until 10 o'clock - - -

MS MORTIMER: Your Honour, can I just indicate I have just sought some instructions about the matter I raised earlier and my instructions are, and my
40 submission is that my learned friend ought to finish this witness before we start Mr Meggs so we would expect this witness to go through in the morning until his evidence is concluded and it might be appropriate if we could have an indication from the Commonwealth whether there is going to be an application to cross-examine.

45 HIS HONOUR: Mr O'Bryan?

MR O'BRYAN: As at present advised no, your Honour, there won't be.

HIS HONOUR: When does Mr Meggs have to leave?

5 MR D. GUNSON: He leaves Thursday afternoon, your Honour, to go back to Sydney and flies to Canada the following day.

HIS HONOUR: Right. What time Thursday afternoon?

10 MR D. GUNSON: I can't say, your Honour. I was simply told by my instructing solicitor Thursday afternoon. We could probably find out fairly quickly.

15 HIS HONOUR: Well, if necessary we could, for example, sit late on Wednesday and/or start early on Thursday to accommodate him. Is there any objection to that course if necessary?

MS MORTIMER: No, your Honour.

20 MR D. GUNSON: Not at all, your Honour.

HIS HONOUR: Yes. All right. So we will continue with Mr Brown's evidence until its conclusion.

25 MR D. GUNSON: And then Mr Meggs.

30 HIS HONOUR: And then Mr Meggs and if there looks like being a difficulty in concluding his evidence in reasonable time then we will contemplate sitting extended hours provided that it doesn't get ridiculous so that the diminishing marginal utility sets in. The Court will now adjourn until 10 am.

MATTER ADJOURNED at 4.36 pm UNTIL TUESDAY 13 DECEMBER 2005

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