

TRANSCRIPT OF PROCEEDINGS

O/N 2348

FEDERAL COURT OF AUSTRALIA

TASMANIA DISTRICT REGISTRY

MARSHALL J

No TAD 17 of 2005

ROBERT BROWN

and

FORESTRY TASMANIA and OTHERS

HOBART

10.00 AM, THURSDAY, 8 DECEMBER 2005

Continued from 7.12.05

DAY THREE

**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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HIS HONOUR: Good morning, everyone. Before we resume with the evidence I have given some consideration over night to the question of further dates and to a concern I have about using part weeks. This latest thought of mine will probably drag out slightly the conclusion of it but ultimately I don't think, having regard to the fact that Easter is between the two times I have in mind, it is not going to make a huge amount of difference in the wash and that is if I stand out of Full Courts I have a clear four weeks from 1 May. Now, I am not saying that those entire four weeks should be used. Someone often - or at least a couple of people I know say that if you give counsel time they will fill it.

5
10 MS MORTIMER: That is very unkind, your Honour.

HIS HONOUR: I said some people say, it is a CNN technique, but in any event I tend to think on reflection that it might be better to do that so the desire to run on can be had and there is no breaking up of weeks, so you have a three day week, then a full week, then a week that is four days that runs into Easter. There is just effectively I think 1 May is the Monday going through to the 26th, that is the May Full Court period which I would stand out from.

15
20 MS MORTIMER: Your Honour, can I just clarify? That is in contemplation of vacating the February week?

HIS HONOUR: Oh no, either or, I wanted to hear views about that. It is still available if you want it but it might be felt better that we resume then rather - in May rather than take the February week. In other words running everything on.

25 MS MORTIMER: Well, your Honour, perhaps we could all have a discussion and inform your Honour after lunch.

30 HIS HONOUR: Yes. Is there general consensus that using May rather than those truncated weeks around late March, early April, is better?

MS MORTIMER: From our perspective I think there would be, your Honour.

35 HIS HONOUR: Yes. I will probably shock the Full Court coordinator. In 10 and a half years I have never stood out of any Full Courts, I have always been a willing soldier. All right. Well, I will still keep that week in February free for this case and if the consensus is that it is better to start in May and go on continuously and not use the February date well, the sooner I am told the better because there are other people pestering me for dates on other matters.

40 MS MORTIMER: Your Honour, perhaps if we agree that we will give your Honour an agreed position if possible, at 2.15, or even after the morning break, my learned friend suggests.

45 HIS HONOUR: That would be great, thank you. All right, is Professor Dickman available?

MS MORTIMER: He is. If Professor Dickman would be recalled. Actually,
your Honour, just before he does can I raise a matter about transcript just so
that we are all clear that we are working on the same line and that is that it is
agreed at the bar table that we ought, in final submissions, be giving your
5 Honour transcript references from the hard copy - - -

HIS HONOUR: Yes.

MS MORTIMER: - - - or at any time before that, that the transcript references
10 are from the hard copy rather than the electronic.

HIS HONOUR: Yes, I understand there are difficulties and different
pagination with the different electronic versions.

MS MORTIMER: Yes, that is so.

HIS HONOUR: Yes, thank you.

MS MORTIMER: If your Honour pleases. Professor Dickman?
20

**<CHRISTOPHER RICHARD DICKMAN, ON FORMER
AFFIRMATION**

[10.05am]

25 **<CROSS-EXAMINATION BY MR O'BRYAN**

HIS HONOUR: Yes, Mr O'Bryan?

30 MR O'BRYAN: If your Honour please.

Professor, do you have with you the affidavit and report, your affidavit and
report?---Yes, I do.

35 Yes. Now, I want to ask you some questions, please, about the process that led
to this affidavit being prepared and your report. Your affidavit was sworn on
19 October, in refers in paragraph 2 to a letter that you received from the
applicant's solicitors, FitzGerald and Browne, dated 7 October, and you annexe
that letter or you exhibit that letter as CD1, and that letter, your Honour,
40 commences on page 578 of the Court book. Now, Professor, that letter says in
the second paragraph that you have agreed to be retained as an expert witness.
When was that agreement made?---It would have been six or eight weeks prior
to the date of the letter.

45 So six or eight weeks prior to this letter you received what, a phone call?---Yes,
that's correct.

Who from?---It was from somebody in Senator Bob Brown's office.

In Canberra, was it?---Yes, I think so.

And was this person known to you?---No, not at all.

5

No. Is Senator Brown known to you?---Yes, by name. I did subsequently meet him after conversing on the phone.

10 And when did that meeting take place?---It would have been again six to eight weeks prior to the date of the letter so some time probably in August. I could check the exact dates but that's a rough time.

And was it at that meeting that you agreed to be retained as an expert witness?---Yes, it was.

15

Right. And then after that meeting what other contact did you have with Senator Brown or anyone from his office in connection with the case?---After that meeting there was no further contact.

20 Until you got this letter?---That's correct.

So the letter is dated the 7th, when did you receive it?---I really don't recall but presumably some time shortly after 7 October.

25 It may assist you if I remind you, that the 7th was a Friday. You will see that the letter in the sixth paragraph, again on Court book page 578, requested your report be delivered by Wednesday the 12th, that is the following Wednesday. Does that assist you to recall when you got the letter of instruction?---Yes. It would have been early the week beginning 10 October I presume, but yes, I
30 really can't recall the exact time when it did arrive.

35 So if it arrived on the 10th we assume, on the Monday, the earliest possible date of arrival for a letter in that week you had, what, approximately 48 hours to prepare the report, did you?---I think I was able to prepare the report after the deadline of the 12th.

So it wasn't, in fact, prepared by the 12th?---No.

40 No. When was it prepared by?---I think it was prepared by probably the following week. Again, I'd need to check my diary to be sure of that, but it was certainly prepared some days after the letter had arrived from FitzGerald Browne.

45 So it would have been some time in the week commencing the 17th, or Monday, 17 October; is that right?---As far as I remember that would be correct.

Right. Now, this is not the only letter dated 7 October that you have received from FitzGerald and Browne, is it, the one that is in the Court book?---Yes, I don't remember any others, there may have been but - - -

5 Are you sure about that, Professor? Are you sure you don't remember any others?---No, I don't.

No. You don't remember a letter referring to the swift parrot and to the destruction of X per cent of its habitat in a different position in another version
10 of a letter of 7 October? You don't recall that?---No, I don't.

No. All right. Could you look at this document then, please? Your Honour, I am handing the witness a copy and I will hand your Honour the only original that we have of an affidavit which is undated and unsworn. Do you have the
15 extra copies of that? In a moment, I will hand - that is for his Honour which has the Court stamp on it. I will give you two of those for the record because it hasn't got all of the other pages. You have seen that, I assume? Others may not have seen it. Now, Professor what I am getting you is a document - it is not the whole bundle that his Honour has. His Honour has the copy that was originally
20 collected by the solicitors for the Commonwealth from the Court file here in Tasmania. The copy that you have got has got the only pages which have differences. I will point out the differences to you in a moment between the version that is now in the Court book commencing at 575 and that version which was filed with the Court on - as I think the date on it discloses - 18 or 19
25 October. Filed on the 18th. Now, for reasons that are unclear - to me at least - that version is no longer on the Court file, although as you can see from its front cover, it is stamped as having been filed on that date but has subsequently been removed from the Court file. Now, what I want to point out to you, Professor, and ask you a question about is this. The letter that is in that version attached in
30 your affidavit differs from the letter that is in the Court book in this respect, and you will see if you turn through the letter in the version that I have given you there is a question 15 on page 4 of the letter which says:

*If X per cent of swift parrot breeding habitat and feeding habitat is set
35 to be logged over the next 10 years what impact in your opinion will that have on the level of endangerment of the swift parrot?*

Now, that question, although not precisely in those terms, you will also find in
40 italics on page 582 of the Court book, the version that was ultimately sworn to and filed. It is not in the same position in the letter. It is not a question that is posed in the letter but rather is introduced with the words which you can read there on the bottom of page 582:

*Finally, I have one further question that I cannot pose until another of
45 our experts has completed revision of some GIS data. That question is*

And you can see the question posed, which differs slightly from the version that was in the first letter you received, I suggest to you, and then Mr Browne says:

I plan to pose that question separately.

5

Now, Professor, you have seen both versions of the 7 October letter before, haven't you?---Well, I certainly recall seeing the letter that is in the Court book. I really don't remember seeing the second letter.

10 Oh, the second letter, you mean the one that you are now holding in your hand; is that right?---That's correct.

HIS HONOUR: Can I just indicate that document 78 on the judge's copy file which - my staff have been liaising with the Tasmania district registry to ensure
15 that the judge's copy file which we had been keeping in Melbourne and the Court file which - the registry copy which has been maintained in Hobart - and something that I have had no involvement in while I have been hearing other matters and writing other judgments, been a purely registry and staff function has - document 78 is an affidavit sworn on 19 October by Mr Dickman and was
20 filed - there is a date stamp filed on the 21st. There is nothing on at least the judge's copy - my associate can check the registry copy, there is nothing from Mr Dickman filed on the 18th.

MR O'BRYAN: No, but as your Honour sees from the stamp on it, which we
25 didn't put on it, your Honour - -

HIS HONOUR: Well, it has got received/filed, and what happens quite often in Tasmania is that - as from previous experience is that when something comes
30 in they put that document on it and don't - there is varying practices, and I have noticed in some industrial cases that they have - received is struck out so it has filed, or filed is struck out and it just has received.

MR O'BRYAN: I see.

35 HIS HONOUR: And there is also varying practices down here in relation to the mainland as to what is filed. Like, whether you file a transcript or whether - what you maintain on the Court file. It is just not a question of Tasmania and mainland, there are idiosyncratic differences amongst registries right throughout Australia. But I wanted to put it on record the position with the file I have
40 which I expect will be the same document in there as in the Court book, which appears to be the case.

MR O'BRYAN: Oh, yes, that is certainly true, your Honour.

45 HIS HONOUR: Is that this document that you have handed up is complete news to me.

MR O'BRYAN: Yes, no, no, we accept that, your Honour, and I certainly don't want to take up time with any concern about the registry practices but plainly I do want to investigate having regard to Professor Dickman's status in the case and his significance in the applicant's case, I do need briefly to
5 investigate why there are two letters dated the 7th and if it be the case that he is only aware of one of them how the other in fact even exists, your Honour.

MS MORTIMER: Well, my learned friend could have asked us, your Honour, and in my submission that might have been the appropriate thing given his role
10 in this case as an intervener to assist the Court. He is not here to fire cheap shots at this witness. He is here to assist your Honour.

And it would have been much more appropriate if he had at least raised this issue with us to see if there is a perfectly obvious explanation. Now, I don't
15 know if there is because I am hearing this for the first time.

HIS HONOUR: Well, is this something to be discussed between counsel at the mid-morning break?

20 MS MORTIMER: Absolutely, your Honour.

HIS HONOUR: I mean, if necessary, you can ask questions if that matter is not resolved to your satisfaction in that break.

25 MR O'BRYAN: Yes, I think we can probably resolve it very quickly, your Honour, with a couple of more questions to Professor Dickman, which I hope, could not, by any fair-minded observer, be regarded as cheap shots.

30 Professor, this question, posed about the swift parrot breeding habitat that you see in the Court book on page 582, is it your evidence that the first time you saw that question posed in any form is in the form in which it is posed on page 582?---Yes, as far as I recall, that's the first time that I would've seen that particular question posed.

35 So you were not involved in any process of removing that question from the list of questions actually in the letter as you see in the other version that I have handed you? You have only seen it in that form in this letter; is that right?---That's absolutely correct.

40 Yes. Did the version of the letter that you received at Court book 582, was that signed by Mr Browne - Mr Roland Browne?---I don't remember.

45 So you don't recall ever seeing a signed version of the letter?---It was signed but whether it was signed by Mr Browne or somebody else in the office, I don't recall.

But you have seen a thing which was a signature on the letter?---As far as I remember, yes.

Do you have that signed version with you, by chance?---Yes. Could I take leave to - - -

5 Well, perhaps we will do that at an appropriate time. We don't need it at the moment, your Honour, but if it could be fished out at the break, that would be very convenient. Now, Mr Browne says at the end of this page, "I plan to pose that question separately." This is in the Court book version. Was that ever done?---No.

10 And did you discuss with Mr Browne when he planned to pose it separately, or in what circumstances?---No, I didn't.

15 You can put that other version of the document I have given you aside. Perhaps I will take up my learned friend Ms Mortimer's suggestion and we will see whether it is necessary or desirable to tender that. It may be desirable, your Honour, at least to mark it for the time being because otherwise the transcript may not make sense.

20 HIS HONOUR: You would like to mark it for identification?

MR O'BRYAN: Yes, your Honour, if that could be done?

25 HIS HONOUR: MFI1.

MFI #1 COURT BOOK PAGE 285

30 MR O'BRYAN: Now, Professor, amongst the materials that you ere given for the purposes of preparing your report, was a copy of the Federal Court's Expert Witness Guidelines, wasn't it?---Yes, that's correct.

35 Do you happen to have a copy of those there, or would it assist you to see them again?---They're not right here. I have a copy - - -

40 Well, look, I will hand you this copy of the guidelines and, at the end of your report, you say you have read and understood them. Now, Professor, you will find the guts, as it were, of the guidelines in paragraph 2, the form of the expert evidence, which is on the second page of that print-out I have handed you. Would your Honour be assisted by having a copy as well, or do you know them off by heart?

45 HIS HONOUR: I think that is an unfair question.

MR O'BRYAN: Sorry, your Honour, I will withdraw it if it was a question. It wasn't intended as one.

Page 2, please, Professor. You will see under the heading The Form of the Expert Evidence the heart of these rules as there stated. Now, you will see that paragraph 2.2 of the guidelines requires that:

5 *All assumptions of fact made by the expert should be clearly and fully stated.*

Now, amongst the assumptions of fact which you were asked to make for the purposes of giving your report, is the assumption in paragraph 13 of the letter
10 from Mr Browne, at the bottom of page 580 in the Court book:

As to the broad-toothed stag beetle, Dr McQuillan has recommended that there be no forestry operations in those parts of the Wielangta Forest area that is potential habitat for the beetle.

15 With a foot-note:

Do you agree or disagree with those recommendations, and why?

20 Now, you were also given - I think your evidence yesterday disclosed - a copy of Dr McQuillan's affidavit from May and I will ask if you could, please, be given book 1 of the Court book if you don't have it there already. You will find Dr McQuillan's affidavit on page 108, commencing at 108, and you will see the reference to page 15, which is the cross-reference that you were given in the
25 letter from Mr Browne. You will find that page 15 on page 122 of the Court book. Now, could you please tell his Honour where his Honour will find the statement on that page, "that there be no forestry operations in those parts of the Wielangta Forest area that is potential habitat for the beetle"? Where is that said?---On page 122.

30 On the page 15, which is the reference to foot-note 1 in the letter you got from Mr Browne, where does one find that proposition?---I can't see the particular statement on page 122 of the Court book.

35 Do you find the statement that is the assumed fact in that first sentence at paragraph 13 of the letter - do you find that statement anywhere in Dr McQuillan's affidavit? If you think it will take a long time we will hold it over but if it is readily to hand could you tell his Honour where in Dr McQuillan's affidavit of May you found the statement that formed the assumed
40 fact in question 13 to you?---I thought it was towards the end of the affidavit from Dr McQuillan.

I will not hold you up now because I will overstay my welcome and there will be complaints but if you are able to point to it later on please feel free to do so.
45 I will move on for the time being. Now, it is true, isn't it, that in your report you have made an assumption of fact that that is what Dr McQuillan had in fact included in his affidavit. That is right, isn't it?---Yes, that's correct.

And if that assumption of fact is wrong then it seriously undermines the reasoning on the beetle in your affidavit, doesn't it?---I think the conclusion that operations would be detrimental to the beetle arose from evidence in the affidavit so the evidence that was provided there still remains. The conclusion
5 that Dr McQuillan arrived at based on that evidence, it would be reasonable to assume that I, or other people reading it, would come to a similar conclusion so I think to answer your question, not necessarily.

So is it your evidence that you could answer the question posed to you in question 13 irrespective of any conclusion that Dr McQuillan had arrived at?---I
10 think I would have been less confident in arriving at the same conclusion but nonetheless the evidence was there upon which such a conclusion could be reached.

15 Yes. You said repeatedly in evidence to his Honour yesterday that you are not a beetle ecologist. That is right, isn't it?---That's correct.

You are not a swift parrot ecologist either?---No.

20 And you are not a wedge-tailed eagle ecologist either?---No, I am an ecologist but not in the ecology of each of those three species.

So you are very heavily dependent, if not entirely reliant, upon the expert work done by experts in the ecology of each of those animals, aren't you?---No.
25

Yesterday you were asked questions about the work that Mr Meggs has done on the beetle and you said that you had read the 1999 Meggs article - I think it was referred to at one point yesterday as the seminal article - and you said that you had read that some time ago. You are aware, aren't you, that the guidelines
30 require you to put at the end of your report references to everything upon which you have relied in expressing your opinion?---Yes, that's correct.

Do you recall that? Now, there is no reference in your report to the 1999 article, is there?---There should be. If it is not it is omitted inadvertently.
35

Okay. You will see a reference in item 16 on Court book 619 to the 2003 article which was the published article. Remember you looked at that yesterday in its published form in the Court book?---Yes, that's correct.

40 Yes. And immediately before in the Court book in volume 4, I think, or 3, is the 1999 unpublished work - that work of course having been done for Forestry in Tasmania but that is not in the list which is appended to your report on pages 618 and 619 and could I suggest to you, Professor, the reason it is not in the list is that you have not in fact read the 1999 piece before preparing your report.

45 That is correct, isn't it?---My recollection is that I had it available and referred to it.

All right. Well, where did you obtain it from if you had it available?

MS MORTIMER: Your Honour, I object to these questions until my learned friend clarifies what he says Professor Dickman's evidence was yesterday about when he read the report because my recollection of his evidence was that the
5 question was asked whether he had read it, not in preparing his report but before he was giving in the witness box and it is of course exhibited to Mr Meggs' affidavit so this line of cross-examination, in my submission, would be irrelevant unless my learned friend can point to exactly what Professor Dickman said yesterday about the timing of reading that report.

10 HIS HONOUR: Mr O'Bryan?

MR O'BRYAN: In my respectful submission I am entitled to ask Professor Dickman today when he read that report. He has accepted that he read it before
15 he published his report. That was his evidence. And it is that evidence which I am exploring, your Honour. The references to yesterday are irrelevant in the context of the questions which I am pursuing with the professor now arising out of his unequivocal evidence that he read this report - sorry he read the 1999 Meggs' report before preparing his own.

20 MR O'BRYAN: His evidence on that is quite clear, given two minutes ago.

HIS HONOUR: Ms Mortimer?

25 MS MORTIMER: Your Honour, the whole line of questioning started from an assumption made by my learned friend about what Professor Dickman had said yesterday so it is a very unfair line of questioning unless my learned friend is going to go on and put to him that he has now said something that is inconsistent.

30 HIS HONOUR: Yes. Let me be an ice breaker. Professor Dickman, do you recall what you said yesterday about reading this report?---I recall that I said that I had read both the Meggs and Munks report in 2003 and the earlier one by Meggs in '99 but I don't really recall the order in which I read them.

35 Yes. Thank you. Mr O'Bryan?

MR O'BRYAN: If your Honour pleases.

40 So Professor, is the position today that you are not able to recall when you read the 1999 article? It may have been before you wrote your report; it may have been afterwards?---To the best of my recollection I would have either referred to it or been aware of it at the time of reading the Meggs and Munks article.

45 HIS HONOUR: Is that because it is referred to therein?---It's perhaps because it is referred to in the Meggs and Munks' article. As for the timing of exactly when I read each of them, well, I can make a guess but I can't be certain.

MR O'BRYAN: No, okay. Professor, you will see on page 583 of the Court book that you have got there, in book 2 where your report is, there is a list of enclosures that Mr Brown sent you when you got the letter of the 7th and in that list is the affidavit of Dr McQuillan, that is item 6, which is the May
5 affidavit that you looked at, at some length yesterday. Now, you recall, don't you, that affidavit refers quite extensively to the work done by Mr Meggs and I think it is Dr Munk in 1999 and in 2003?---Yes, that's correct.

And did you then - sorry, when you read that affidavit you would have been
10 conscious, would you not, that Dr McQuillan was very critical of the methodology that had been applied by those persons in searching for and trapping and so forth, looking for populations of the beetle?---Yes, he had been critical in that report.

15 Did you make contact with Dr McQuillan at all in relation to those criticisms?---No, I made no contact at all.

No. Have you subsequently spoken to Dr McQuillan about those criticisms that he made?---No, I haven't.

20 No. So you were not aware that Dr McQuillan was a supervisor of Mr Meggs' Masters thesis at the University of Tasmania?---At the time of writing the report I was not aware of that at all.

25 No. But you are now aware, aren't you, having read - - -

MS MORTIMER: I object to this, your Honour. My learned friend ought to couch these questions in the context of that is the respondent's evidence.

30 HIS HONOUR: Mr O'Bryan?

MS MORTIMER: It is the respondent's evidence.

35 MR O'BRYAN: Your Honour, it is also Thursday, 8 December which is equally plainly obvious to the witness, your Honour. The witness knows that Mr Meggs' is the respondent's witness and he knows that Dr McQuillan's is the applicant's witness. With due respect, your Honour, this - - -

40 MS MORTIMER: No, sorry, I might have missed the point. It is the respondent's evidence that Dr McQuillan was Dr Meggs supervisor. That is the point. That is all it is at the moment. It is the respondent's evidence, or will be.

HIS HONOUR: I think it is fair to say it has been suggested that.

45 MR O'BRYAN: Yes, all right. Let us go back - - -

MS MORTIMER: Yes, absolutely.

MR O'BRYAN: Your Honour, I hope I am getting a credit on all elapsed time by reason of what I submit are not reasonable objections.

5 Professor, let me put to you a hypothetical situation. This is not hypothetical. You have supervised more than 100 Masters, Honours and PhD students in your career, haven't you?---That's correct.

Including 39 PhDs?---It is about that number, yes.

10 And 10 right now you are supervising?---That's correct.

15 Yes. Now, Professor, just talking about you for a moment, which is not hypothetical, can you conceive of circumstances in which you, in your professorial capacity having supervised a student's thesis for post graduate degree would, having supervised that degree and seen it award, would subsequently publish a piece criticising in a very fundamental respect, the methodology adopted by that student in the course of doing his or her work for that degree?---I think it would be most unlikely that I would do that.

20 You would regard it as academically very offensive, would you not?---I think I would need very good cause for doing so.

25 Yes. Thank you. Now, Professor, another document which you said you have read, and there is no doubt about when you had read this one because the transcript at page 68 at line 14 says, "about two months ago" is the Forestry Code of Practice in Tasmania. That is right, isn't it?---Sorry, where is the reference?

30 The reference is to the transcript of yesterday at page 68 at line 14. The question is commenced at line 9. Do you remember giving that evidence yesterday? Sorry, you said you had read parts of it two months ago, parts of it?---I am sorry, I can't see it but I have read - - -

35 Have you got yesterday's transcript at page 68. The printed version?---Yes, sorry.

Okay. Page 68, line 10, Mr Gunson asked you:

40 *Are you familiar with the provisions of the Forestry Code of Practice that applies in this State?---Not intimately familiar.*

Have you read it?---I have read parts.

45 *When did you read those parts?---It would be about two months ago.*

?---Yes.

Right. And presumably you read it for the purpose of or to assist you in the preparation of your report; is that right?---That's correct.

5 Now, do you recall whether what you read looked like that?---No. I think I or one of my assistants in the laboratory would have gone to the web to look for it or to get a document out of the library and taken copies of the parts that looked to be relevant.

10 There is no reference to the Forest Practices Code or any code of practice in appendix 2, is there? That starts at Court book 618?---No, that's correct.

15 And why is there no reference to this document which you or one of your assistants obtained from the website?---It may be that on reading parts of the code the other aspects, the Forest Practices Plan, the Forest Practices Board, versions of that, wildlife habitat clumps and so on were the more relevant aspects that I read in preparing the submission.

20 Well, in relation to the Forest Practices Plans, Professor, you had been given those plans by Mr Browne when you got the letter of 7 October, hadn't you?---Yes, that's correct.

25 They are in the schedule of enclosures. And you also got, whether from your own researches or those of your assistants or from somewhere else, the Forest Practices Board's wildlife habitat clumps and wildlife habitat strips technical notes which are referred to in appendix 2, didn't you?---Yes, I - so I recall these were again on the web and were downloadable.

30 But you are also confident that you downloaded from the web, are you, part or all of the code as well, to read?---I need to check to find the source of it, whether it was obtained from the web or whether it was obtained by an assistant work to get a copy out of the library. I am really not sure.

35 Can you tell his Honour who were the assistants who worked with you on this report that is in the Court book?---There would have been two, possibly three people. Their names are Aaron Greenville, Bobby Tomayo and Chimiang Baye.

40 And could you briefly tell his Honour what work those two or three people did to assist you to prepare the report?---At the most they would have looked for number references, and that would be the extent of it. There was no other assistance in the writing of the report to any extent at all.

45 So none of their intellectual endeavour, other than research endeavour, is in this report. Is that the case?---There would be no input at all - no intellectual input at all from any of those people.

Now, is the fact that the Forestry code not in the appendix again just an oversight on your part?---It is more likely that in reading parts of the code the

more relevant parts for the submission of my report were found in the other aspects - the other materials that are referred to on pages 618 and 619.

5 So you think there are parts of the code recorded in some other of the documents that are in this appendix of materials, do you?---I think from the point of view of writing my report the references to the wildlife habitat clumps and so on were the ones that would have been most relevant from my point of view in writing it.

10 And you think they are referred to in the code, do you?---I don't recall if they are in the code or not.

Okay. Now, Professor, just returning the expert witness guidelines again for a moment, you will see guideline 2.9 states:

15 *That if an expert's opinion is not fully researched because the expert considers that insufficient data are available or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one.*

20 Now, Professor, you have always had the view, haven't you, that there is insufficient data about quite a number of the matters in respect of which you have been asked to express an opinion and perhaps the most obvious one is in relation to the population of the broad-toothed stag beetle in Tasmania, isn't it?---Yes, I think it's fair to say that the information that is available is
25 incomplete.

And you would agree, would you not, that the incompleteness, as you put it, of that information satisfies a description in paragraph 2.9 of the guidelines namely
30 there is insufficient data about that matter. Isn't that right?---I think it really depends on where the insufficiency in the data lies. In the case of the stag beetle the insufficiency in information might come from our inability to work out the population size of the species. In other respects the information is probably
35 adequate that removing large numbers of trees over areas is likely to have a detrimental effect by virtue of squashing the beetles, by virtue of reducing the availability of the habitat that is available to them and even though we have incomplete information on exactly how many beetles would be affected I think we are still in a position to make judgments, clear judgments, about the effect of the proposed practices on this species so I am not quite sure - although there
40 isn't sufficient information exactly where the insufficiency is particularly important.

Yes. You certainly agree with the proposition though, don't you Professor, that so far as population data is concerned it is clearly, in relation to the beetle,
45 insufficient?---Yes, certainly in respect of trying to identify the population size of the beetle. We are not yet at a stage where I think we are able to do that.

It is also insufficient, as your evidence showed yesterday, to form or express reliable conclusions about population trends for the beetle either, is it?---I think if the information were to be collated on all aspects of collecting the effort that had been put into collecting different areas - - -

5

No, Professor, could you attend to my question, please? I didn't ask you to hypothesise about what might happen and thus, could I suggest to you, that it is not an appropriate answer to my question to start with the word "if". My question is a simple one. Your evidence yesterday was clear and you believe that it is the case that there is insufficient data to express any reliable scientific conclusion about population trends for the broad-tooth stag beetle; that is so, isn't it?---I think I would have said there is no good information on population size of the beetle but that because we know that there are threatening processes operating that are likely to depress the population of the beetle that the trend is likely to be downward.

10
15

And you regard that as data, do you?---No, that's not data.

No, it is not, is it? Professor, did it occur to you when you read these guidelines that because you are not an expert in relation to any of the beetle, the parrot or the eagle, and because you believe, indeed you know, that there is insufficient data in relation to very material matters relating to these species, and in particular to the beetle, that it would have been appropriate to do what paragraph 2.9 of the guidelines requires to be done, namely to state clearly that your opinion can be no more than provisional in the absence of the data. Did that occur to you at all?---I think it would be in the report that I constructed that I am stating a belief and the belief is based on the documents that are referred to in the report.

20

25

Do you recall any of the conclusions that you expressed in your report as having been expressed provisionally by reason of the problem that clause 2.9 of the guidelines draws attention to?---It is not stated in the same words as in section 2.9 but, for example, in the concluding paragraph I have said that it is my opinion and that I am not suggesting that the conclusions I have arrived are hard factual data. It is my opinion.

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35

His Honour should understand that that opinion in paragraph 19 is expressed provisionally, should he?---I think in terms of the context of the preceding paragraphs upon which the conclusions are arrived at where there are a number of statements made about conditional statements and so on, that would be a fair conclusion that these are provisional conclusions that I have arrived at.

40

So your evidence is that you have in fact paid attention to clause 2.9 of the guidelines and in fact applied them in this report, is it?---Yes, that's correct. So paragraph 19 should be understood as a provisional conclusion by his Honour, is that your evidence?---Yes.

45

Yes. And you will find almost identical language to paragraph 199 in the closing sentence at paragraph 18. Does the same position apply in relation to that sentence?---Yes.

5 Sorry, it is two sentences?---Yes, it does.

Yes, okay. And so far as the eagle is concerned, which is the third animal in respect of which you express an opinion, the sum total of that opinion is in paragraph 14, isn't it?---Yes, that's correct.

10

And it depends entirely on the assumptions about the reliability of the PVA analysis which are stated in paragraph 14, doesn't it?---Yes, it does.

15

By the way, on 7 October or whenever it was that you got the letter, where did you understand the Bass Forestry district was?---In north-eastern Tasmania.

You knew that straightaway, did you?---Yes, I knew the Bass region referred to. I couldn't tell you the precise southern or western boundary of it but it's the north-eastern part of the State.

20

Yes, and you have always known therefore, haven't you, that apart from the reliability of the PVA analysis under taken by Dr Bekessy and her colleagues in connection with Bass, to make any worthwhile predictions about population viability in Derwent or more particularly in Wielangta, you would need to apply that methodology and a host of actual data or assumed data in respect of Wielangta, wouldn't you?---I think many of the data that were used in the Bekessy report would be identical to those that should be used and applied to the Wielangta situation. There are many aspects of the biology of the bird that will not differ between the two regions.

25

Yes, but it nevertheless remains the case, doesn't it, Professor, that to transpose the outcome of Bass into the context of Derwent and more particularly Wielangta you have to make assumptions, they may be good assumptions etcetera, but you must make those assumptions that the data and the methodology can be reliably transposed from the Bass district studied in the Bekessy report into the Wielangta context, that is true, isn't it?---Yes, you do, that's true.

30

Now, why didn't you mention that very fundamental assumption or set of assumptions in paragraph 14?---I think because the PVA that was run by Bekessy and colleagues was sufficiently general that the assumption would be that it could be moved to any part of the State where equivalent forestry operations are being conducted.

35

45 Well, then why didn't you say that in paragraph 14?---It was perhaps too obvious to mention.

Oh, so obvious, I see. Okay. Now, Professor, paragraph 2.10 of the guidelines says that:

5 *An expert should make it clear when a particular question or issue falls outside the relevant field of expertise.*

Now, did it occur to you that in compliance with that clause it would be desirable for you to state very clearly in your report that you have no - you claim no expertise in relation to the ecology of the three animals which are at the heart of this proceeding?---I think it would be clear from reading the curriculum vitae that was provided as part of the report that my expertise lies in the field broadly of terrestrial ecology and of the factors that influence terrestrial animal populations and to some extent plant but primarily terrestrial animal populations.

15 So is that another way of saying it went without saying you didn't need in your view to actually state it in your report to assist his Honour?---It seemed to me that these were guidelines and that provided my report covered the intent and nature of the guidelines in the report that they need not be spelt out one by one as they appear in part 2 of the form of the expert witness guidelines that are before us.

25 Now, Professor, you gave some evidence-in-chief yesterday morning when Ms Mortimer was asking you questions and you referred to a thing called the precautionary principle. When did you first consider that the precautionary principle was relevant and applicable in this case?---I think in general terms whenever any proposal is advanced to disturb habitat or the natural habitats of species the precautionary principle could be invoked. I can't remember - - -

30 Well, that wasn't my question, Professor. My question to you was when in preparing your evidence to give in this case did you first consider that the precautionary principle was applicable in the circumstances of this case? When was it?---It would probably have been fairly early in the piece.

35 So in October of this year, would it?---Yes, probably.

And before you wrote your report?---I think it would have been probably at the back of my mind.

40 At the back of your mind?---Yes.

And where will his Honour find reference to the precautionary principle in the report that you have given the Court?---I don't recall having written it specifically.

45 I see. But you do regard it as a very important principle now in the context of this case, do you?---Yes, I think it is.

5 Could I suggest to you the real reason why you now regard it as significant, Professor, is that it has been drawn to your attention that a large number of the factual assumptions which you were asked to base your opinion upon land which are reflected in your report might be wrong, in particular the factual assumptions in Dr McQuillan's material; isn't that so?---No, I reject that.

10 No. I suggest to you that the precautionary principle about which you first gave evidence yesterday morning in-chief now becomes relevant to you because in your mind there has been potentially a serious undermining of the science that lies behind the assumptions you were asked to make, in particular the assumptions based on Dr McQuillan, that is correct, isn't it?---I don't think that serious undermining has taken place.

15 But could you just answer my question, please, Professor, that the reason why the precautionary principle arrived as it were in this case yesterday morning through your evidence-in-chief led from the witness box is because of what you now perceive to be a significant problem in relation to the data that underlies the assumptions of fact you have been asked to base your opinion on, isn't it?---No, it was more a general comment that for species that are currently listed -
20 recognised as being endangered we should be very sure that our activities if they are carried out will not further increase that level of endangerment and that in fact actions should be going the other way, that is, to try to recover them rather than to increase the degree to which they are endangered.

25 Yes. One final thing, Professor, yesterday you gave evidence about Maria Island and its separation from the mainland about 10,000 years ago. Was that given as an assumption on your part or do you know that as a fact?---I don't know as a fact, no.

30 So you haven't got any geological knowledge of the date or the era when Maria was separated from that mainland; is that right?---No, I don't have any precise dates for that.

35 HIS HONOUR: I assume you mean mainland Tasmania?

MR O'BRYAN: I am sorry. I am trying to be a local, your Honour, I do regard it - yes, I am sorry.

40 Separation of Maria from the other island of Tasmania. You don't have any personal knowledge of that?---No, it would be general knowledge that during the last ice age that ended 10 to 13,000 years ago there has been an increase in sea levels.

45 In that context you gave evidence about the movements in genes and gene pools that occur when species are physically separated over many years, that is right, isn't it?---Yes, that's correct.

And were you seeking to draw some analogy between Maria and the Galapagos Islands in giving that evidence? You mentioned the Galapagos Islands at one point?---It was merely to indicate that speciation processes can take place in the small insular populations.

5

Yes. You wouldn't regard that as a very good analogy, would you, Maria and the Galapagos for any biological purpose?---Not as an analogy, I think that when I invoked the Galapagos example it was more by way of indicating that there can be very rapid morphological change in small-island populations.

10

Yes. How close is the closest land point on Maria from Tasmania?---I'd guess it's in the order of one or two kilometres.

15

And opposite which point on the mainland is that closest point?---I can't tell you.

HIS HONOUR: If you turned around you might.

20

MR O'BRYAN: Professor, these beetles which are on Maria, we have no DNA analysis of them, do we?---None that I'm aware of.

No. Even Dr McQuillan has been unable to recover any DNA in respect of them, has he?---That's true as far as I am aware.

25

And you have made no effort independently to do so?---No, that's correct.

30

So there is actually no basis for an assumption one way or the other about any gene mutation or allele development or any other genetic activity, as it were, in relation to these beetles on Maria, is there?---The only reason for suggesting that as a possibility is that it has been documented in many situations with respect to invertebrates and other taxa that have been isolated for periods of time. It's a reasonable expectation based on what we know from studies elsewhere in Australia and world wide.

35

Yes, but, Professor, we don't know when they got there, do we, these beetles?---No, we don't.

No. We don't know how they got there?---No, we don't.

40

No. We do know though, and if you turn around you can see it, that the nearest landfall is directly opposite that sand spit creek that we all observed flowing freely down to the little estuary opposite Maria and it is entirely possible that some logs have floated across down that creek in relatively recent times, isn't it? That's possible?---I suppose it might be possible.

45

We also know, don't we, Professor, that the area around Darlington, which is to the north end - the north-western end of the island, where in fact most of these beetle sightings have been occurring, is the largest area of human activity on the

island in the last 200 years; that is true also, isn't it?---I don't know, I don't have the information to answer yes or no to that one.

I have no further questions, your Honour.

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HIS HONOUR: Thank you, Mr O'Bryan. Ms Mortimer?

MS MORTIMER: I gather there is no cross-examination from the State?

10 MR DIXON: I don't wish to cross-examine, your Honour.

HIS HONOUR: Thank you.

15 **<RE-EXAMINATION BY MS MORTIMER** **[11.01am]**

MS MORTIMER: Do you know how well, Professor Dickman, rotting logs float?---No, but being saturated and quite damp I wouldn't think they would float well.

20

Now, you were asked some questions by my learned friend, Mr Gunson, about the recording of beetles in pit-fall traps and I think you gave some evidence along the lines that you had recorded stag beetles in pit-fall traps in many surveys. Are you aware of any differences, genetic or behavioural, between the kinds of beetles that you have been involved with and this particular kind of stag beetle that might make them more or less amenable to pit-fall trapping?---The beetles that are in question here, the lissotes, the broad-toothed stag beetles appear to be perhaps more likely to be associated with the undersides of logs, the underside of log soil interface. If they don't move very far from that then it may be that pit-fall traps set more broadly in forest environment would be less likely to catch them.

25

30

So does that mean you manage to take more care about where you set the traps?---Yes. I think if you were targeting particular species and you had some idea for which micro habitats in the forest that they occupied, then you would probably take care to set the pit-fall traps in those micro habitats or close to them rather than in random locations.

35

Now, you were asked some questions by Mr Gunson - some propositions were put to you that there was no evidence in the Meggs and Munks reports that the beetle was in decline and you gave an answer along the lines that it was difficult to find evidence of decline. Can you explain to his Honour what kind of evidence generally for a species, what kind of research is necessary to obtain evidence of a decline of the species?---There are a number of kinds of evidence that can be used to infer decline. One is to directly target the species and to try to catch it and count it and to do this over periods of time. If the species is

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difficult to catch and count in a direct enumeration way there are less direct or indirect ways of doing so. If you, for example, know aspects of the habitat or particular resources that the species require and you are able to more easily measure the availability of those resources over time, you can get a very good reliable second-hand approximation of the extent to which decline might be occurring. There might be in addition signs by which it is possible to indicate a population trend so it may, for example, the signs an animal leaves behind, droppings or this sort of thing and if these can be censured in some way over time that is a further measure of the population trend.

In relation to the first method that you identified, that is, studying the individual species or population - and I think you said over periods of time - over what kinds of periods of time would you need to undertake a piece of research to come up with some reliable results?---It does depend on the species and the environment that they occupy. For long-life species the research probably should be long term simply because if the population trend is downward but it's affecting - the numbers are being reduced by a decline in juvenile animals, if the adults are still moving around, any decrease in numbers will be difficult to pick in the short term. For short-lived animals, then it should be possible to pick up population trends much more readily over periods of probably two, three, perhaps 10 years might be the maximum if it's needed.

All right. Now, you were asked some questions by Mr Gunson about the listing criteria for threatened species and you were asked a number of questions about the criterion of geographic distribution as it applied particular to the beetle. Can you just explain to his Honour, please, why the criterion of geographic distribution is part of a set of listing criteria for threatened at all; that is, what is its importance?---It's recognised that if a species has a very restricted distribution, that that very small distribution size, in itself, can be a threatening factor, and it can be a threatening factor for a number of reasons. One is that a population that occupies a very small area is likely to have a low population size. It's likely to suffer from inbreeding to a degree. There won't be the possibility of individuals moving over larger areas and avoiding inbreeding problems. In a small area, too, it's much more likely that a species that is so restricted will be affected by any single factor, such as a prolonged drought or a wildfire or some other catastrophic event that knocks out the entire population over where it occurs. So population smallness in itself is recognised as being a criterion by which endangerment can and should be recognised.

Now, you were asked some questions by Mr Gunson about predation possibilities and possible predators for the beetle and you gave some evidence about - or you identified both currawongs and quolls as possible predators. Can you explain to his Honour, please, what the basis for your knowledge is about quolls and currawongs being predators of beetles other than the stag beetle?---Yes. In general, currawongs will be attracted anything that's moving around on the ground. They're quite omnivorous feeders. They will take a wide variety of foods - some living, some dead - and in areas where currawongs are in abundance, in people's backyards, even, it's quite possible and quite easy

to see currawongs swooping down and picking up small invertebrates from the surface of the ground, rummaging about in leaf litter, under logs, and so on, and picking them up. With respect to quolls, I've had one PhD student recently who has worked on the ecology of the spotted-tail quoll, which is one of the two
5 species that occurs in Tasmania, and he has shown that beetles and other invertebrates form part of the diet of the spotted-tail quoll, and this is a species that obtains ground-level prey. It will eat big beetles, the kind that could be expected to occur in the Wielangta area. There is a paper that should be drafted on that soon.

10 Now, you gave some evidence in relation to some questions asked by Mr Gunson about the effects of fragmentation in confining species to smaller habitat, and the assertion - I think it was in Dr Meggs' affidavit - that there needs to be a disproportionate decline demonstrated, with which you disagreed.
15 Your evidence was that you could show an accumulation because sometimes, I think you said, that a species might go into that kind of area; there might be an initial increase. Do you recall that evidence?---Yes, I do.

20 Is that called a sink sometimes? Is that the same concept, or not?---A sink is slightly different. A sink is often viewed as being habitat that can be utilised by individuals of a different species; not so much for breeding but more for being able to move through, or to obtain sufficient resources to keep going. But it differs from a source population, which is usually considered to be a part of a habitat where breeding can take place and it forms the source of new individuals
25 to move out into other areas which may include sink areas.

If that phenomenon were to occur that you have described in your evidence in cross-examination - that is, an initial increase in numbers - what, in your
30 opinion, are the dangers in terms of the survival of that population, were that to occur in a smaller area like that?---Often in small areas when the surrounding habitat has been removed, the individuals that have survived the disturbance will move into the still-remaining-intact patches and, because there has been a net influx of individual into those undisturbed areas, there will be a transitory increase in population density. Then, for a variety of reasons, the remaining
35 patches don't have sufficient resources to support the increased populations, or because of the attraction of predators across the edge boundaries, or for other reasons, the population will decline sometime, probably shortly after the initial influx has taken place.

40 Now, still on habitat fragmentation, you were asked some questions about what Dr Meggs had to say about that and you gave an answer that, in substance, as I have noted it down, said that there was a large school of thought about habitat fragmentation and a small school of thought about habitat fragmentation with different opinions. Can you explain to his Honour what the differences are
45 between those two schools of thought about the effects of habitat fragmentation?---Yes. I guess the dominant school suggests that when a habitat is fragmented, it is just chopped into smaller chunks; so there is simply less of it. The other school suggests that there is, in fact, this process going on, as well

as another one that reduces the overall amount of habitat variation that's available. So it's perhaps more likely to occur in a very heterogeneous habitat in an area where there are lots of habitat types. If you have fragmentation occurring there there may well be, in addition to the overall loss of habitat, a
5 loss of habitat types as well.

Pardon me a moment, your Honour. Yes, I have no further questions of Professor Dickman.

10 HIS HONOUR: If we adjourn to 25 past 11 or thereabouts, that would give enough time for the Commonwealth and the applicant to discuss the matters that were raised earlier in Mr O'Bryan's cross-examination, or would you like a little bit longer?

15 MS MORTIMER: Your Honour, it might not, because Mr Gunson has suggested that we also try and resolve dates, and co-operative as we are we might need a bit longer than that.

HIS HONOUR: Do you want to let my associate know when you are ready?
20

MS MORTIMER: If your Honour pleases.

HIS HONOUR: That is probably the best way to tread, and if we cheat too much in our mid-morning break, we might sit a little bit beyond a quarter to
25 one.

MS MORTIMER: We will bear that in mind, your Honour.

HIS HONOUR: Okay.
30

ADJOURNED [11.15am]

35 **RESUMED** [11.33am]

MS MORTIMER: Thank you, your Honour. Firstly, in relation to Professor Dickman, I had an opportunity to talk to my learned friend, Mr O'Bryan, and to
40 explain to him that what appears to have happened is that the document that he produced and showed to Professor Dickman with a Federal Court of Australia stamp on it and a different version of the letter appears to have been a draft of that letter and the difference between that and the one in the Court book, on my instructions, is that somebody didn't save the version that went in the Court
45 book and so when somebody pressed print to file the unsworn version, the draft came out instead of the final version and my learned friend, Mr O'Bryan, has seen the original letter, signed by my instructor, that was sent to Professor Dickman and it is exactly the same as the one in the Court book.

5 HIS HONOUR: All right. We are trying to get some process in line here in Tasmania in respect of list matters that I am responsible for that if a draft affidavit comes in, no doubt in a desire to comply with the time table, that that is placed in the correspondence file and is not placed in the formal file until it is sworn.

10 MS MORTIMER: Your Honour, that would likely, in this circumstance, have avoided the issue.

HIS HONOUR: Yes.

15 MS MORTIMER: And I can inform your Honour that it was because as often in these cases, people are driven to try and comply with the time table as best they can.

HIS HONOUR: Yes, I suspected that. Yes, all right. And there is no further questions any one wishes to ask Professor Dickman?

20 MR O'BRYAN: No, your Honour.

MS MORTIMER: May Professor Dickman be excused, your Honour.

25 HIS HONOUR: Yes. Professor Dickman, thank you for your evidence. You may be excused from further attendance but if you wish you may remain in Court.

30 <THE WITNESS WITHDREW [11.36am]

35 MS MORTIMER: Now, your Honour, where we are moving to - dates. Your Honour, it is agreed between the parties and the two interveners that it would be appropriate to retain the 6 February date and the week starting 6 February and then to start again on the dates your Honour has suggested, 1 May onwards.

40 HIS HONOUR: Yes. It wouldn't be envisaged that all would be required but to make absolutely certain of the case finishing in the first half of the year it is safe to reserve them all and if we don't - what we don't use can be a bonus in the sense it will be time usefully used on preparing written submissions.

MS MORTIMER: That is so, your Honour.

45 HIS HONOUR: Yes. Thank you.

MS MORTIMER: That is dates, your Honour. Now, my learned friend, Mr Mitchell, is going to deal with Mr Dudley's affidavit in a moment but before he

does that I have a submission I want to make about the Commonwealth and it is this, your Honour. Your Honour has heard this morning one hour of cross-examination, even giving my learned friend some credit, as he claimed, for my objections - one hour of cross-examination by the Commonwealth and that
5 cross-examination fell, in my submission, to two principal areas.

The first was cross-examination of an expert as to the experts independence, possible bias, the way in which the expert was instructed and compliance with the expert witness guidelines. Now, let me deal with that. That must, in
10 accordance with the rules, in accordance with the plain role of an intervener and the differences between an intervener and a party, that must have been done in order to assist the Court and therefore, in my submission, it is incumbent on the Commonwealth to engage in that process in relation to each and every witness in this proceeding, not just the applicant's witnesses.

15 That is, if the purpose of that cross-examination is to assist the Court, it is as equally relevant to the respondent's witnesses that the same vigour and rigourness be applied to them in relation to those issues as was applied to the applicant's witness. That is the first point. The second point is that the
20 remainder of the cross-examination went to some of the substantive issues about the beetle and Dr McQuillan and what Professor Dickman did or did not do. Now, I ask your Honour to look back at the three issues that the Commonwealth was given leave to intervene about - issue 2, issue 8 and issue 9 - and your Honour will find those in the Court book at page 11.

25 Issue 2 is whether the proposed forestry operations are actions. None of the cross-examination is relevant to that issue. Issue 8 is whether the RFA is an RFA. None of the cross-examination was relevant to that issue. Issue 9 is whether the respondent has an exemption by virtue of section 38 and whether
30 forestry operations were in accordance with the RFA. None of the cross-examination was relevant to that issue. Accordingly, in my submission, your Honour should not allow my learned friend, Mr O'Bryan, to continue in relation to any further witness with any cross-examination of the kind that he engaged with Professor Dickman in.

35 HIS HONOUR: Doesn't that contradict your first submission to me?

MS MORTIMER: Of that kind - no, of the substance, that is issues going to the evidence in this case about the beetle, the parrot and the eagle, which expert
40 says what, all those kinds of issues, they are not matters on which the Commonwealth has been given leave to intervene. Now, I accept, your Honour, that it may be appropriate - it is unusual - but it is appropriate for an intervener to assist the Court if the intervener sees it not otherwise being done and therefore is something that might be left undone to examine each and every
45 witness in that first category. It is conceivable, your Honour, that it has to be done in an impartial way because that is the role of the intervener. If your Honour pleases.

HIS HONOUR: Mr O'Bryan, do you want to say anything about that?

MR O'BRYAN: I don't, your Honour, but could I remind your Honour of what was said by Ms Mortimer in opening about what this case is all about. I
5 will not read it to your Honour since you have heard it over a couple of days but in my respectful submission, your Honour, the cross-examination was directed to precisely the issues that Ms Mortimer opened and 9B of those issues is directly engaged with matters of fact and matters of practice in relation to the forests which the Commonwealth does have leave to intervene in respect of and
10 in respect of which all of the professor's evidence was highly relevant because it was directly engaged by clause 68 of the RFA and, your Honour, that is a 9B issue.

HIS HONOUR: I should say generally my approach is to deal with objections
15 to questions as they arise, not discuss them later or even in advance unless it is known in advance what the questions are. My approach also in relation to interveners is that ordinarily, although it doesn't occur very often, but I have more experience in the industrial jurisdiction with interveners, is generally to not permit cross-examination unless I consent or unless by a demonstrated need in
20 advance and identification of questions and the line of questions. I don't know whether that indication will provide you with a useful tool for future witnesses.

MR O'BRYAN: If your Honour pleases. Well, better than not.

25 HIS HONOUR: Yes, thank you.

MS MORTIMER: Mr Mitchell will deal with Mr Dudley, if your Honour pleases.

30 HIS HONOUR: Yes, Mr Mitchell?

MR MITCHELL: Your Honour will find at page 581 of the Court book an affidavit sworn by Todd William Dudley on 6 October 2005. The respondent and the interveners have consented to that going into evidence without cross-examination, your Honour.
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HIS HONOUR: Is that book 2, is that correct?

MR MITCHELL: Book 2, your Honour.
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HIS HONOUR: Yes, is Mr Dudley required for cross-examination?

MR MITCHELL: No, your Honour. The parties have all consented that no cross-examination is required.
45

HIS HONOUR: No cross-examination is required, all right.

MR MITCHELL: Can I ask that that affidavit be taken as read, your Honour?

HIS HONOUR: Yes. Well, I will treat as the - part of the evidence of the applicant in the proceeding the affidavit of Mr Dudley which commences at 501 and concludes at - - -

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MR MITCHELL: 511, sorry, your Honour.

HIS HONOUR: Sorry?

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MR MITCHELL: 511.

HIS HONOUR: That takes into account all the annexures, does it?

MR MITCHELL: Yes, your Honour.

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HIS HONOUR: Or all the exhibits, I should say.

MR MITCHELL: Thank you.

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HIS HONOUR: Yes, Ms Mortimer?

MS MORTIMER: If your Honour pleases I call Matthew Robert Dell.

HIS HONOUR: Thank you.

25

<EXAMINATION-IN-CHIEF BY MS MORTIMER

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MS MORTIMER: Mr Dell, can you tell his Honour your full name, your address and your occupation, please?--My full name is Matthew Robert Dell. My address is 483 Huon Road, South Hobart. And I am an environmental scientist.

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HIS HONOUR: Thank you.

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MS MORTIMER: Now, Mr Dell, you have sworn two affidavits, or affirmed two affidavits in these proceedings. Your Honour, the first one is at Court book 561 and the second one is at Court book 573. Do you have those two affidavits with you in the witness box?--I do.

20

I understand there is a correction you want to make to the first affidavit at Court book 561 in paragraph 1. What is that correction?--The sentence that I hold a Bachelor of Science in Environmental Studies with Honours degree from the University of Tasmania should read "I hold a Bachelor of Science in Geology, Geography and Environmental Studies".

25

If your Honour pleases, I would seek that you treat those two affidavits as read.

HIS HONOUR: Yes. Are there any objections to the events?

30

MS MORTIMER: Not that we are aware of, your Honour.

HIS HONOUR: No. Is Mr Dell required for cross-examination?

MS MORTIMER: Yes.

35

HIS HONOUR: Thank you. Do you have any additional questions in-chief?

MS MORTIMER: I do, your Honour.

40

HIS HONOUR: Have you discussed the nature of them?

MS MORTIMER: Yes, I have.

HIS HONOUR: Yes, thank you. No objection, I take it?

45

MR C. GUNSON: No.

MS MORTIMER: Now, Mr Dell, were you in Court when I opened this case and presented a Powerpoint as part of that opening?--I was.

Can you tell his Honour what your role was in preparing that Powerpoint?
What did you do?--I compiled the data that was provided by Forestry
Tasmania for the purposes of displaying that evidence to the Court.

5

And just to make it clear, what data did you use?--Data supplied by Forestry
Tasmania. There was only one bit of information in the maps that wasn't
provided by Forestry which was the satellite image which sat behind to give it a
context.

10

Now, your Honour, I seek to tender the Powerpoint, and the way that I am
going to do that, your Honour, is that we produce it on a CD and we will tender
that.

15 HIS HONOUR: Yes.

MS MORTIMER: My learned friend Mrs Gunson has agreed that - well, have
offered to print out the Powerpoint, and that is being done at the moment and
so we will have actual hard copies of that which we will also be able to tender.
20 Mr Dell has not had an opportunity to look at those yet, and I want him to look
at them and be able to identify them before they are tendered. So in a moment,
perhaps in about - after I have gone as far as I can in-chief in relation to the
matters I need, if we could just have a short break so that that can occur?

25 HIS HONOUR: Certainly.

MS MORTIMER: This is the CD of the Powerpoint, your Honour, so I tender
that.

30 HIS HONOUR: When the hard copy document comes, together with the CD
it will comprise exhibit C.

MS MORTIMER: If your Honour pleases.

35

**EXHIBIT #C POWERPOINT PRESENTATION IN COMPACT DISC
FORMAT PLUS PRINTED HARD COPY**

40 MS MORTIMER: Now, I am going to show you this map, Mr Dell, and at the
moment we don't have copies but it is one of the maps that Mr Dell has
otherwise been working on. Is that a map that you prepared from the same set
of information that you prepared the maps in your affidavit and in the
Powerpoint?--It is.

45

And did you prepare that map for Mr Peter Browne who is to give to evidence
in this proceeding?--I did.

And was it printed out so it could be given to him?---It was.

Your Honour, I tender that.

5 HIS HONOUR: Exhibit D.

EXHIBIT #D MAP PREPARED BY MR DELL

10

MS MORTIMER: And if I can just explain to your Honour why that is necessary, it is because of the form of the undertakings given by my instructor, Mr Browne, which only permitted copying which of course would include the printing out of a document of this material if it was to be tendered or intended to be tendered. Now, can I ask that Mr Dell be shown the affidavit of Mr Kelly on behalf of the respondent? That is in book 3, page 1121.

15

Have you read Mr Kelly's affidavit, Mr Dell?---I have.

20

Can I ask you to turn to paragraph 10(c)(iii) which is on page 1124 - sorry, 10(b)(iii)?---Yes, I have that one.

25

Now, what Mr Kelly says there is that it is not correct for you to infer in your affidavit that what is on that spreadsheet represents coupes to be harvested. What is your response to that statement?---Well, I think we asked for the coupes that were to be logged over the next 10 years as part of their harvesting scenario, and that was the data they gave us. So we assume giving that they gave us those coupes that that's what would be harvested.

30

HIS HONOUR: When you say "we", is someone other than yourself involved?---No.

You are speaking using the royal we?---I was assuming we were part of a team.

35

Well, you are giving evidence - - -?---As myself, yes.

Yes.

40

MS MORTIMER: All right. Now, Mr Dell, can you look at paragraph 18(a) - well, paragraph 18 which is on Court book 1129. That is where Mr Kelly is giving some evidence about the CDs that he has examined that were attached to your affidavit, and he makes some observations about what he characterises as double counting of prov coupes. Firstly, "prov coupe" is short for provisional coupe; is that your understanding?---It is.

45

And if you look at 18A(ii) over the page at 1130 Mr Kelly explains what he sees the problem as being. Now, do you accept that there was some double counting?---I do.

Can you explain to his Honour why or how that occurred?---When I asked for the 10-year plan I expected to be given a complete digital copy of the whole 10 years to be harvested, we were only given years 4 to 10 and we had to derive
5 years 1 to 3 from the forest harvesting plan - the forest production plan, or wood production plan, that's published by Forestry Tasmania. I had to purchase that plan and then scan that into the computer and use text recognition software to derive the relative information to produce that and then combine that along with another set of information which is provided on the Forestry website called
10 the Addendum which is extra coupes that may or may not be set for logging over that three-year period. So during the compilation there was some replication in the coupes.

And as far as you know from the maps that were produced by you is that double
15 counting replicated in the way that you see the maps or how does it have an effect, if at all, in the way that you see the maps?---It has no effect whatsoever in the appearance of the maps.

Can you explain to his Honour why that is?---The coupes are represented on the
20 map as a polygon or as a shape on the actual map and they can't be displayed twice because they appear over the top of one another if they're replicated. So there's no visible difference whatsoever in that replication.

Now, would you look at paragraph 18B(i), that is at the top of page 1131. Mr
25 Kelly gives some evidence about your use of forest classes from a particular file - data file on the Forestry Tasmania information and he says that the method that you used produced a basic inconsistency in the definition of mature forest and he gives two reasons for that. Can you tell his Honour what your response to that criticism, about there being an inconsistency, is?---Sorry, can you
30 repeat the question again?

Yes. Sure. If you focus on where Mr Kelly says it is my opinion that this
method, that is, the method that you have used, produces an inconsistency in the
35 definition of mature forest. Can you tell his Honour whether you agree or disagree that the way that you went about it produces some kind of inconsistency in the definition of mature forest and what is mapped as mature?---In my knowledge of the data set which I received shortly before I submitted my evidence I could only use information that was provided to me by Forestry. I think the wording says significant mature forest and I attempted to
40 use the areas of significant mature forest as listed.

Well, when you were mapping the kind of forest that you were going to include
in your map what criteria did you use? Perhaps, if you look over at the table on
the next page that might assist you. If you just take it back to what is said at
45 B(i)B where Mr Kelly says that what you have done is that you haven't used any forest classes with a value greater than 33 and, as I understand, the inference is that you have used everything below that?---From the data that was provided to me, the data was clearly divided into a number of sections based on as I

5 interpreted to mean - the first letter in the line if you look on table 3 is E plus 3D, that is a eucalypt - a mature eucalypt forest. I assumed that was prioritised to mean that mature eucalypt was the predominant type of eucalypt that was there and as a result I used that as mature eucalypt class whereas classes 46, 59, 64, and 69 - in table 4 we have a regrowth eucalypt forest not a mature eucalypt forest.

10 Now, you have described the differences in terms of what predominates. Can you just explain to his Honour what difference that makes in terms of how you map something, that is, how you represent forest on a map where there is an area that is predominantly something or there is an area that is regrowth? What do you actually see as the difference on the map?---The map areas are actually amalgamated into a large area. So while they have got a number of classes inside that polygon there's no division internally within that polygon that you can represent. So you must therefore assume that the - well, you can assume
15 therefore that that is - the majority of the polygon is of the primary description unless it's stated weighted wise which it is but it's very hard to chop a polygon up subsequently then if you don't know what those internal divisions are.

20 And when you say that you have to assume that the majority of the polygon is the primary description, if you would just look at table 3, just identify for his Honour in each of those lines what are the words that you mean by primary description?---Well, 28, for example, we have got regrowth eucalypt between 27 and 37 metres high and with a crown density of 10 to 50 per cent plus
25 mature eucalypt with 5 to 20 per cent plus naturally seeded regeneration but it has no values, so it's hard - - -

30 So what is the primary type in that entry as you understand it? How do you read that?---Regrowth eucalypt of 10 to 50 per cent crown density inside that particular area.

All right. And take number 18 up at the top. When you read that entry what do you understand is the primary type in that entry?---Well, it says 5 to 20 per cent mature eucalypt plus naturally seeded, it's not specified how much of that is
35 naturally seeded so I just assume that the mature eucalypt would be the predominant.

40 All right. Thank you. Now, Mr Kelly makes criticism of you at the bottom of that page, 1131, where in (iii) he says that:

Forest class 2001 is unlikely to be the most appropriate data to use to define mature forest for ecological modelling.

45 Did you have access to any other kind of data to perform those mapping and modelling tasks?---Not from Forestry.

What other data did you use apart from what you received or you saw on a computer from Forestry?---To my recollection we received some threatened

species information from the Department of Primary Industries which located the threatened species that we're presently studying. Other than that, it's all derived from Forestry Tasmania.

5 Your Honour, those are only supplementary questions I wanted to ask Mr Dell, and if it is convenient for us to have a very short break so he could look at those maps?

HIS HONOUR: Yes. Does that suit you, Mr Gunson?

10

MR C. GUNSON: Yes.

MR D. GUNSON: Mr Gunson junior will be doing the cross-examination, your Honour.

15

HIS HONOUR: Yes, thank you. The Court will adjourn briefly.

ADJOURNED

[12.04pm]

20

RESUMED

[12.06pm]

25 MS MORTIMER: Thank you, Your Honour. I will just finish with the maps.

HIS HONOUR: Ms Mortimer.

30 MS MORTIMER: Can Mr Dell be shown the folder of maps that has just been produced, please? Pardon me, your Honour, I thought that two folders were handed over to your Honour's associate but I must have been -no, they haven't yet been handed over. I am grateful to my learned friend, and I apologise to your Honour's associate.

35 Now, Mr Dell, can you just take the maps out of that folder, please? Now, you have had an opportunity to look through the series of maps; is that right?---Yes.

40 And there is one map missing; is that right?---Yes, that's correct.

And that map is the one that should occur third in the sequence which is a map of State Forests over the whole of Tasmania; is that right?---That's correct.

45 But subject to that are you satisfied that these maps reproduce what was on the power point that you produced?---I do.

Your Honour, I have agreed with my learned friend, Mr Gunson, that we will just put that additional map in after lunch to form part of this exhibit.

HIS HONOUR: Will kilometres be correctly spelt on that one?

5 MR C. GUNSON: No, it won't be, your Honour, and to assist my friend I have just been handed copies of the missing map that can be distributed and included.

HIS HONOUR: Should we insert that as number - as the third one in order?

10 MS MORTIMER: It comes as third in the sequence, your Honour. Perhaps if your Honour thinks it is going to be helpful, over lunch we could have someone put numbers up the top so that they are actually numbered in a sequence. If that would assist your Honour, we can arrange for that to happen.

15 HIS HONOUR: Thank you.

MS MORTIMER: Your Honour, I tender that bundle of maps.

20 HIS HONOUR: I think I had already indicated that together with the CD that would be exhibit C if that is the same one we are talking about.

MS MORTIMER: That is, your Honour, yes.

25 HIS HONOUR: Yes.

MS MORTIMER: I have no further questions.

HIS HONOUR: Yes, thanks, Ms Mortimer. Mr Gunson?

30 MR C. GUNSON: If your Honour pleases.

<CROSS-EXAMINATION BY MR C. GUNSON

[12.09pm]

35 MR C. GUNSON: Mr Dell, during the course of your examination-in-chief you described the request being made to Forestry Tasmania for data and you used the phrase "we". Who was involved in formulating the request for data to be provided by Forestry Tasmania?---I requested the layers from my limited
40 knowledge of what data was available. I drafted the letter with my lawyer, I think, with Mr Roland Browne.

45 And you described yourself as being part of a team in your evidence-in-chief?---Yes.

And who consists - I withdraw that. Who were members of that team?---I guess myself and the lawyers but I just - was my supposition, I guess.

And for what purpose was the team formed?---I guess it's to pursue a case.

Yes, this case?---Yes.

5 Yes, and you are an active member of that team?---I provide information to the team, yes.

And you are a player on the team?---Yes, I guess I am.

10 It is not the case, is it, that you simply have prepared maps at the request of the applicant solicitors and then provided them to the applicant solicitors and that is the end of your involvement, is it?---Can you clarify your question, please?

15 It is not a case that you were retained to prepare maps, you simply prepared the maps and that was the end of your involvement in this case, is it?---My involvement hasn't finished yet. I prepared some maps and tendered them as evidence but as the case is still going I'm still part of the case, as I understand it.

20 And the team consists of you and who else?---The group of lawyers.

No one else is part of that team?---I guess there must be the person who is taking the case.

25 Is it Senator Brown, so he is a part of the team?---Yes, he must be.

Is Sophie Underwood a part of the team?---She is a member of the proceedings, yes.

30 So you perceive her as being a part of what you described as "the team"?---Under my initial definition, yes.

And you have provided assistance to Ms Underwood, haven't you?---When requested, yes.

35 Is Dr McQuillan a part of the team?---I think we can assume from my initial statement that I guess everyone involved in the case is part of the team.

Presumably everyone involved in the case from the applicant's side?---Yes.

40 So your perception is that each person involved in the conduct of the applicant's case is a part of a team?---My supposition is based on what I have heard, a legal team, I just assumed they were part of that team but obviously not.

45 And the goal of the team is to win this case, isn't it?---The goal of the legal team to win the case.

It is part of your goal too, isn't it?---My personal goal or what I was asked to do?

No. As part of the team that you consider yourself to be a member of, it is your goal to win this case for the applicant, isn't it?---I guess it is.

5 And it is Ms Underwood's goal?---You will have to ask Mrs Underwood.

She is your partner, isn't she?---She is.

10 And you have discussed this case with Ms Underwood?---I have discussed the case, yes.

I suggest that you have discussed it repeatedly?---Possibly, yes.

15 In fact, it is possible that in fact you have repeatedly discussed this case with Ms Underwood, haven't you?--- Yes.

And you and Ms Underwood have similar political views in relation to the conservation of the environment?---You will have to ask Mrs Underwood that.

20 who does Ms Underwood work for?---I understand she works for Senator Christine Milne.

25 That is a mere understanding, is it or do you know that she works for Senator Milne?---She works for Christine Milne.

Yes. And Senator Christine Milne is a senator for the State of Tasmania?---Yes.

30 And she is a member of the Greens?---Yes.

And the applicant in this case is Senator Robert Brown?---Yes.

And he is a member of the Greens?---Yes.

35 And you understand that the applicant in this case is opposed to logging in the Wielangta Forest area?---Yes.

40 And you understand that the Greens, as a political party, are opposed to logging in the Wielangta Forest area?---I can only speak of Senator Brown but I can assume that the Tasmanian Greens representative should be opposed to the logging of the Wielangta Forest.

45 And you are aware, aren't you, that Ms Underwood is opposed to logging the Wielangta forest area?---Yes, I guess she is.

Well, she has told you that she is, hasn't she?---Yes.

And you are a supporter of activities to stop logging in that area?---Excuse me?

And you are a supporter of activities to stop logging in the Wielangta area?---Yes, I am.

5 And Ms Underwood, from your knowledge, is likewise a supporter of activities to stop logging in that area?---Yes.

Now, you gave evidence that assisted in formulating a request for data to assist you in the preparation of the maps that you have produced. Do you recall giving that evidence?---I do.

Now, did you, or were you ever shown a copy of the order that his Honour made on 15 September 2005 in relation to the data?---Could I have a look at that order?

15 HIS HONOUR: Just for clarification the witness is being shown document 56 from the Court file?

MR C. GUNSON: Now, if you could just look at the first order which is confined to the first page. The forms of data described in 1.1 to 1.7 are the data that you requested. Is that correct?---Yes, I think it appears to be that way.

And that is ultimately the data that you received via the applicant's solicitors?---Yes.

25 I wonder if Mr Dell, your Honour, could be shown a copy of the affidavit sworn by Sophie Underwood in these proceedings which commences at volume 2, page 512 of the Court book.

30 Have you seen that affidavit before?---I don't think I have.

Could you turn to the report attached to the affidavit at SESU2, page 517, your Honour. Have you seen that report previously?---I have seen the report.

35 And you assisted in its compilation, is that correct?---I provided information for it, yes.

Right. I wonder if you could just turn to page 1 of the report which is page 521?---Yes.

40 Now, figure 1 contained in that report?---Yes.

Is that your work?---Yes, I produced the map.

45 If you can the page to page 2. Is the figure there your work or someone else's?---Figure 2?

Yes?---Figure 2 is not my work.

Not yours? The next page, page 3. That is a map of yours?---That is indeed.

Page 4 and figure 4; that is a map of yours?---It is.

5

If you can move forward to page 7 - page 527, your Honour. On that page what of that work is yours and if we could start with informal reserves or the heading Informal Reserves, down the bottom, the fifth dot-point in that?---Sorry, where are we looking? Page 7?

10

Yes. You see the heading Informal Reserves?---Yes.

And if you go down five of the dot-points?---Yes.

15

Do you see the sentence that starts:

The informal reserves within the Wielangta forest block cover approximately 1158.941 hectares, 14 per cent.

20

?---Yes.

Whose work is that? Is that yours or Ms Underwood's?---By the look of it that is Ms Underwood's work derived from table 1 below it which is sourced Forestry Tasmania and Department of Environment and Heritage.gov.au.

25

Hang on. Yes, it says Forestry Tasmania GIS data 2005?---Yes.

And that is the data that you were provided isn't it?---Yes.

30

So is the figure contained in there a figure that you - I withdraw that. The bullet-point that I was referring to is the figure of 1158.941 hectares something that you calculated, that Ms Underwood calculated or you don't know?---I don't recall. I may have calculated it. I don't recall exactly every part - bit of information that I produced for Ms Underwood.

35

The next dot-point, do you see the sentence:

The proposed CFA informal reserves cover 829.181 hectares, 10 per cent.

40

?---Yes, I can see that.

And do you recall if that is a figure that you calculated or was calculated by Ms Underwood or comes from some other source?---I can't recall. It may well have come from me.

45

Do you see the heading State Forest?---Yes.

The first bullet point there which reads:

5 *The Wielangta forest block covers a total of approximately 7956.339 hectares. The block includes couped and uncouped State forest and formal and informal reserves.*

10 Is that figure a figure that you calculated?---I can't be sure. In all likelihood, yes, it is a figure that I have calculated, but I cannot recall precisely what information exactly I provided to Ms Underwood.

15 As of 19 October this year however you could recall what information you provided to Ms Underwood, couldn't you?---What date is that, sorry?

20 19 October. Do you recall what information you provided to Ms Underwood?---In my affidavit?

25 19 October is the day that you swore your affidavit in these proceedings?---Yes.

30 And at paragraph 17 of that affidavit you deposed:

35 *I also extracted some data for Ms Underwood from the FT data so that she could use that information in her report. That involved producing some maps for her, see pages 1, 3, and 4 of her report; (b) calculating some areas for her, see pages 7, 27, and 33.*

40 ?---That's correct.

45 Now, in paragraph B of your affidavit where you refer to pages 7, 27, and 33, you are referring to page numbers in Ms Underwood's report, aren't you?---I am.

50 And at the time that you swore your affidavit you were able to recall what data you had provided to Ms Underwood; is that correct?---Yes.

55 And now you don't recall?---I can't remember producing the exact numbers, I acknowledge that yes, I provided numbers to Ms Underwood but I can't recall exactly what numbers those were. I'm dealing with - I was dealing with quite a lot of data.

60 Who did you give the numbers to? Did you give them directly to Ms Underwood or to someone else?---Directly to Ms Underwood.

65 And had anyone asked you to do that?---Well, Ms Underwood had asked me to do it.

70 And so that is where the request came from, was it?---It's where a request came from.

And there were other requests for you to provide information to Ms Underwood, were there?---There may have been.

5 Can you recall any other requests being made of you to provide information to Ms Underwood that did not come from Ms Underwood?---I cannot recall at this stage, no.

10 That is because there weren't any other requests that came from anyone other than Ms Underwood, isn't it?---Not to my recollection.

So on page 7 of Ms Underwood's report - do you still have that in front of you?---I do.

15 Okay. Can you identify on that page any figures that you provided to Ms Underwood?---I cannot recall exactly what figures I provided, I can surmise that they may have been derived directly from the GIS data that was provided to me by Forestry Tasmania but as there are dual sources there I can't be sure exactly what data was provided by me and what was not.

20 When you swore your affidavit on - I withdraw that. When you affirmed your affidavit on 19 October 2005 could you recall any of the information on page 7 of Ms Underwood's report that you provided to her?---I think the Wielangta forest block I in all likelihood would have provided to her as that was a - the definition appears wrong but that is a block of State forest and information
25 received from Forestry Tasmania so I can surmise that I may have provided that information but - - -

I think, Mr Dell, that you may have misunderstood my question?---Yes.

30 When you affirmed your affidavit on 19 October could you remember what on page 7 you had provided to Ms Underwood? I am not at this stage asking you to identify what you did in fact provide to Ms Underwood but rather whether you could remember what on page 7 was your work on 19 October when you affirmed your affidavit?---Not exactly, no. All I know is I must have provided
35 the information to her

40 But you don't know what information it was?---It was information relating to areas of forestry information - of forest areas but the exact mix and where she derived the data from on that page I can't be totally sure, no. Given the chance I could quite possibly find out.

I wonder if you could move to page 27 of Ms Underwood's report. Page 547, your Honour. Looking at that page can you identify what information you provided to Ms Underwood?---Looking at it I can see that I must have provided
45 the Forestry Tasmania 2005 GIS data shows 98 coupes covering the Wielangta forest block. I must have provided that information.

And is there anything else on that page that you provided to Ms Underwood to the best of your recollection?---No.

5 I wonder if you could now move forward to page 33. Page 553, your Honour. Do you know or recall what information on that page you provided to Ms Underwood?---The average coupe size, .2. The dot-point below that, the largest foresting coupe - foresting harvesting coupe. I think that is.

10 And in that as the next two pages which aren't referred to in your affidavit but it is under the same heading of past logging activities, is there anything else contained in those two pages that comes from you?---It doesn't appear so.

15 Did you discuss providing Ms Underwood data derived from the material discovered by Forestry Tasmania with the applicant's solicitors prior to giving it to her?---Sorry, what was that question?

MS MORTIMER: I object to that question on the grounds of privilege. Yes, I object to that question.

20 HIS HONOUR: Yes. Mr Gunson?

25 MR C. GUNSON: I don't pursue it. I wonder if I could just move away from that issue onto the question - or an issue that I suspect you are more familiar with and that is with maps and mapping. You would agree, wouldn't you, that a basic definition of a map is that it is a two dimensional representation of a portion of the earth?---A paper map is.

30 Yes, a paper map. And I was about to put the caveat on the end of that, "and usually on paper"?---These days they are not always on paper.

That is because there are a number of other maps and mapping techniques that are used these days, aren't there?---There are.

35 And the accuracy of maps is largely reliant on the accuracy of the material or data that is used in the preparation of it?---Yes, it is.

And maps can be used for a variety of different purposes, can't they?---They can.

40 For example a map show as geological - as rock types or the distribution of rock types?---It can.

As vegetation types?---Yes.

45 Maps can be prepared from - as interpreted aerial photography?---They can.

Now, in relation to the photo-interpreted maps, do you know in relation to the data provided to you by Forestry Tasmania via the applicant's solicitors, the scale at which that data was prepared?---Not unless specified in the data.

5 Will you dispute that it was at 1:25,000?---Once again it depends on the scale of the photography. I have got photography from the entire state and it will be interpreted from maps or photos and numerous scales.

10 But the overall data prepared for mapping purposes is contained at a single scale, isn't it?---Not necessarily.

When are different scales used?---I beg your pardon.

15 When are different scales used?---When you are studying an area intensively.

20 So you don't agree with the data but - I will withdraw that. You don't know what scale the data was that was provided by Forestry Tasmania?---The scale depends at what stage - at what scale you are viewing the data. The whole of the State, for example lists data here is not one to 25,000, it is one to at a guess - far out, a few million. So it depends what you are looking at the scale - what scale you are looking at the data. So the scale of this map for example is different to the scale of this map.

25 I understand the concept of scales?---Yes.

The scale of one to 100,000 will show less detail on the map than something of a scale of one to 25,000; is that correct?---Assuming the resolution of the mapping is consistent, yes.

30 And one to 100,000; is it correct that one centimetre on the map represents one kilometre on the ground?---No, that's not correct. A kilometre is 10 centimetres.

35 Is it, sorry?---No, sorry. Can I just refer to something? Yes, I think that is correct, actually. One kilometre on the ground is equal to one centimetre on the map.

40 And at one to 25,000, one kilometre on the ground is represented by four centimetres on the map?---Yes.

You were supplied with data from DPIWE as well as from Forestry Tasmania?---That's correct.

45 And you say that the maps that you produce can only be as accurate as that data?---That's correct.

And any inaccuracies in that data would lead to inaccuracies in the map?---Yes, that is correct.

Or the maps that you produced. Another source of inaccuracy is possible error on your part in the interpretation of the data?---That is a possible error, yes.

5 And an example of that was - of an error that you made in the interpretation of data, was the double counting of 40 coupes?---It was, but it didn't affect the map.

I accept your evidence on that, but it was an error that you made in interpreting the data that you were provided to enable you to prepare the maps?---It wasn't an interpretation error, it was a collation error.

15 It was an error that you made when using the data to prepare the maps?---Correct.

I wonder if I could ask you to look at the affidavit of Mr Ellis, which is in volume 3 commencing at page 780. Have you seen that affidavit before?---I have.

20 And you have read the affidavit previously?---I have.

Now, you accept - I was wondering if you could look at paragraph 6 of the affidavit on page 2 as I will ask you to accept that as that evidence, or as that paragraph is correct. You have never worked for Forestry Tasmania?---I haven't.

25 And you are not familiar with the systems that Forestry Tasmania has in place within it as an organisation for the purpose of conducting GIS analysis?---Sorry, can you clarify the question? The systems that are in place, what does that mean?

30 What they have and how they do it?---The principles of using the software are reasonably universal. As I understand it they use similar software to what I have been using, so I understand the principles of what they are doing. I obviously don't understand - I don't know their data intimately because they have produced it.

35 Now, I wonder if you could look at paragraph 13 of Mr Ellis affidavit which commences on page 6, page 785 of the Court book. In that paragraph Mr Ellis says:

40 *Since the 1970s the Tasmanian Forestry Commission and its statutory successor, Forestry Tasmania, have used the areas depicted in figure 1 and figure 2 below as the administrative boundary for the Wielangta forest block.*

45 If you turn over the page there are two figures. Do you dispute that statement contained in Mr Ellis affidavit?---No.

At paragraph 14 as Mr Ellis says that:

5 *The Wielangta forest block is made up of forested and non-forested land including agricultural land. The Wielangta forest block comprises different types of tenure including private land, reserve land, State forest and crown land.*

10 You wouldn't dispute any of that?---No.

Now, the definition of the Wielangta forest block that you have applied is different, isn't it?---Where have I applied the definition "Wielangta forest block"?

15 Can you find a map that looks like that?---I have, these are actually old maps I might say, this isn't the presentation that we presented to the Court on the first day.

20 So these now are not the maps that were presented to the Court?---As part of the power point presentation I corrected that mistake. That mistake was pointed out to us - the forest block mistake was pointed out to us in a replied affidavit, I think, and I though I had corrected forest bloke. It shouldn't read Wielangta Forest.

25 So your evidence now is that this should simply read as Wielangta State Forest?---I was just calling it the Wielangta Forest.

HIS HONOUR: Is this the second one in the bundle?

30 MR C. GUNSON: That is the map I am looking at, your Honour. It is about half-way through the pile, I guess.

HIS HONOUR: The second map does have forest block on it, is that correct, is it?

35 MR D. GUNSON: Yes, it does.

40 MR C. GUNSON: Yes, I will address that. The second map in the pile of maps that you have there is headed Wielangta Forest Block?---That's correct.

Yes. And that is that map?---That is that map, yes.

45 And you now say that it is - it ought not to be described as the Wielangta Forest block?---We called it the Wielangta Forest block because it was the block of State forest in the Wielangta area. I understand that that is incorrect but I - yes, that is incorrect, it should not be accurately called the Wielangta Forest block.

MS MORTIMER: Your Honour, can I just interrupt my learned friend for a moment, because my instructor has just pointed out that - and this is why we did need to check the maps but we obviously had missed this - that he is looking at the power point, it doesn't have the word, it only says Wielangta Forest, so I do not know how it has printed out with the word "block" on it. I don't know what my learned friends have - - -?---I do, they have got the - - -

No, just hang on still. I don't know from what my learned friends have printed and I don't know why it has got "block" on it because on the machine that was used for the power point it hasn't.

HIS HONOUR: Similarly with the - - -

MS MORTIMER: But it is probably something we can sort out over lunch, your Honour.

HIS HONOUR: Yes. What about the twelfth one, this one? Should that not have block on it as well? It is the second one?

MS MORTIMER: I will see what is on the - it has got Wielangta Forest on it.

HIS HONOUR: Yes, all right.

MS MORTIMER: So perhaps we can try and sort that out over lunch but it is the one machine, your Honour, because it has got all the data on it, so that is what we showed on the screen, so we obviously didn't check them quite carefully enough in that short break.

HIS HONOUR: Mr Gunson, should that happen before you proceed or are there other matters you can cross-examine on?

MR C. GUNSON: Yes, I think it would be easier to take the adjournment now, your Honour, if that is convenient with you.

HIS HONOUR: Yes. Everyone else?

MS MORTIMER: Yes, your Honour.

HIS HONOUR: We will adjourn now until 2.15.

ADJOURNED [12.58pm]

RESUMED [2.15pm]

MATTHEW ROBERT DELL:

MS MORTIMER: Your Honour, we have had a discussion about the maps
and there is an issue that needs to be resolved in terms of what has been printed
5 out not being the same as the power point, and my learned friend, Mr Gunson,
and I will be attempting to resolve that perhaps after Court and without trying
to do something that is going to not require reproducing all the maps again
which is an expensive process, so - - -

10 HIS HONOUR: Does that mean you might need Mr Dell back?

MS MORTIMER: I wouldn't have thought so, your Honour. I don't think it is
a matter about which we will be disagreeing or about which there will need to
be any evidence but I am not sure about that.

15 HIS HONOUR: If he is required he can be reasonably available at short notice,
is that correct, Mr Dell?---Yes, it is.

Yes.

20 MS MORTIMER: If your Honour pleases.

HIS HONOUR: Sorry to talk about you in your presence. I sound like my
grandmother. Yes, Mr Gunson?

25 MR C. GUNSON: If your Honour please, just as an administrative issue prior
to recommencing the cross-examination I wonder if you would be prepared to
make an order authorising the respondent solicitors to uplift and copy the CD
that was tendered by the applicant in relation to the power point presentation so
30 that it can be copied overnight for our use?

HIS HONOUR: Is there any opposition to that course?

MS MORTIMER: For what purpose, your Honour?

35 HIS HONOUR: For copying, as I understand.

MS MORTIMER: No, no, to be distributed or what is the proposal?

40 MR C. GUNSON: So that we can have a copy of an exhibit that has been
tendered.

HIS HONOUR: Just for counsel's use only.

45 MR C. GUNSON: Yes.

MS MORTIMER: Well, your Honour, only if that is on the condition that they
supply us with a copy because at the moment we are bound by an undertaking

that we can't copy that material unless it is to be tendered so that is why I handed over one copy and we don't otherwise have one.

5 HIS HONOUR: I see. Well, what if my associate made the disk available to any party or intervener that wish to copy it? On the basis that it is used only by counsel and solicitors for the purpose of the proceeding.

10 MR C. GUNSON: There are no difficulties from the respondents perspective with such an approach, your Honour.

HIS HONOUR: Ms Mortimer?

15 MS MORTIMER: And so long as we can have it on the transcript that the respondent doesn't - well, no one else at the bar table considers that if my instructor copies it that he will be held in breach of his undertaking.

HIS HONOUR: Well, to the extent that the undertaking might cross with it I think what I have directed would overtake it.

20 MS MORTIMER: If your Honour pleases.

HIS HONOUR: I more than think it will overtake it.

25 MS MORTIMER: Yes, I have faith.

MR C. GUNSON: We certainly have no issues with that, your Honour.

30 HIS HONOUR: I do not think any formal order is required, I am just indicating that the parties are at liberty to uplift it by arrangement with Mr McKenna.

MS MORTIMER: Thank you, your Honour.

35 MR C. GUNSON: As your Honour please.

Mr Dell, I wonder if you could have a look at again, map - what is now numbered 23 which is the last map in the bundle, your Honour.

40 HIS HONOUR: I will separate the CD out from the exhibit for the moment. Yes, thank you.

MR C. GUNSON: Mr Dell, you have that map?---I do.

45 At the time that you swore your affidavit you believed that the area depicted in red on that map was the Wielangta Forest block, is that correct?---Yes.

And you would agree, wouldn't you, that the area depicted in red on that map is in fact the State Forest within the Wielangta area?---That's correct.

And that map has been amended in the power point presentation that was tendered through you this morning?---Yes, the title of that block has, yes.

5 So to now simply refers to Wielangta Forest, is that correct?---That's correct.

And likewise in relation to every other map that refers to the Wielangta - or that originally referred to the Wielangta Forest block in the maps that you produced, for those that were included in the power point presentation, you changed them to simply be Wielangta Forest?---That's correct.

10

And they depicted areas of State forest only?---I think some of the maps also have localities with threatened species that may fall outside that forest block.

15 And the area analysis that you undertook for Ms Underwood was based on what you believed to be the Wielangta Forest block?---There was other evidence tendered as well which included the revised tenure for the - that was received from the respondent which may have altered those calculations and some of those calculations may have been included in that report by Mrs

20 Underwood.

But the calculations that you provided to Ms Underwood are based on the area depicted in red on map 23?---Yes, in part, yes. There has been a revision of the tenure of that block as I understand it in the Community Forest Agreement, the new Community Forest Agreement.

25

And that has been taken into account in the figures that you provided to Ms Underwood?---Some of the figures, yes.

30 I wonder if you could please look at the affidavit of Luke Ellis, which commences at Court book volume 3, page 780, but particularly the annexure LE2, which is a map and, your Honour, may not have been included in the Court book itself so if it is not Mr Dell might need to be shown the original affidavit and from looking at my instructor that is not the case.

35 HIS HONOUR: No, it doesn't look like that LE2 is reproduced.

MR C. GUNSON: No, it doesn't appear to be, your Honour. I wonder if the witness could be shown a copy of Mr Ellis' affidavits? I understand from my instructor, your Honour, that two copies of all the respondent's affidavits complete with annexures were filed.

40

HIS HONOUR: Yes, it is document 102 on the Court file.

45 MS MORTIMER: Your Honour, perhaps I can assist? My instructor is not in Court but I understand there are a lot of large maps that form part of the respondent's materials so they couldn't be reproduced in the Court book. So your Honour will have to find them separately, I am afraid.

HIS HONOUR: Yes. Thank you. So it is LE2, is it?

MR C. GUNSON: Yes, it is a map, Wielangta forest block by tenure, your Honour, which looks like that.

5

Mr Dell, the outline on that map, the line in black and filled with colour, do you accept to be the boundary of the - as Wielangta forest block?---I do.

10 And you haven't undertaken an analysis of the tenure within that block as defined in that map?---I restricted my investigation in the tenure of the State forest.

15 And you would agree that from a spatial - as an analytical perspective it is critical that a consistent reference point be used in discussing or considering land tenure and the like?---I'm sorry, what was that question?

It might be easier if I asked you to turn to paragraph 19 of Mr Ellis' affidavit. Page 787 of the Court book, your Honour.

20 HIS HONOUR: Have you finished with the annexure that is not in the book - the exhibit that is not in the book?

MR C. GUNSON: Most likely, your Honour.

25 HIS HONOUR: Sorry, what page are we on now?

MR C. GUNSON: 787, your Honour.

30 Now, if you could look at paragraph 19B on that page, you would agree with the proposition that the area of State forest has changed over time as demonstrated in figure 1 and figure 2?---Yes.

35 And you would agree with the proposition that administrative boundaries like the Wielangta forest block do not change when tenure boundaries change?---That is correct.

40 And you would agree with Mr Ellis' statement as a spatial analyst it is critical that a consistent reference point be used, statistical information can then demonstrate how land use and tenure changes over time?---I agree with the statement.

45 And if I could then ask you to look at paragraph 20 and particularly the table marked as table number 1 at the end of that paragraph. You wouldn't dispute any of the evidence contained in that paragraph in the table?---I didn't calculate the areas but I'm assuming that Forestry have a good handle on their areas.

I wonder, your Honour, if Mr Dell could now be shown a copy of the affidavit sworn by Thomas Kelly which is contained in Court book volume 3, page 1121? Have you found that affidavit?---I have, indeed.

5 And have you previously read that affidavit?---Sorry, what page number was it, 1121?

Yes?---Sorry, I was at the wrong page.

10 Thomas Kelly?---Yes.

And have you previously read that affidavit?---I have.

15 If I could ask you to turn to paragraph 10, which is on the third page of the affidavit? And at paragraph 10A(1) when Mr Kelly deposes:

20 *Provisional coupes represent the result of an office-based exercise undertaken by experienced field staff to roughly identify potential forest operational boundaries and exclude from them any areas unlikely to be logged due to known or mapped features.*

Do you disagree with that statement?---I must take the statement as read because I didn't compile the provisional coupes.

25 Prior to undertaking the map preparation that you undertook for the purpose of this case did you understand what provisional coupling was?---I understood that they were - yes, I did.

30 And what did you understand as provisional coupling to mean?---Provisional coupling was a subdivision of the State forest into the areas that were likely to be logged or may be included in logging practices in the State.

And over potentially an extended period of time?---I guess so, yes.

35 And did you understand that a representation of provisional coupes is not a representation of everything that will be logged?---I don't know on an individual coupe basis until, I guess, the forest practices plan is actually undertaken.

40 As indeed a section tool - as you would agree would you, that as you wouldn't know for certain until the coupe was actually being logged?---Yes, that's right. Some coupes are completely clear-felled and other coupes have areas subtracted from them.

45 And some just aren't logged?---I wouldn't know that.

From your previous employment is it fair to say that, as I think you have given evidence earlier, that you have never worked for forestry?---No, I haven't.

Is it a fair assessment that you have never worked within the forestry industry?---No, I have not worked within the forestry industry.

5 And issues in relation to forest planning that are unique to Forestry Tasmania, you would agree that the staff of Forestry Tasmania would be in a better position to explain that to the Court than you?---Yes.

10 And you have seen Mr Kelly's qualifications as they commence at paragraph 6 of his affidavit?---Yes.

And you would agree that his qualifications would appear to be such that he would be well positioned to give the explanations that he does give?---Yes.

15 And in a better position than you?---Yes.

Now, at paragraph 10B on page 4 of Mr Kelly's affidavit he discusses 10 year tactical scenarios?---Yes.

20 Have you read the entirety of the three subparagraphs at paragraph 10B?---I have.

25 And given Mr Kelly's qualifications and experience is there anything in those paragraphs that you dispute?---The only point I might make that years 10 to 4.XLS by my calculations only represents seven years of a 10 year scenario not 10 years of a 10 year scenario.

Yes. And you were provided also with the three year tactical plan?---I am not aware that we were provided with the three year tactical plan.

30 If I may rephrase it: you both do calculations including the three year wood production plans?---We weren't provided with that data.

35 I will rephrase that again: you had the three year wood production plans?---Yes, in paper copy.

40 And you requested the components of the district data bases comprising the informal indicative coupling undertaken by each district for the years to 10 following on from the three year operational plan. Is that correct?---That is correct.

45 So you actually had a set of data that covered 10 years?---Yes, but the statement read years 4 to 10. That is not a 10 year time period so - I was just reading what was read out. That is not a 10 year plan. That is only a seven year plan.

Now, at paragraph 10C which is on page 5 which is headed Area Discounts, prior to reading Mr Kelly's affidavit were you aware of the concept of Area Discounts?---No, I was not.

And you wouldn't dispute what Mr Kelly deposes to in paragraph 10C in relation to area discounts?---Without actually doing the calculations myself I must rely on his data, yes.

5

And you haven't attempted to undertake any such calculations yourself?---We are not privy - the data is not publicly available with which to perform those calculations. I would have to ask for another data set from Forestry Tasmania to perform that.

10

And you wouldn't dispute, as Mr Kelly's assertion, that as an average area discount of 20 to 30 per cent would be appropriate and that in the Wielangta the average discount was found to be below the State average at approximately 15 per cent?---Once again I have seen the calculations so I must rely on his evidence.

15

You requested the RFA vegetation map in electronic form. Is that correct?---Yes.

20

And you received that map?---I did.

Do you recall this morning I cross-examined you in relation to the scale of various maps and I put to you that - or asked you to assume that the vegetation type data set that you received was at the scale of 1:100,000. Do you recall that information?---Sorry, can you repeat that statement again?

25

That the data set in relation to the vegetation type, I suggested to you, was scaled as the 1:100,000. Do you recall me raising that with you this morning?---I thought it was 1:25,000 but if it is 1:100,000 so be it.

30

Now, do you agree with the proposition that the data is provided at a particular scale?---I am assuming from that question that you are saying that the data was compiled at 1:100,000 scale or the data is presented at 1:100,000 scale.

35

The data itself is compiled at 1:100,000?---Okay. Yes, okay.

But it is not presented at 100,000.

40

And that is what I wanted to clarify. The data is compiled at 1:100,000 for example?---Yes.

It can be presented at different scales?---Yes, that's correct.

45

However, the detail and definition, if it is presented at a different scale, will remain at or about the scale 1:100,000?---If it was compiled at 1:100,000, yes.

Yes. Now, what do you understand the vegetation type data to consist of?---In the RFA data set or the data sets in general?

Is the vegetation type data set that you received from Forestry?---Veg CRA I think was the name of that data set that we were provided with. Is that correct?

5 You have described it in your affidavit as:

The digital layers of the FT data include vegetation layers.

10 Yes, I am advised that that is right and I have actually just found it as I think it was the spreadsheet veg CRA_provcomp_years 1 to 10 as XLS?---That is a data set I produced - - -

As one that you created?---Yes, that's correct.

15 And it is from the veg CRA data set that you received?---Yes.

Do you agree that that data set was drawn at 1:100,000, the scale, or was compiled at a scale of 1:100,000?---I don't know what scale it was compiled at but if they say 1:100,000, that's what it was compiled at.

20

And you would agree that the vegetation data sets are general in their nature?---That vegetation data set, it has specifics and general components I would say depending on the importance of the vegetation type.

25 And it doesn't come down to the - as micro level of detail?---Not that I am aware.

30 Do you have any understanding - and I don't mean to be condescending in this question at all - of the preferred habitat for the broad-toothed stag beetle and please if you don't, say that you don't?---I have some understanding, yes.

35 As I am going to ask you a number of questions which will relate to the preferred habitat of the broad-toothed stag beetle and I want to make it perfectly clear that I am not trying to trap you into moving outside your area of expertise so please if we do end up in that area would you just let me know. I wonder if Mr Dell, your Honour, could be shown a map which is attached to the affidavit of Luke Ellis which is LE8.

40 HIS HONOUR: We are now looking at document 102 on the Court file. I will never be able to put this back the way it was.

MR C. GUNSON: Now, Mr Dell, have you previously see this map?---I have.

45 HIS HONOUR: It helps if you have it the right way around.

MR C. GUNSON: Thankfully in this context we don't need to attempt to orientate them north.

Mr Dell, with all the spare room you have there in the witness box, I wonder if you could also look at page 19?---Page, sorry?

Paragraph 19 of Mr Ellis' affidavit which is - - -

5

HIS HONOUR: Pardon me, I will go on the floor here.

MR C. GUNSON: I suspect, your Honour, that this is not the first time in this trial - it is not the last time in this trial that we are going to encounter this difficulty?---So what page are we on, sorry.

10

HIS HONOUR: It is at 565. Sorry, paragraph 19 of whose affidavit?

MR C. GUNSON: It is page 19 of Mr Ellis' affidavit.

15

HIS HONOUR: Page 19 of that affidavit? What page of the Court book?

MR C. GUNSON: Page 787 I am told, your Honour. No, 798.

20

HIS HONOUR: So it is paragraph 51?

MR C. GUNSON: 51 is the starting point.

Now, Mr Dell, paragraphs 51 to 54 describe the data used to create this map and you wouldn't disagree with any of the material contained in paragraphs 51 to 54?---Can I have a read of them?

25

Yes, please do.

30

And you would agree that the vegetation mapping appears to be based on a scale of 1:100,000?---Yes.

However, the scale of this map itself is certainly not 1:100,000 is it?---No.

35

It is 1:40,000?---Yes.

Now, you understand that wet forest can occur in patches within dry forest?---Yes.

40

Particularly in gullies?---Yes.

Riparian areas?---Yes.

45

And other damp areas?---Yes.

And that that is the habitat that is preferred for the broad-toothed stag beetle?---Yes.

And where have you previously seen this map?---I saw it as part of the affidavit.

And have you seen it since then?---No.

5

Did you see it on the view?---No.

Now, that is all I propose to do with that map, your Honour.

10 Now, if I can ask you to go back to the affidavit of Mr Kelly, particularly page 9?---Could I have the page of that please?

15 Page 1130. It is 1129. In relation to the issue of double-counting that is referred to paragraph 18A, you gave evidence about that in-chief this morning, is it fair to say, as given your evidence-in-chief this morning you don't take issue with anything that Mr Kelly says in relation to double-counting?---No.

20 And if I could ask you then to move onto paragraph B which is on page 11 of the affidavit defining mature forest. Is my understanding of your evidence this morning correct that your definition was based on your knowledge of the data set?---That's correct.

25 And if Mr Kelly - I withdraw that. You wouldn't now dispute Mr Kelly's assertions in relation to the data set?---Are we talking about the same data set though.

I will come to that - in relation to the data set that you used?---What assertions?

30 MS MORTIMER: Your Honour, I rise to object at this stage because, in my submission, these questions need to be very precise. There is a number of SHP files referred to here. There are a number of tables that need to be broken down so that the witness can understand precisely what he is being asked to agree and disagree with.

35 HIS HONOUR: Mr Gunson?

MR C. GUNSON: I accept that.

40 At paragraph 18B(1), Mr Kelly says:

I also noted that Mr Dell apparently used forest classes from the FT supplied shape file, FC 2001.SHP to define mature forest.

45 That is correct, isn't it?---That's correct.

He then says:

I believe he created the shape file mature_fc2001.SHP to contain all polygons from FC2001.SHP where the attribute fc2001 was between 01 and 33 inclusive -

5 and that is correct?---Yes, I think so. Yes.

That is correct, that statement?---It is correct, yes.

Yes. Mr Kelly then says:

10

It is my opinion that this method produces a basic inconsistency in the definition of mature forest because -

15

(a)some areas of partial harvesting are included in the mature forest are as defined in mature_fc2001.SHP (see table 3 for several examples of this condition).

Do you agree with that statement?---It is still a mature forest so I don't see the inconsistency.

20

And

25

(b)other areas of similar forest consisting of a combination of mature forest and partial harvested forest but with a forest class value greater than 33 are not included as mature forest in mature_fc2001.SHP (see table 4 for several examples of these forest types).

Do you agree with that statement?---I do agree with the statement.

30

And then at subparagraph (2), Mr Kelly says:

35

The only difference between these forest types included as mature forest and those not included is the order in which the PI type elements are listed.

Do you agree with that statement?---Not entirely, no.

40

In what way do you disagree?---My assertion was based on the percentages of the forest as well that are included in those classes. I was looking for significant areas of mature forest and that was what the mature forest class were defined as in that forestry classes table that we were provided with. Significant mature forest was the group of elements that I pulled out so it is matter of opinion I guess.

45

And you would agree that Mr Kelly is well qualified, through his academic qualifications and work experience to express that opinion?---Yes.

And he then says:

This order is important in Forest Class 2001 where the purpose -

5 I think it should be -

is to stratify forest types into classes which have broadly similar timber volumes and growth characteristics.

10 Do you agree with that statement?---Yes.

He then says:

15 *These strata are therefore useful for timber inventory and yield planning applications.*

Do you agree with that statement?---Yes.

20 And in subparagraph (iii) Mr Kelly deposes:

25 *However, it is in my opinion that disordering of PI-type elements is largely irrelevant to ecological habitat studies and the Forest Class 2001 is unlikely to be the most appropriate data to use to define mature forest for ecological modelling.*

30 Would you agree with that statement?---It depends what attribute you are modelling on, I guess. For the wedge-tailed eagle it is the height class that you want to use to model so that is very useful in a modelling process and is probably the only data set that has that height class in it, I would assume.

35 And you would agree that as Mr Kelly is well positioned to make - or to express the opinion that he expressed in that paragraph?---I admit that he is well qualified to express that opinion, yes.

40 Now, in your evidence-in-chief this morning you were taken to that paragraph as well, is that correct?---Which paragraph was that?

45 To paragraph 3?---I don't recall being taken to that paragraph before. I was taken to the tables, I think.

It is my recollection that you were taken to that paragraph and that - my note says has no access to other data from FT. "We received some threatened species unit data" and my learned leader's note, although in different words is along the same lines?---Okay, yes, sorry.

45 Do you agree that you received all of the data from Forestry Tasmania that you requested via the applicant solicitors and Forestry Tasmania was ordered to discover?---Yes.

If the data that you have used is not the preferable data, your maps which rely on that are likely to be inaccurate, aren't they?---I don't think they are, no.

5 And you would agree also, wouldn't you, that in relation to the state wide maps in particular that you have produced and by way of example, map 3 - a better one is map 7, that given the scale of the map much of the definition between individual coupes is lost?---I agree with that statement, that is a product of printing though. If it was printed at a very high resolution you would still be
10 able to see the little lines.

But certainly there are little lines between each of the provisional coupes on that map?---You can see some lines, yes.

15 And it is not a correct assertion that huge swathes of forest of that size will be logged in total, you would agree with that?---I agree with the statement in relation to the map but the data we were provided with and - it is just a representation of the data. If it was possible we could blow it up on the screen and you would be able to see the gaps between the coupes.

20

I think that last statement encapsulates where I was going, that it is simply a representation of the data at a given point in time?---It is.

25 And if the data was to change the map would be inaccurate by reference to the data?---This data sets a provisional coupling layer and as I understand it provisional coupling layer is you know, as we were given so yes, if it were to change, I don't know if it does change, but I understood it was just the coupling of the available forest and then changes were made on a smaller scale after the - on an individual coupe basis.

30

Well, the provisional coupling data is a list of every individual coup contained in the data set, isn't it?---As I understand it, yes.

35 Each potential coup is individually identified within the data?---No, there are a number of coups with no attributes in them at all in the data set that I received.

But it is not simply a statement of forest available for harvest and then it is dealt with at - or it changes at an individual coup level, is it?---Sorry, can you repeat that question?

40

A provisional coup data set is not a generalised statement of forest available for harvest?---No, the State forest is as I understand it.

45 So you understand that all State forest is available for harvest?---No, I'm not saying it all but State forest by - it's State forest, it's under the control of the Forestry Department as far as I understand it.

If your Honour please, I have nothing further.

HIS HONOUR: Yes, thank you, Mr Gunson. Ms Mortimer?

5 <RE-EXAMINATION BY MS MORTIMER [3.14pm]

MS MORTIMER: Now, Mr Dell, you were asked about what data you used
to create some of your maps and you gave an answer that I have recorded in
10 this way, that the data is not publicly available to perform those calculations, we
would have to ask Forestry Tasmania for another set. Can you tell his Honour
from your knowledge what data from Forestry Tasmania is publicly
available?---The three-year wood production plan is available and I think some
15 maps are available to people who are immediately affected, ie, neighbours close
to where logging may occur, but general requests for information such as the
provisional coupling layer are not available to the public, their forest class
mapping is not available to the public. Most of their data, indeed, is not
available to the public or as I understand the wider scientific community.

20 Now, your Honour, I want to re-examine on a matter that is going to require I
think Mr Dell to open up the mapping program that he used and I am not sure if
that is on this computer and I might have to just take a moment to allow the
transfer of the computer over to Mr Dell. If your Honour can just pardon me
while we do that.

25 Now, Mr Dell, you are going to also have to look back at Mr Ellis' affidavit -
Mr Kelly's affidavit which is paragraph 18B(i) on page 1131 of the Court book.
This relates to the questions. Mr Dell, you were asked about Mr Kelly's
statement about whether you used - to create the shape files, whether you used
30 all the polygons where the attribute was between 01 and 33. Now, can I ask
you on that computer open up the ArcView program that you used and look at
the satellite base map and does that refresh your memory about whether you
used all the attributes between 01 and 33?---For mature forest class I used all
the attributes between 1 and 33, yes. For other files such as tall mature I used a
35 different set of - a subset of that data.

All right. So just concentrating on tall mature. What was the different subset
that you used?---I subset the data based on the height of the trees that were
40 included in that forest class. So for the wedge-tailed eagle, for example, I
subset trees that were low in height and just used trees above, I think, 27 metres
high.

And why did you do that?---As a preferred nesting habitat, it's higher up - they
use larger trees.

45 Thank you, Mr Dell. Finally, you were asked some questions by my learned
friend about the Veg CRA data set and whether you compiled the XLS file, the
Veg XLS file, from that data set. Is that what you did? I ask you that because

you paused and you looked a little puzzled when you answered my learned friend's question and I wasn't sure whether you needed to refresh your memory about that or whether there was something you didn't understand about that?---The XLS data sheet from memory - I might have to have a look, but I think that's just a list of the attributes that were used in the - that we used to define all the forest classes. The data set itself will be a list of codes and numbers basically and it's like a legend. I can check now to confirm that if you like.

10 Can you do that, please?---It's actually a data set called Veg Com.XLS as I understand it, that's their data set.

And so just explain to his Honour what is that data set? What does it look like and what does it allow you to do?---The data set that I'm looking at is just a list of codes and like to give you an example, somewhere that we went, R is e.regnans forest. So anywhere which R appears as a quantifier in that vegetation CRA data set inside a polygon that will represent a regnans forest.

20 Thank you, Mr Dell. Pardon me a moment, your Honour. I have no further questions, if your Honour pleases.

HIS HONOUR: Yes, thank you. Would you like Mr Dell excused subject to the reservation about one matter.

25 MS MORTIMER: About the Powerpoint?

HIS HONOUR: Yes.

30 MS MORTIMER: Well, there is the question of the Powerpoint, your Honour, and at the moment, no, I don't ask for him to be excused.

HIS HONOUR: Yes, thank you.

35 MS MORTIMER: But may he leave the witness box, your Honour.

HIS HONOUR: Unless he wants to stay in there while Ms Underwood gives her evidence. Yes. Mr Dell, you may take a seat in Court and come back later if required, but with that one reservation I will excuse you subject to the reservation about the Powerpoint.

40 MS MORTIMER: Generally, your Honour, I don't ask for him to be excused.

45 HIS HONOUR: I see. All right. Subject to the reservation of being required by Ms Mortimer. That gives you the chance if you don't require him, you see. Yes. Thank you, Mr Dell.

<THE WITNESS WITHDREW

[3.22pm]

MS MORTIMER: My learned friend Mr Tree is taking the next witness.

5 HIS HONOUR: Yes, thank you. Thank you, Mr Tree?

MR TREE: Thank you, your Honour. I call Sophie Underwood.

<EXAMINATION-IN-CHIEF BY MR TREE

5

MR TREE: I wonder if we might just take a moment to get the computer that is presently before the witness back on the bar table, your Honour.

10 HIS HONOUR: Certainly. Yes, Mr Tree?

MR TREE: Thank you, your Honour.

15 Could you tell the Court your full name, please?---My name is Sophie Clementine Sorell Underwood.

And your residential address?---483 Huon Road, South Hobart.

20 Are you presently in employment?---Yes.

And who is your employer?---I am presently working for Senator Christine Milne.

25 Have you a profession or occupation that you ordinarily follow?---Yes, I am also an environmental consultant.

Indeed you are presently engaged in that activity as well as your employment?---That is correct.

30 Thank you. You have affirmed an affidavit in relation to these proceedings, have you not?---I have.

35 I wonder if the witness might be shown volume 2 of the Court book at page 512?---Thank you.

Is that the affidavit that you affirmed on 18 October 2005?---Yes.

40 It principally appends a report which you have compiled in relation to issues arising out of Wielangta area?---Yes.

And I think there are some matters in it which you wish to modify or clarify, I am correct?---That's correct.

45 Your Honour, I seek leave to do that, which has been practised thus far.

Could I first direct your attention, please, Ms Underwood, to page 533?---Yes.

About three quarters of the way down the page you will see under that shaded heading Broad-Toothed Stag Beetle there is a heading General Information, and the third point underneath there reads:

5 *The type locality for the beetle is on Maria Island.*

And there is a reference there to a particular article with 1856; is that the correct date?---It is actually 1855 and the correct reference I would like to change it to is actually 1871.

10 Thank you. And can you explain to his Honour, please, what "Westwood 1871" is?---That's actually the description of the species of broad-toothed stag beetle. The 1855 reference that I refer to is actually described in the genus.

15 And the 1871 article relates to Maria Island specifically, does it?---It says:

Descriptions of some of new exotic species, the Lucanids.

20 So the beetle was first found on Maria Island and that is where it was first described from. That's why it's the type locality.

And you understand it to have been first located in 1871 on Maria Island?---That's when the reference was published describing the species.

25 Thank you. Can I get you then to go to the heading Threat Status and the subheading Threatened Species Protection Act 1995? The second dash "Why listed?" and it presently reads:

30 *Due to its restricted distribution, low population density and loss of habitat.*

35 Do you wish to review that component of your report?---Yes, I do. I would just like to stop the sentence at "due to its restriction" full stop. So cross out "low population density and loss of habitat".

Thank you. At the top of the following page, page 534 - first dash on the page:

40 *Why listed? Due to restricted distribution, low population density and habitat loss.*

Do you wish to modify that answer?---Yes. The sentence should finish at, "Due to restricted distribution" full stop.

45 So you have put a line through those words again?---Yes.

Can I then direct your attention please to page 536. About a quarter of the way down the page - perhaps starting a little bit earlier than that - there is a heading Key Sites and you then list from the research as what you have identified as

being the key sites and the final point which is under that subheading says
Tasman and Forestier Peninsula. Do you wish to review where that appears in
your report?---Yes. What that - I should have actually listed under Likely
Habitat rather than Key Sites so it is a potential region for the beetle but as you
5 will read - - -

So there should be a heading in similar boldness and font to Key Sites which has
one dash underneath it, namely Tasman and Forestier Peninsula?---Yes.

10 Thank you. Finally, can I direct your attention please to page 546 of the Court
book at the very top of the page. You will see that it presently reads:

15 *After the construction of the W road in 1987, cable logging of steep
slopes commenced and coupes have been progressively clear-felled
ever since.*

Do you wish to revisit that answer?---Yes. I'd like to delete the word
"clear-felled" and replace it with "harvested".

20 Because some of the harvesting has not been clear-felled?---Correct.

Thank you.

25 HIS HONOUR: Sorry, where was that again?

MR TREE: Sorry, your Honour, top of page 546, second line.

30 HIS HONOUR: Yes. "Clear-felled" is deleted and - - -?---Replaced with
"harvested".

Thank you.

35 MR TREE: With those modifications, your Honour, I ask that this affidavit
form part of the evidence for the applicant in this case.

HIS HONOUR: And there is no objections to it?

MR TREE: No, not that I am aware of, your Honour.

40 HIS HONOUR: Well, the affidavit and exhibits will constitute the
evidence-in-chief of Ms Underwood, as varied.

45 MR TREE: Ms Underwood, I think you have been referred to in two of the
affidavits that have been filed and are to be relied upon by Forestry Tasmania, I
wonder if I might have placed before the witness, your Honour, volume 3 of the
Court book and this is the affidavit of Luke Ellis which commences at page 780
and I wish to have the witnesses attention directed to page 785.

You see at page 785 Mr Ellis, at paragraph 12, makes reference to your affidavit and then goes on to describe or give some evidence in relation to the definition of the Wielangta forest block. Can you tell his Honour please whether the Wielangta forest block is a term that you have used in your report?---Yes. Yes, it is a term that I have used in my report and I can see that that is an incorrect usage but I actually defined what I referred to as the Wielangta forest block in my report and that was that it referred to the State forest around Wielangta so, yes.

So if I can direct your attention please to page 787 for instance, paragraph 19, do I understand your criticism there or your understanding of the criticism to be that you have used the Wielangta - State forest in the area of Wielangta as comprising the Wielangta forest block but Mr Ellis uses a broader term?---Correct.

and if we look at the previous page, page 786, we see a graphic representation of the difference?---Yes.

That which you have referred to is in figure 2 in red?---Correct.

And that which he is referring to is in blue and red?---Correct.

Thank you. Now, can I direct your attention please to the affidavit of Thomas Kelly, page 1121 of the same book that you have before you.

And can I direct your attention please, to page 1125? Going on that page you will see that there is reference to you about half-way down the page?---Mm.

And have you had an opportunity to consider that page and the following pages which make a critique of your approach?---Yes.

Firstly, can I get you please to tell his Honour whether you had the same material that it appears as though Mr Kelly has had access to in compiling your report?---No, I haven't. I actually started working on my report in March 2004 and at that time I didn't have any GIS data or electronic data on Wielangta so when I first started doing my report I didn't have the same data and then- - -

What data did you have when you commended upon your report?---I had timber harvesting plans and forest practices plans.

And how did you make a calculation of areas in hectares in undertaking the work that you did?---On a timber harvesting plan and a forest practices plan, a forest practices plan is the new name for a timber harvesting plan, it actually identifies the area to be harvested and so my calculations were based on what was outlined in the timber harvesting plans and the forest practices plans.

So you simply had a calculator and added them all up?---Yes.

Thank you. It appears as though Mr Kelly has had access to two different areas or two different other sorts of data. Firstly paragraph 14 PI-type and secondly paragraph 15 Forestry Tasmania's harvest boundaries?---Yes.

- 5 Is recourse to PI-type or forest harvest boundaries more accurate or less accurate than the material you had regard to?---More accurate.

To the extent that your calculations differ from calculations based upon PI-type or harvest boundaries which is the more reliable? Sorry, which between those two is the more reliable?---My methodology or the methodology used by - - -

10 Sorry, I will go back a step. As between calculations that you have undertaken based upon visual examination of the plans on one hand, and calculations using PI-type and harvest boundaries on the other, which is the more reliable?---PI-type and harvest - or yes, harvest boundaries.

15 Thank you. Now, can I then direct your attention please to paragraph 16 of his affidavit, page 1128?---Yes.

20 There is a discussion there about the number of coupes which you have had regard to and you will see that there is a distinction between you and he in relation to the total number. A, he refers to your reference to 40 coupes; C, he refers to his calculations of 26 coupes?---Mm.

25 And you will see over on the top of page 1129 there is reference to the possibility that you had regard to forest practices plans roading?---Yes.

Did you have regard to forest practices plans for roading?---Yes.

30 So the postulated explanation for the difference between you and he is correct?---Yes.

Do you know how many forest practices plans for roading you had regard to?---Twelve.

35 Thank you. Why did you have regard to forest practices plans that included roading?---Because in my view roading was equivalent to harvesting and they were - roading is also equivalent to clear felling so they need to be considered as part of the overall picture of what is happening in a particular area.

40 HIS HONOUR: is that in the context of environmental disturbance?---Yes.

Yes.

45 MR TREE: Do you understand where the roading can be undertaken in a State forest without a forest practices plan being submitted?---I don't know. It's my understanding that a forest practices plan is needed for road construction.

Thank you. Thank you, your Honour.

HIS HONOUR: Yes, Mr Tree. Mr Gunson?

5 MR D. GUNSON: Thank you, your Honour.

<CROSS-EXAMINATION BY MR D. GUNSON

[3.37pm]

10

MR D. GUNSON: Ms Underwood, if we just deal with some of these issues that you have addressed first. Could I take you back please to page 536 of the Court book? Mr Tree took you there a few moments ago. And you have now explained that there should be a sub-heading Likely Habitat appearing above Tasman and Forestier Peninsula?---Correct.

15

Was that just an omission on your part in the first instance when you described the Tasman and Forestier Peninsulas as key sites?---Sorry, what do you mean was it an omission?

20

Well, did you intend to put in the likely habitat as a sub heading in the first instance?---No, it was a correction that I later noted that it was not in fact a key site, that it was an area of potential habitat.

25

Well, where did you obtain the information that led you to report that the Tasman and Forestier Peninsulas were key sites rather than a likely habitat?---I believe that I obtained that information from Bryant and Jackson, 1999, and having re-read that information I think I misread the paragraph and it should have been written as a potential habitat instead of a key site.

30

Well, you think it was just a misreading of the information that you got; is that right?---Yes.

35

A failure to properly read the material that you were relying on for the purpose of preparing your report; is that the case?---Correct.

40

Thank you. Now, if we go then to page 533 under threat status you have suggested that under the Threatened Species Protection Act the status is endangered and you say why listed and you say because of - did say:

Because of restricted distribution, low population density, and loss of habitat.

45

Why did you include low population density and loss of habitat as two of the criterion?---As you can see there, I haven't identified a source, and I would have obtained that information from somewhere but I cannot recall where that source came from.

You have no idea now?---I can't remember.

5 Did you not think it appropriate to record this source in your report, to identify the source?---At the time I didn't for some reason, I don't know why, that's why I have made the later correction.

10 But you only made them today. When did you first realise that you needed to correct that information that included low population density and loss of habitat?---Yesterday.

10 Yesterday, that was the first time?---Yes.

15 And presumably you have read and re-read your report before you came to Court yesterday?---Yes.

15 And you hadn't picked it up before then?---No.

20 It is a fairly basic error, isn't it?---Well, it's a fundamental - it's very important and I should have rechecked the source and that's why I guess I haven't put it there.

You should have in fact recorded your source, shouldn't you?---Yes.

25 And you would agree it is a fundamental mistake that you have made in your report?---Yes, and that's why I corrected it.

30 And if we then look at the bottom of the page we see reference to the Environment Protection and Biodiversity Conservation Act of the Commonwealth and you state that the status is endangered and again you had repeated the earlier error, hadn't you? Correct?---Yes.

Again, a fundamental error?---Is that the question?

35 It is a fundamental error, isn't it?---It is an error, yes.

40 And it is a fundamental one, isn't it?---Well, the listing advice actually states that the population - there are indicators that the population is low and that it is threatened by habitat loss. But the main reason - criterion 2 is that it is a restricted distribution. So it is an error I have made.

40 And you haven't put in your source either, have you?---No.

45 What source should you have attributed?---Well, the listing advice would be one source.

Yes, the advice to the Minister?---Correct.

Did you look at the advice to the Minister before you prepared your report and then wrote:

5 *Why listed, due to restricted distribution, low population density and habitat loss.*

MR TREE: Your Honour, I wonder if the witness might be given an opportunity to review the page?

10 HIS HONOUR: What appears immediately under what you have deleted?---

Date listed, 3 December 2002, to view listing advice go to -

15 MR D. GUNSON: Well, did you go to the listing - listening device [sic]?---Yes.

And you checked the listing advice?---Yes.

20 And you still got it wrong?---Well, I read why it was listed and that was its restricted distribution but it actually specifically says - under that, it talks about low population and habitat loss. So it's not specifically why it was listed, low population density and habitat loss, but in my view it relates to its vulnerability.

25 Could the witness be shown the listing advice which I think is exhibit 2 or 3 from yesterday. It looks like that, Mr Associate.

HIS HONOUR: Exhibit 1.

30 MR D. GUNSON: Thank you. Getting confused with only three exhibits.

HIS HONOUR: Sorry, it is exhibit 1.

35 MR D. GUNSON: I was just saying to my junior I was getting confused with the numbers already. It is not a good - - -

HIS HONOUR: It will help when all of us will have to go back and re-read the transcript. You might think I am being too clever by half sometimes just making commentary but it is sign-posting for when we are reading it later.

40 MR D. GUNSON: That is very useful, your Honour.

Now, is that the listing advice to which you referred prior to writing your report?---Yes.

45 And if you look at the criteria that are set out there the only one that is suggested as applicable is the geographic distribution, isn't it?---Yes.

Decline in Numbers has written under it:

There is no evidence against this criterion therefore the species is not eligible for listing under this criterion.

5 ?---No.

And the Population Size, there is a similar entry, isn't there?---Sorry, are you talking about under criterion 2?

10 I am looking at criterion 3 at the moment?---Yes.

Criterion 2 is Geographic Distribution?---Yes, Population Size.

15 And it repeats the fact that there is no evidence against that criterion, doesn't it?---Correct.

And on population size it is similarly expressed?---Yes.

20 So in reality if you had checked the listing advice you should not have recorded, "Low population density and habitat loss," should you?---Not in relation to those criteria, no.

25 No. So why did you do it?---Well, I imagine that when I was looking at why the species was listed that because of all the information that was written under Geographic Distribution but I have also conceded that that was not, in terms of how it was listed that Geographic Distribution was the only reason and I have pointed that out.

30 But nonetheless it appeared in your report in the first instance?---Yes.

And I imagine when you wrote your report you were very careful to check the report before you signed off on it?---Yes, to the best of my ability.

35 No doubt you prepared a number of draft reports first?---Yes.

And no doubt read those very carefully and checked them?---To the best of my ability, yes.

40 And no doubt you checked your references when you checked your drafts?---Yes.

And still you made those fundamental errors?---Yes.

45 You cannot proffer any real explanation as to why you included that material in the report when it was just plainly wrong?---No.

Are there any other errors in your report that you would like to identify now?---Not that I know of, no.

What is your specific discipline that you are giving evidence in?---I was engaged as a consultant to do a broad background report on the Wielangta area.

5 As a consultant. A consultant in what discipline though?---I am an environmental consultant and I work on a varying array of - I have worked on a varying array of areas. My background is in botany and geography in environmental studies.

10 And who asked you to prepare this report?---Fitzgerald and Brown.

And were you invited to prepare the report orally or did you receive a letter of instructions?---Sorry, can you clarify that question?

15 Well, did you receive a letter providing you with information and asking you to prepare a report?---Yes.

So you received a letter of instructions. Is that correct?---Correct.

20 You haven't exhibited that - and this is not necessary a criticism of you but you haven't exhibited that letter to your affidavit, have you?---No.

Do you have a copy with you now?---No.

25 I call for production of a copy, your Honour?

MR TREE: I am sure if we had some notice it could have been produced but we will make our efforts - I am sorry, this is the first I have known it was going to be called.

30

MR D. GUNSON: I can move on. The notice is given and we are happy if it is produced even by tomorrow morning.

35 Now, Ms Underwood, you presently work for Senator Christine Milne. How long have you worked for Senator Milne?---Since the end of July 2005.

And prior to that have you ever worked for any politician?---No.

40 And Senator Milne of course is a member of the Green party?---Correct.

And a state colleague of Senator Bob Brown, the applicant in these proceedings?---Correct.

45 You have been an activist against Forestry Tasmania, have you not?---Yes.

And you have attended demonstrations and have protested against activities of Forestry Tasmania, have you not?---Yes.

How many demonstrations have you been to where you have actively protested against Forestry Tasmania?---I can't remember.

5 Well, would you like to give me some example of what we are talking about.
Two? Twenty? Thirty?---I would say less than 10 or 15.

So 15 demonstrations would be the maximum, would it?---Yes.

10 And what sort of activities have you engaged in at these demonstrations against Forestry Tasmania?

15 MR TREE: Your Honour, this is irrelevant unless my friend is going to seek to undermine some specific aspect of this witness report which is said to be motivated by bias. Now, if that is where my friend is going it is unobjectionable, but if this is just simply a demonstration of this witness past political activity it is wholly irrelevant to these proceedings.

20 MR D. GUNSON: It is very relevant, your Honour, because in her affidavit the applicant actually says at paragraph 5:

I am opposed to logging -

page 512, your Honour, paragraph 5 -

25 *I am opposed to logging in the Wielangta forest area. I support campaigns to stop logging in that area.*

30 Now, my question to her was not confined solely to protesting against Wielangta, but that she has a general agenda of protesting against the activities of Forestry Tasmania. She goes on to say in her affidavit that:

My personal views referred to in paragraph 5 have not affected the way in which I have undertaken the tasks referred to in paragraph 7.

35 That at the end of the day is distinctly a matter for your Honour to determine once you know the extent of her activism and what she has done, taken in conjunction with the balance of the evidence that I will be leading from her. It is directly relevant in my submission.

40 MR TREE: If my friend is going to say that there is some bias which has motivated components of this report then of course my friend's cross-examination is proper, but if it is on that basis I withdraw the objection.

45 HIS HONOUR: Well, do you want to say anything to that, Mr Gunson?

MR D. GUNSON: Well, no, your Honour. I thought I had responded to it, and I put it quite fairly; we say it is a bias.

HIS HONOUR: Yes. So I will allow the question.

MR D. GUNSON: Thank you.

5 Well, you have engaged in demonstrations against Forestry Tasmania, not only in respect of Wielangta, haven't you?---Yes.

What other issues have prompted you to protest or demonstrate against the activities of Forestry Tasmania?---I participated in a visit to the Styx valley.

10 Yes?---And I protested against the construction of a road through the Tarkine.

Yes?---I visited Mother Cummings.

15 MR TREE: That is a location, by the way, your Honour.

MR D. GUNSON: All right. Styx valley, Tarkine, Mother Cummings, what else? Blue Tier?---No.

20 What else?---I think that - I think from my memory that's all I can recall.

And what precisely did you do in the Styx valley? Before we get there, you had better tell his Honour where the Styx valley is?---Right. Styx valley is near Mount Field National Park; Derwent Valley. It forms part of the Derwent River Catchment. Does that help?

25

HIS HONOUR: Yes.

MR D. GUNSON: We will come to Mother Cummings in a minute?---I went to a rally which was basically walking on a road and then listening to a range of speakers and then walking back along the road and getting in my car and going home.

30

And at the Tarkine, whereabouts is the Tarkine? Explain that?---Tarkine is in the north-west of Tasmania and it's an area where - the boundaries of the Tarkine are sometimes disputed, but it's the north-west and I was arrested protesting against the construction of a road which was going to be built through the Tarkine area.

35

And what led to you being arrested? What activities did you engage in?---I was locked onto a road. So basically what we were trying to do was stop construction of a road through the largest tract of cool temperate rainforest in Australia. And so I was locked onto a road and therefore - and I wouldn't move, and so therefore I was arrested.

40

45

You chained yourself to an object, did you?---No, I didn't actually chain myself.

How did you lock yourself onto the road?---They have what you call - well, there is an apparatus called a lockbox, and it's basically a metal box.

Yes?---And it has things that you can hold onto in the box.

5

HIS HONOUR: I hear that protesting against logging may be a qualification for appointment to the Supreme Court in Tasmania.

MR D. GUNSON: There is at least one - dam construction, your Honour. But there is one precedent at least.

HIS HONOUR: I don't know, perhaps I should disclose that as a child I marched in an anti-Vietnam moratorium.

MR C. GUNSON: Not the appropriate place for confessions, your Honour, I don't think, today at least.

MR TREE: There is no application from this side of the bar table, your Honour.

MR D. GUNSON: Does anybody else want to confess at this stage? Best give them the opportunity, your Honour.

In any event you went up there and you actively demonstrated against problems you perceived at the Tarkine and locked yourself up and obstructed the road?---Correct.

And you were arrested for that?---Correct.

And at Mother Cummings - now, we will tell his Honour where that is. That is at the back of Deloraine, isn't it, up in the - - -?---In the Meander area, it's on the Western Tiers.

On the edge of the Western Tiers?---Yes, correct.

35

Is your Honour familiar with that area?

HIS HONOUR: I am familiar with the news of Deloraine, and I know the racecourse.

40

MR D. GUNSON: Right. I will put it generally sort of - - -

HIS HONOUR: I think there is going to be a dam there shortly.

MR D. GUNSON: Yes. There is no protest over that one, I think, at this stage.

But in any event in the Western Tiers, not far from Deloraine is where the area known as Mother Cummings is and did you demonstrate there in a similar way to that which you demonstrated at the Tarkine?---No. I simply visited the area to observe what was going on. I didn't attend any rally specifically but I was - I
5 did go up there before.

And have you demonstrated anywhere else in respect of the activities of Forestry Tasmania?---Yes, within the City of Hobart.

10 Right, and how many times have you done that?---Maybe - I can't recall specifically, but maybe four or five times.

Yes, and who were the organisers of those demonstrations in the city?---Wilderness Society.

15 Yes, Senator Brown?---Don't know.

All right. Have you demonstrated outside Forestry Tasmania's premises?---I may have done once but I'm not 100 per cent sure about that. I am aware of an
20 activity that was going - happening at the front of Forestry but I can't remember if I participated or not.

But you have certainly been up there and demonstrated, haven't you?---Not to - I can't remember definitively if I have.

25 And you do not want to see the Wielangta area further harvested, do you?---I don't want to see the area harvested in the manner that - I have a difficulty, I guess, with the issues associated with clear fell.

30 But you understand now that there will be no clear felling at Wielangta, don't you?---Sorry?

You understand it is not going to be clear felling at Wielangta, don't you?---No, I didn't understand that.

35 But you have read the timber harvesting plans relevant to Wielangta, haven't you?---I have.

40 And they all show that there is to be selected harvesting there, don't they?---Seed tree retention and - - -

Do you understand the distinction between clear felling and selective harvesting?---Yes.

45 What do you think the distinction between the two is?---Well, I - depends how the two are defined and by who, who is defining what selective logging is and what clear felling is.

- Well, where do you think we would find those definitions for the purpose of logging activities in this State?---I don't know because the three year plans talk about - they don't talk about selective logging so when I looked at definitions of what is going to be happening in the future it didn't include selective logging.
- 5 What about clear-felling?---In the past it is referred to clear-felling and I need to look at the summary of the next three year plans that are planned to see if the harvesting prescriptions are in that.
- 10 Have you been into the Wielangta forest area?---Yes.
- And what coupes have you visited?---I actually worked for Forestry Tasmania at Wielangta and so I may have visited some coupes then.
- 15 When did you work for Forestry and in what capacity?---In the early 1990s.
- And in what capacity?---I was a - I can't remember my specific title but I observed people in a forest setting. It was when Forestry Tasmania first started putting the interpretation of the forest into a forest setting.
- 20 So is that in what is known as the relic forest area, that rain forest area - - -?---In the sand spit forest reserve area but also we were taken on a tour and we visited several coupes.
- 25 Well, did you go into the coupes, 17E and 19D?---Not then but in the year 2004, I think it was, I visited 17E.
- Now, when you were working for Forestry Tasmania, in what capacity were you employed?---I was employed to observe people in a forest setting who were visiting the interpreted areas.
- 30 HIS HONOUR: Were you undertaking a Bachelor of Science course?---Yes.
- And working part-time?---I worked for two summers for Forestry Tasmania.
- 35 MR D. GUNSON: What you said in your CV is that in 1992 you:
- Conducted social research for Forestry Tasmania, evaluating visitor use of forest reserves.*
- 40 ?---That's correct.
- Surveys were undertaken in the southern forest as well as the Tasman Peninsula and Wielangta.*
- 45 So what you were doing - I don't mean to denigrate your work in any way at all but it was fairly basic fundamental work, wasn't it?---That's correct. You asked me if I visited any coupes?

Yes. Now, you know the difference between clear-felling and selective logging, don't you?---As I said before it depends on what definition you are using.

5 Let me assist you?---Clear-felling is the taking of everything that is standing on the block or the coupe and leaving basically nothing, then burning the coupe and regenerating it. Now, using that definition for clear-felling you are not suggesting for one moment that you believe that Forestry is intending to clear-fell at Wielangta, are you?---As I said before I would need to look at the
10 three year plans to see what they are actually planning to do but from my memory I have got it listed in my report what they plan to do and I don't think they listed clear-felling in that instance in the next three years.

15 They haven't listed clear-felling at all, have they?---Well, can I have a look at my report?

Certainly. If you would be so kind to refer me to the page that you are referring to?---I have just got to find it.

20 And which table you are looking at?---Page 000547 of Court book 2.

And which page?---Table 12.

25 Table 12, yes?---So looking at the three year wood production plan for - so that is Forestry Tasmania 2004, it outlines four forest harvesting coupes to be logged and so the harvest method is seed tree retention.

Yes, seed tree retention?---Yes.

30 No reference to clear-felling is there?---No, not in the next year.

Right. Now, while we are looking at your tables can I take you please to the table that appears at table 14. 549, your Honour.

35 HIS HONOUR: Thank you.

MR D. GUNSON: Now, as I understand that table, if I look at the right hand side of the table - - -?---Yes.

40 - - - you are referring basically there to the timber harvesting plans from 1988 to 1998 in the Wielangta area?---Correct.

And if you look at the far right hand table we see BTSB?---Yes.

45 Management and then Pres. What is Pres?---Prescriptions.

Management prescriptions. You indicate that there are no management prescriptions right through until we get to number 31; is that correct?---No.

Sorry, the next page?---So timber harvesting plans there was - - -

5 Yes, quite correct?---So there was - if you look at the totals column it actually says 28 out of 29 said there was no indication or management prescriptions for the beetle.

10 That is right. And so there was no management prescription for the beetle until plan 29, coupe WT007A, in June 1997; is that correct?---Yes.

And that is the first time you have found a reference to it. When was the beetle first entered on to the endangered species list?---I think it came on - I think it was when the Act came into effect. Oh, sorry, do you mean the Commonwealth Act?

15 The State Act?---The State Act. I just need to look at that.

Yes. I will think you will find it was 1995?---So when that Act came into effect.

20 The beetle was listed on - in the Act when the Act came into effect on 14 November 1995, if you refer to page 533 of the Court book. This is your own work, Ms Underwood?---Yes.

25 So if the beetle wasn't listed on the Threatened Species Protection Act until 1995 you wouldn't expect to find it referred to in a management prescription in 1988, would you?---Correct.

30 It is a little bit disingenuous of you, wasn't it, to record all of those nil entries in there?---No.

Is there any qualification in your table about when the beetle went on to the Act?---No, but I'd already said it.

35 But if you have said it somebody who is reading your report has got to go back to page 13 of your report to find it, looking at a table at page 30, don't they?---Yes, the reason why I included it is because those coupes were in the Wielangta area and so therefore it is a potential habitat of the broad-toothed stag beetle. So whether it was listed or not listed in my view is not relevant to
40 the habitat of the beetle. So those coupes they may have impacted on the beetle's habitat or they may not have, but it's still valid to include - to consider the entire management of Wielangta over time.

45 What was the purpose of table 14? What were you trying to achieve by recording in that final column whether or not the BTSB had a management prescription? What was the object?---Because I was trying to determine whether the beetle had been taken into consideration during logging activities at Wielangta.

But it hadn't gone on to the list until 1995?---No.

5 And you didn't think it might be just a sensible thing as a scientist to record as a footnote perhaps the entries prior to 1995 were understandable because the beetle wasn't listed until then?---Well, I guess - well, I'd already said that it wasn't listed until 1995.

10 Hidden away back at page 13, wasn't it?---Well, it's not hidden.

No, I withdraw that. It was back at page 13 and a person looking at the table at page 29 could be forgiven for thinking - or forgetting that earlier reference, couldn't they?---Yes.

15 Yes. And as a scientist you are taught in writing reports to put little disclaimers where necessary, aren't you? It is important to get it correct, isn't it?---Yes.

And were you trying to be disingenuous or that was another accident?---Sorry?

20 Were you trying to be disingenuous or was that just another error on your part?---How do you mean, were you trying to be disingenuous?

Were you trying to mislead people?---No, not at all.

25 But you would agree that your table without reference back to page 13 of your report is misleading, isn't it?---Well, no, it's not because all I was trying to do was to get a handle on how the habitat of the broad-toothed stag beetle had been managed. So had Forestry considered the broad-toothed stag beetle in the prior - in its management and because I looked at - if you look at table 15, I had
30 also asked the same question there. So it was also, you know, consistent that I looked at it with - looked at the timber harvesting plan as well as the forest practices plans to see if the beetle had been mentioned.

35 Let us come back to your views about forestry and Forestry Tasmania. Do you think or believe that woodchipping Tasmanian forests for paper is a crime?---No.

Have you ever said that?---Not that I can remember.

40 Have you ever said, "I want to highlight the hypocrisy of government legislation. Tasmania has one of the highest rates of land clearance in Australia and has been stated to be as high as the land clearance in the Amazon basin." Ever said that?---Can you repeat the statement?

45 "I also want to highlight the hypocrisy of government legislation. Tasmania has one of the highest rates of land clearance ion Australia and has been stated to be as high as land clearance ion the Amazon basin"?---Don't remember saying it.

You deny saying that?---No, I don't deny it but I can't remember saying it.

Is that your belief that Tasmania has one of the highest rates of land clearance in Australia?---It is my understanding.

5

And is as high as land clearance in the Amazon basin?---I'm not sure.

Have you ever said, "If we had a true concern about greenhouse effects, etcetera, then we should stop companies like Forestry Tasmania and North Forest products from clearing any more areas of forests"?---I can't recall saying that.

10

Do you deny saying that?---I don't deny it but I don't recall saying it.

I would like you to have a look at this document please, which will be handed to you by his Honour's attendant. Please look at the document and read it to yourself?---Sorry, did you ask me a question associated with this?

15

No, I just want you to read it to yourself please and just tell me when you have finished reading it. Have you read that document, Ms Underwood?---Yes.

20

Do you accept that as a copy of a document created by you?---I remember - - -

Just tell me yes or no, is it a copy of a document created by you?---I wrote this in 2000.

25

The answer to my question then is, "Yes, I wrote that document." Is that correct? Yes or no?---Yes.

Thank you. I tender that document, your Honour.

30

MR TREE: Before it is tendered may I see it please, your Honour?

HIS HONOUR: Certainly?---The thing is, I actually - I can't - I can remember - - -

35

MR D. GUNSON: Just wait a minute, please. Mr Tree wants to read it.

MR TREE: No, thank you, your Honour, I don't wish to be heard.

40

HIS HONOUR: No objection? That will be exhibit 3.

EXHIBIT #3 LETTER WRITTEN BY MS UNDERWOOD IN 2000 RE KYOTO PROTOCOL

45

MR D. GUNSON: The passage I read, your Honour, appears on page 2 of the document that I have tendered.

HIS HONOUR: Yes, thank you.

5

MR D. GUNSON: Now, do you recall having written that document, Ms Underwood, back in 2000?---I remember responding to that - to the advertisement, about the Kyoto Protocol. It was five years - or it was written in 2000.

10

That is what you wrote in 2000, isn't it?---I can't remember if that's exactly what I wrote.

15

Yes?---But it's got my name on it, so - I'm just saying I can't remember a letter that I wrote five years ago.

20

All right. And were those sentiments that you expressed then, views held by you? That is, that you wanted to highlight the hypocrisy of Government legislation?---It must have been at the time.

25

And that Tasmania held one of the highest - held then one of the highest rates of land clearance in Australia, being equalled, as it were, to land clearance in the Amazon Basin. That is what you said at the time. Was that the view you held then?---It must have been.

30

And at that time you said, "We should stop companies like Forest Tasmania and North Forest Products from clearing any more areas of forests. Woodchipping our forests for paper is a crime." That is what you said then, wasn't it?---Yes, I must have done.

35

And those views that I have just read out, which are your words, were views held by you at that time, weren't they?---I wrote the letter, so, yes.

Were they views held by you at that time, or were you exaggerating?---When I wrote that letter - for example, by saying I think woodchipping is a crime, I may - that's an extreme point of view. I may not have meant that in the direct translation of what that's talking about.

40

What else could it mean? What else could it mean?---Well, I - - -

Strong words, aren't they?---All I was saying is that I don't agree with clear felling, and turning high-value - well, forests into woodchips.

45

Is that a suitable time, your Honour? I will be some little time with Ms Underwood.

HIS HONOUR: Have you finished with this particular line?

MR D. GUNSON: I can probably finish this line reasonably quickly.

HIS HONOUR: Yes.

5 MR D. GUNSON: Are those views that are set out in that paragraph I have read, views still held by you today, namely that woodchipping our forests for paper is a crime?---No.

10 And that companies like Forestry Tasmania and North Forest Products should be stopped from clearing any more areas of forests?---No.

15 You don't accept that view now? You don't espouse that view now?---Well, I think that we should have - we've got - we can woodchip forests other than native forests per se, but - can you ask - sorry, can you ask me the question again?

I think you have answered it. And for his Honour's information, North Forest Products you understand to be a harvesting company?---Yes.

20 Quite separate to Forestry Tasmania?---Yes.

Yes. I have finished that, your Honour.

25 HIS HONOUR: Yes. All right. We will adjourn now until 10 o'clock tomorrow morning.

MATTER ADJOURNED at 4.20 pm UNTIL FRIDAY, 9 DECEMBER 2005

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NONE REQUESTED