

TRANSCRIPT OF PROCEEDINGS

O/N 2919

FEDERAL COURT OF AUSTRALIA

TASMANIA DISTRICT REGISTRY

MARSHALL J

No TAD 17 of 2005

ROBERT BROWN

and

FORESTRY TASMANIA and OTHERS

HOBART

9.15 AM, FRIDAY, 19 MAY 2006

Continued from 18.5.06

DAY THIRTY ONE

**MS 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 and MR I. TEMBY
MR P. TURNER appears for the State of Tasmania,
with MS K. GANLEY**

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<CROSS-EXAMINATION BY MS MORTIMER

5

HIS HONOUR: Yes, Ms Mortimer?

MS MORTIMER: If your Honour pleases.

10

Now, Dr Shields, just before I take you back to that saw-log report that we were dealing with yesterday - - -?---Yes.

15

- - - and I just want to ask you about this document, which is one of the documents that you produced to the Court yesterday. Now, you recall producing that one as one of the documents, I think, that you were asked for?---Yes.

20

And am I correct, Dr Shields, that this is something that you obtained as part of your own researches in preparation for either your affidavit or for giving evidence?---Yes.

And you have obviously read it?---Yes.

25

And it is a report, as I understand it, from a private consultancy firm to the Commonwealth Department of Environment and Heritage in relation to possible actions or activities that could be construed as actions under the EPBC Act, namely wind farms?---Yes.

30

And is there anything in this report with which you particularly disagree? Well, let me break that up, because that is far too broad a question really. Is there anything that is said in this report about the ecology, population size, breeding range, migration of the swift parrot that you disagree with; the species-specific statements?---As I recall it, it was a general account and I found nothing to disagree with.

35

And the reason I broke it up is because, of course, I understand you have some particular views about modelling, don't you?---I have a thorough knowledge of modelling and am a good practitioner of using them.

40

But you also have some particular view about it. I think you have expressed some in your affidavit, such as they are only as good as the things you put into them; something to that effect?---No, that's not my view. That's a characteristic of models.

45

Well, it is also your view, Dr Shields?---Yes, yes.

And from what you are able to read of the method employed in this modelling report, do you have any particular disagreements with either its methods or the conclusions they draw?---Yes, I have a problem with the methods and their application. Having used those methods, I don't have any problem with the conclusions particularly.

All right. So what aspect of the methods is it that you say you have a problem with?---Simply the application of models in this case. It was the only thing available for them to use, so they used it, and it gives some feeling of comfort to the people that have got the results, that they know what they are doing, when in fact the model tells them very little.

So that is a criticism, Dr Shields, of the use to which the outcomes of this report might be put, is it?---You have summarised my views well.

It is not a criticism - when I use the word "methods" what I meant was the methods that were used to construct the model and apply it to the information they had, and you don't have any particular criticism of that?---No.

No, all right?---I tried to be clear about that in my first statement.

All right. So your criticism is about the use, as I have perhaps - I withdraw that. Your criticism is about the use to which a report like this might be put, particularly in environmental decision making, is it?---Yes, but that's specific to this case - the case that you've put before us.

Yes, I understand that. Your Honour, I tender that.

HIS HONOUR: Exhibit CO.

**EXHIBIT #CO REPORT FROM PRIVATE CONSULTANCY FIRM TO
COMMONWEALTH DEPARTMENT OF ENVIRONMENT AND
HERITAGE RE WIND FARMS**

MS MORTIMER: Now, Dr Shields, if I can just take you back to the saw-log harvesting plan that I was showing you yesterday. If you go to page 9 of that, where the prescriptions for the superb parrot are there - and I think you told his Honour yesterday that you were the author of those prescriptions; is that right?---In a generic form they appeared in the original reports about the superb and regent parrots, yes.

Now, as I read it, the prescriptions require three things, and I just want to walk you through that to see whether you agree with my understanding. The first thing they require is that the net harvest area, and the area within 100 metres of the boundary of the net harvest area, must be surveyed during the breeding

season of superb parrots prior to logging for evidence of superb parrot nest trees. That is the first thing; correct?---Yes.

5 And that survey, as I understand it, is not simply to determine whether there are parrots there, but whether there is evidence of superb parrots having used trees in the harvest area for nest trees; is that right?---Yes.

10 Now, the second thing that the prescriptions require is that the person that does that survey has to be a person suitably experienced in the identification of such features. Now, that, as I understand it, would mean that surveys are required to be conducted by somebody who was suitably experienced in identifying superb parrot nests and trees that superb parrots might use; is that right?---Yes.

15 And the third thing that is required by these prescriptions is an exclusion zone of a minimum of 100 metres radius around each superb parrot nest tree, whether presently active or not. So that is each nest tree that has been identified at some time as having been used by a superb parrot; is that right?---Yes.

20 Now, which of those prescriptions, when you were deciding that this wasn't information relevant for you to include in your affidavit in this case, which of those do you consider to be inapplicable to the swift parrot?---Certainly the last one, the 100 metre radius exclusion.

25 Why?---I considered that quite explicitly when I was writing the affidavit because they are a similar species in many regards, but not with regard to their nesting habitat, and certainly not with regard to the history, operations and intensity of silviculture. Now, the difference in the history is that the river redgum forests have been logged historically for over 150 years. They are
30 relatively flat and accessible. They were logged for both fuel for the steamboat trade and to do things like pave the streets of Melbourne with river redgum blocks. Consequently there are very few suitable nest trees, and the forest is quite open. The purpose of the prescription was not to maintain patches of habitat in an otherwise forested landscape, but to restore habitat from a state of
35 considerable degradation resulting from historical processes. The second thing that is different is the forestry operation itself. Forestry in the river redgum forest is extensive rather than intensive. They come through areas fairly frequently on a five-year-return cycle, perhaps to pick out individual logs that they want to pick up, which is quite different from the way that Tasmanian
40 Forestry operates. There is a different roading pattern and there is a different ecosystem, both in natural and anthropogenic terms.

45 As I understood it, one of the reasons that certainly for other species such as the wedge-tailed eagle a prescription establishes an exclusion zone is to minimise disturbance; isn't that right?---That's a very minor part of the prescription.

It is not minor for the eagle. Do you know about that or not? It is a major component, Dr Shields, or don't you know that?---I know a small bit about eagles and have had some experience with them. I thought we were discussing the swift parrot here. If we want to enter into that we can.

5

Do you agree with me or don't you that a principal reason of establishing an exclusion zone around an eagle nest is to prevent or minimise disturbance?---One reason.

10 And why isn't that equally a consideration that ought be taken into account in relation to a swift parrot?---Well, I would advise you to have a look at Brown's report and his description of the species as being a human-friendly species that frequently nests in and near towns. The difference in the ecology and behaviour of eagles and swift parrots is fairly obvious. If you would like me to
15 detail that I will.

You wouldn't agree, Dr Shields, with any expert in this case, including Mr Brown, who may have given evidence that swift parrots are relatively shy nesters? Nesters, not foragers?---The - I would turn to the example of Bob
20 Green in Launceston where the swift parrots were nesting in holes in banks in a dam for many years.

Who told you about that?---It's in Bob Brown's report.

25 All right. And you are prepared - - -?---Not Bob Brown, sorry, Parrot [sic] Brown.

Peter Brown?---Peter Brown.

30 And you are prepared on the basis of lifting one anecdotal line out of Mr Brown's report to go head to head with any other expert, including Mr Brown, who might have given evidence in this case to his Honour that swift parrots are relatively shy nesters, are you?---I am prepared to discuss it reasonably.

35 And you would consider the view you have just expressed to be a reasonable one, would you, Dr Shields?---Yes, and it's certainly not based on one incidental record that I brought forth as an example at your prompting. It's based on a wide variety of information in Peter Brown's report if you care to go
40 into it. Disturbance is certainly one thing that is to be considered in establishing an exclusion zone, but it's far different for eagles than parrots and mice and moose.

You do not, do you, quarrel with the application of the first two aspects of this prescription to the swift parrot?---No.

45

And indeed as I understand your report, one of the assumptions on which you have proceeded in expressing your opinions is that nest surveys are carried out

in Tasmania for each - in respect of each harvest area before logging. Isn't that right?---No, I don't have that expectation.

5 You say that - I will just find the part. Are you sure you don't want to recheck your affidavit, Dr Shields, about whether you have made that statement? But even if you have, you are saying you didn't proceed on that assumption, are you?---The question I was answering was the assumption that every compartment was surveyed for swift parrots prior to logging. My - the knowledge I am talking from now is I assume that the logging areas have been surveyed for swift parrot nesting habitat. I don't in the information I am operating on, my memory is that the areas to be logged are surveyed for swift parrot presence and nesting habitat. It's not my assumption that each compartment is intensively surveyed in the same manner that is prescribed for superb parrots.

10 Well, let us take that step by step. In principle, surely, Dr Shields, you would endorse that as being an appropriate prescription, the same kind of one that we see in this management prescription?---I would, yes, it would be a good thing to survey each individual compartment for swift parrots in the same manner as it is prescribed for the superb parrots.

15 Better that a good thing, Dr Shields. You are the author of this, and you require it to happen in the forests in which you have a management role; isn't that right?---Yes.

20 And you were told, were you, that all the areas of potential swift parrot habitat in what, the whole of Tasmania or just Wielangta had been surveyed?---I wasn't told particularly anything, but from my reading it was my knowledge and the assumption that I am working on is that the areas to be logged, they are put forward as planned to be logged, have an effort devoted to them to find swift parrots and their nesting habitat.

25 Areas to be logged have an effort devoted to them by way of a survey to find whether swift parrots are nesting in them; is that what you have been told?---As I say, I have not been told or instructed any of this, I have done my own investigations on it and that has been my conclusion.

30 You have said I think already several times, Dr Shields, that you were told that. Now, are you now saying that is not the case?---I don't recall saying I've been told. I possibly might have. It's a way of expressing how one acquires information, and you see it is possible that someone related to me that information at some time. The important thing I think for the Court is that I wasn't basing it on what I had been told but what I had found out for myself.

35 It is possible, is it, that Mr Miller may have told you that?---I quizzed Mick Miller fairly seriously about his knowledge about swift parrot and what he had done on that site, and what he told me was related to himself and the actions he had taken and his particular knowledge. I am not basing my assumptions on

surveys or anything that Mick Miller told me, but we did discuss his knowledge and interaction with swift parrot and what he had done on those sites.

5 Mr Miller accompanied you to Wielangta, Dr Shields, for the purpose of informing you about what had been going on in relation to harvesting operations and preparation for harvesting operations in those coupes, didn't he?---Yes.

10 And therefore I suggest to you that it is entirely likely that it was Mr Miller that told you that nest surveys were carried out in all areas of potential swift parrot nesting habitat?---Well, I'm saying that Mick Miller didn't tell me that particularly, that nest surveys were carried out in all areas for logging. The - it's possible that - well, as I say, we discussed it at length. We would have
15 discussed the procedures he went through.

Where else did you get the information from then? What was your source?---My source about how the surveys were carried out in Tasmanian forests, my sources are the material that's before you here and - do you want
20 me to cite specific sources? The Code of Forest - - -

Dr Shields, if you have a specific source for the proposition that you are putting to the Court, that nest surveys as you understand it are carried out in all areas of potential nesting habitat for swift parrot before harvesting, I would
25 like you to identify that source?---No. I don't have the specific source. I don't have a specific source, I have a general knowledge and an assumption that they were done. I don't have a specific source, I'm sorry.

And if that assumption or piece of information is wrong then your comments
30 about the adequacy of the management prescriptions that presently exist in relation to swift parrots might need to be modified; is that right?---No.

All right. So you would consider that even if that doesn't happen the management prescriptions are all right; is that your evidence?---Yes.
35

And does that take us back, Dr Shields, to the well, something is better than nothing kind of approach to management prescriptions that you talked about yesterday?---I believe you were the one that talked about something better than
40 nothing.

Or does that take us back to what you say in your affidavit about some active management being better than none?---Yes.

Now, I want to ask you some questions about habitat mapping, and can I ask
45 you to go to page 2501 of the Court book? Right. 2501. Now, from paragraph 16 onwards that is where you talk about the modelling with which you have been provided and expressed some opinions about it, and that is the bit that I was referring you to before, particularly in paragraph 17, about your views

about modelling being only as good what is put into it?---As I say, that's not my view, that's what you read in the beginning part of any text on models.

Do you agree with that or not, Dr Shields?---Yes.

5

Thank you. Do you agree that if data is limited - no, I withdraw that. Do you agree that in relation to modelling of the breeding range of the swift parrot there are presently some limits on the available data?---Yes.

10 And do you agree that if data is limited the best predictor of where you might actually find swift parrot nests are actual records of nests?---The best predictor, no, that's not correct.

15 Why not?---Where you find nests is usually where you're looking for nests. The location of nest sites are a function of survey input. You will find as Brown said in his own report that the limits to this survey were caused by the roading pattern. If you look at the distribution only of nest sites you'll find that it's highly correlated with the input of the survey.

20 Dr Shields, are you saying it is your opinion that the actual records of where swift parrot nest sites have been found are not the best predictor available on current information?---Without similar data on survey input the number of records is - not meaningless, but it is impossible to interpret.

25 Well, do you agree that you have to work with the information that you presently have? In assessing any issue about actual habitat, potential habitat management, decisions can only work with the information it presently has; correct?---Well, obviously, yes.

30 Thank you. Now, in that context - think about the question in that context, Dr Shields - is it not the case, fairly plainly I suggest to you, that the best predictor on available information of where one might find swift parrots are actual records of where they have been found?---No, as I've explained, the finding of records is a function of looking.

35

All right. Well, Dr Shields, what is the best predictor then, if it is not that?---The best predictor would be to go and measure the habitat around known nest trees and compare it to a similar set of data from random points around those nests. It would be some way to get some meaning out of it rather than getting a function of where people have gone looking for the nests.

40

45 And all that involves, Dr Shields, more research and more surveys than have currently been undertaken; is that right?---No, that's working with the data that you have. It's a fairly simple matter to generate some random numbers, put them into your GIS and go and do a few plots, that's a very simple procedure, it's been used many times.

That is an exercise that requires something to be done in addition to what you have already done; agreed?---Yes, yes.

5 So if you are looking at only what is presently available, Dr Shields, the best predictor of where you might find swift parrots is where you have already found them?---I tried to give a positive solution to dilemma here, but the point I'm trying to make is the location of present Superb nests is not the best predictor because it could falsely predict - you might find nests in places which very simply are easy to get to.

10 HIS HONOUR: What I am struggling with at the moment is whether in your evidence you have disclosed a better one - a better predictor?---A better predictor of swift parrot - yes, I could suggest one from present knowledge, it would - as these things haven't been done it might fall under the same criticism of habitat mapping, but there is present knowledge concerning the senescence and growth stages of forests which would suggest forests that have the correct physical features for parrots to nest in - and you could do a mapping exercise of those forest types and find out where there were concentrations of old trees that the parrots might nest in were reasonably distributed equally across the landscape simply than opening yourself to the bias of where nests have been located due to the ease of looking.

25 So you go to a certain type of tree and search there?---Yes. The reason I don't want to agree with the present nest sites being the best known predictor is because they could be misleading. Even, it would be better not to use them at all rather than to be misleading is why I'm sticking to this point so avidly.

MS MORTIMER: Dr Shields, can you look at paragraph 48 of your affidavit, please, on page 2513?---Could you repeat the page number, please?

30 2513?---Thank you.

35 Now, I just want to take you back to the answers you gave about the prescriptions. Paragraph 48, about half-way through that paragraph, this is the bit where you say if there are prescriptions that is an improvement on no active management, but you then do say, Dr Shields:

40 *The current prescriptions target areas with known nests and seek to locate new nests before harvest.*

?---I chose those words carefully.

45 Well, have a look at the prescriptions on page 2073 and 2074 and tell me what the basis for that statement is. Might it be the one under recommendation 5:

If a coupe is found within 500 metres.

?---Yes, it could be point 2 refers to a special survey.

It is not the same statement as the one you make in paragraph 48, is it, Dr Shields?---Well - - -

5 What you are implying in paragraph 48 is that:

The prescriptions seek to -

well, you are not implying it, you are saying it -

10

seek to locate new nests before harvest.

15 The implication is that that happens every time before harvest. That is not what the prescription says, is it?---I know. That's why I used the word "seek" rather than any other word. And my understanding of these prescriptions was that, although they do not necessarily do it every time, and I couldn't determine the exact extent to which the surveys were carried out, there was certainly an effort to seek the nests that were needed to be protected.

20 Well, did you ask anybody how often the surveys had been carried out? Did you make that inquiry?---Yes.

Of who?---I believe that was one of the Miller inquiries in the field trip.

25 And what did he tell you?---The coupes that we had been - that we were in, the ones under question, had been surveyed.

30 Did he tell you by whom and when?---Well, we discussed the David James report yesterday, so it was sort of a moot point. I asked about them doing recent surveys, and what they had done, particularly since the knowledge had been at hand, and he did not provide any specific details. He did tell me that there had been other surveys, both very close to the time that we had been there on the first - say, in November, and that other surveys had occurred earlier in the breeding season.

35

That, on your oath, as best you can recollect it, is what Mr Miller told you when you visited Wielangta; is that right?---As best I can recall it, I - it was a - let me refer to my notes. I might have written that down. I was interested in that particular point, and I did make inquiries as to when the surveys had been done.

40

Well, you are checking your notes, Dr Shields, to see if they have got any records about what Mr Miller told you, I think?---No, I have nothing here about that.

45

All right. Thank you. Now, I want to go back to questions about habitat mapping. In forming your view that you express in paragraph 17 that the model produced by Mr Ellis from Forestry Tasmania is generally robust, did

you take into account the material that you had been supplied with from DPIWE?---The answer to the questions, yes, yes.

5 You did take that into account. I will just hand you a copy so you can refresh your memory about what is in it. Now, you will see, just to refresh your memory about this, Dr Shields, you will see that one of the questions that is asked is 2B. DPIWE is asked by Forestry Tasmania, and if you look at the responses they are dated November 2005, so we gather they were asked some time before that:

10

To comment on the relationship between suitable nesting habitat and forest community type and age, including comment on Forestry Tasmania's nesting habitat model.

15 HIS HONOUR: I am bit worried about the fact that you are described as the appellants.

MS MORTIMER: Wishful thinking, your Honour.

20 HIS HONOUR: I have no thinking at the moment.

MS MORTIMER: 2B, on the second page, Dr Shields, is the answer given by DPIWE to whether this model that Forestry has is a good model.

25 *First, this is not a model of suitable nesting habitat. It is a model of potentially suitable nesting habitat.*

30 And then the people from DPIWE go on to make a number of criticisms about it. Now, I will just give you a moment to refresh your memory, but those criticisms go down to the end of the page, and over to the top of the next page. You just re-read those so you can understand them, please. You had read these before you expressed that opinion in paragraph 17 about the model being generally robust; is that right?---Yes. Yes.

35 All right. And, what, you just completely disagreed with what DPIWE said there, do you?---Well, I took it into account, but the DPIWE people are fairly innocent, I think was the word, with regard to what's a robust model, and they seemed to have some assumption that models are useful for land management, and that this was actually a reflection of reality, than a model, but the - yes, I
40 took their notes into account.

The DPIWE people are innocent. That is your word, is it?---I think so. Well, what I'm trying to say is - - -

45 No. No, Dr Shields, just answer the question, please?---Yes.

That is your word?---Yes, it's mine. Yes.

Who in DPIWE had you spoken to personally, either about this document that they produced, or about your evidence?---I have spoken with hardly anyone in Tasmania, and I don't know their names, or the agencies that all of them worked for. But I - - -

5

Do you know, Dr Shields, whether you have spoken to anybody in DPIWE about this document, or the preparation of your affidavit?---No.

Did you speak, for example, to Mr Mark Holdsworth?---No.

10

Did you speak, for example, to Mr Matt Webb?---No.

Do you know either of those gentlemen?---No.

15

Did you speak to Dr Sally Bryant?---I might have spoken to her. I think I have been introduced to her.

Did you speak to her about this document?---Not in any detail that I remember.

20

Did you speak to her about the opinions you were forming?---No.

All right. And you are not aware of any other individual who might be an employee of DPIWE that you have spoken to about this document in particular?---No, I'm not, I'm aware.

25

So how do you get to the rather offensive description of any individuals working for DPIWE as innocent?---I would say I chose that word very carefully to be polite and inoffensive. The comments are well meant and accurate. I was trying to be respectful and convey a good impression of the work they had done.

30

HIS HONOUR: Did you mean naive?---Yes. Yes, I was using the old usage of the word innocent, rather than any legal one. Instead of it being needlessly complex I - with nuances I did - I was seriously trying to avoid offence to any person, and I apologise if I have given any.

35

MS MORTIMER: Dr Shields, so is it your view that the persons who work for the State of Tasmania, with the principal responsibility for research and development of recommendations in relation to threatened species, are naive?

40

Is that your evidence?---With regard to this particular point, and the application of models in controversial circumstances, yes.

And do you accept that you are including in that people who might, for the last two or three years, have been out on substantial field expeditions, looking at swift parrot nesting habitat?---Yes.

45

You know more than they do?---No.

Right. Now, where, in your opinion about the robustness of this model do we see, or particularly does his Honour see a disclosure that those people who are in Tasmania responsible for carrying out nesting surveys, don't agree with you? Where do we see that disclosure in your affidavit?

5

MR BROADFOOT: As a matter of fairness, your Honour, my learned friend ought to identify the individuals, in my submission.

HIS HONOUR: I thought she had.

10

MS MORTIMER: And in any event, your Honour, I am not really quite sure what my learned friend for the Commonwealth is doing standing up, making an objection like that.

15 HIS HONOUR: Mr Broadfoot?

MR BROADFOOT: Your Honour, the question, if my learned friend is now inviting me to give an explanation - - -

20 MS MORTIMER: No. I am inviting my learned friend to explain what, in the leave given by your Honour to the Commonwealth in this case, entitles him to stand up and make that objection.

HIS HONOUR: That is why I have asked him to address me.

25

MS MORTIMER: Yes.

MR BROADFOOT: Well, your Honour, we are here to assist, and the purpose of my standing and making the point, and I hesitate to interrupt, is that, in my submission, the question is unfair and misleading. It does not - it proceeds on the premise that there are individuals within DPIWE who has specific disagreements with the views which this expert is giving evidence about, and if there are such views the proper way to do that is to put the views to the witness, and ask him whether he agrees or disagrees.

30

HIS HONOUR: I think that is a matter for Mr Gunson to handle.

MR BROADFOOT: If your Honour pleases.

40 HIS HONOUR: Ms Mortimer?

MS MORTIMER: Where in your affidavit, Dr Shields, do we see a disclosure by you to his Honour that those responsible for the preparation of this document on behalf of DPIWE have an entirely different view to yours about the robustness of the model?---There is no such disclosure, to my knowledge.

45

And did you think, as an independent - when you were being put forward as an independent expert to his Honour, that you ought to have disclosed that?---Not

necessarily. I thought it was fairly obvious that there were people who would disagree with my views, and that it was their job to put that forward in their evidence. And I - if it was that important, it would be put to his Honour.

5 You see, Dr Shields, if I hadn't asked you what you meant in paragraph 6 about
DPIWEs subpoena information this document would never have come to light,
because you didn't either append it to your affidavit, or talk about it anywhere
in your affidavit, did you?---No, did not. I did not see that there was any
reason for me to do so. I mentioned that it existed, and gave you the
10 opportunity to do this, and we are discussing it now.

And so your evidence to his Honour is that you don't agree with all the parts of
the answers that is given under 2B by DPIWE; is that your evidence?---There
are three parts to 2B. Firstly, this is not a model of suitable nesting habitat, it is
15 a model of potential suitable nesting habitat, which is obvious but true, and I
agree with that. The other points aren't things of which you can necessarily
agree or disagree with. Their descriptions of photographic interpretation data
is not an appropriate tool for analysis as - - -

20 Well, do you agree with that, or not?--- - - - it's either incorrect, not detailed
enough, out of date, or the PI data is not an appropriate tool for the analysis.
There are many things with which to disagree or not disagree.

Well, Dr Shields, I am asking you?---There's no way whether I can disagree or
25 not about the PI data being incorrect, not detailed enough or out of date, unless
I have the photographic - the aerial photographs to look at, and say, yes, I agree
with DPIWE or not. So there's no way that I can answer that question.

Well, I will just stop you there, Dr Shields. I understand that you undertook a
30 GIS analysis as part of the preparation of your evidence in this case?---That I
undertook a GIS analysis?

Yes?---Yes. I referred some material to a GIS colleague. I did not - I am not a
GIS expert myself. I had some informal discussions, and that sort of stuff. I'm
35 not quite sure what you are referring to.

Have a look at this document?---Oh, yes. Yes.

40 This is the bill that you delivered to Forestry Tasmania for your work on this
case, isn't it?---Yes.

And you have got an entry there, GIS analysis in relation to the model. Now,
are you telling his Honour that that is actually not work that you personally
undertook?---It's work that I undertook by going and discussing the matter with
45 my colleagues who are GIS specialists, and analyse the input parameters to the
model.

Well, if you did that, Dr Shields, why are you not in a position to tell his Honour whether or not you agree with the statement in the DPIWE material about the PI data being either incorrect, not detailed enough, out of date, or not an appropriate tool? Why aren't you in a position to tell his Honour whether you agree with that or not?---Do you know what a photographic interpretation is, what PI data is?

Dr Shields, the thing about this process is that I ask the questions and you answer them?---Okay.

So why are you not in a position to tell his Honour whether you agree or disagree with that statement?---To disagree or agree with that statement I would have to look at the photographs. The photographs would have to be presented to me. I - without them, being here, I can't - simply can't say. The DPIWE people said that they didn't agree with it. I took that into account. They said that it was out of date. I took that into account. They said that it was inappropriate for use. I took that into account. I discussed with my colleagues the swift parrot model over and above doing things - other things that I did as part of this job, and I - that's input from them. It's not the same question as, do I disagree or agree with point B, which is specific technical detail about the photographs. If you were - but if you would produce the photographs I would happily say whether I agree or disagree.

Dr Shields, you have now given evidence that in order to decide whether you agree or disagree you have to undertake a certain kind of analysis; correct? That is what you have said?---Yes.

And you have also said that you read this document before preparing your affidavit, haven't you?---Yes.

And you have now said that you took these criticisms into account; is that right?---Yes.

What you must mean by that is that you decided to ignore them, because if you wanted to really consider them, you would have had to undertake some analysis of your own; isn't that right?---No. The question is, did I decide to ignore them? Is that your question?

My question to you is that what you mean by "taken into account" is that you decided to ignore them, because on your own evidence, to really consider them you would have had to undertaken an entirely new exercise?---I did not make a decision to ignore the advice of DPIWE with regard to the model.

HIS HONOUR: You didn't think to ask for the photographs from DPIWE so that you could consider what they say and see if you agreed with it or not?---I did think to ask about that, and considered asking to see their aerial photographs and the base documents that - you know, the base information. I

decided that it was not worth the time, given what I had to do, and that I should take them on face value, and did not pursue it further.

5 MS MORTIMER: Nor did you pursue, Dr Shields, the next criticism, which is, I suggest to you, a very significant one: that if RFA mapping has been used in the model, this is not current information. Now, do you agree with that statement?---Yes.

10 You don't put anything to that effect in your affidavit, do you?---Well, no, I did not go into detail by describing the status of RFA mapping in my affidavit.

15 Dr Shields, that is not a detail, I suggest to you; that might be a fundamental flaw with Mr Ellis' model if he has used RFA mapping. Don't you agree with that?---It might be.

20 Well, given that you and DPIWE are of one view about that and given that you have been asked to express an opinion about the robustness of Mr Ellis' model, isn't it the most fundamental thing for you to think about, whether the RFA mapping, whether Mr Ellis had used RFA mapping?---Yes, it is a fundamental thing, and I did think about it.

Did you ask Mr Ellis?---Not to my knowledge.

25 HIS HONOUR: You didn't think it was worth disclosing to the Court?---No, I - although, this is a true point, but in my opinion it's a very minor one. It may be inaccurate, but all models have inaccuracies, and the degrees of inaccuracy we're talking about are very minor. All of what our colleague is saying is true, but it doesn't make any difference in the long run. The fundamental flaws that are in models don't come from mapping, they come from equations.

30 MS MORTIMER: Dr Shields, if his Honour were to read your paragraph 17, I suggest to you he would be, without the question and answer session we have just engaged in, he would have been seriously misled, because he would not have understood that you shared DPIWEs view that if RFA mapping has been used, the model has been constructed on information that is not current. Do you agree with me that his Honour might well have been misled if we hadn't had this discussion?---No, I don't. Having had this discussion, his Honour is now aware that most models are now generally inaccurate, I hope, and most models are not made from the most current information. It is a minor point, in my opinion. If it was a major point I would have put it in my affidavit and made a major point of it.

45 Well, you see, but the strange thing is, Dr Shields, that none of the information or opinions that are in this DPIWE document have made their way into your affidavit. Now, do you need to check through your affidavit before you agree or disagree with that?---No. I would be very surprised if the opinions and views of DPIWE made it in to my affidavit.

And almost all of the information and opinions in this document support Senator Brown's case and don't support Forestry Tasmania's case; do you agree with that?---No.

5 And let us go through the document and see, Dr Shields, which parts of it you have particular problems with, so we can understand - - -?---Which document are we talking about? The DPIWE - - -

10 We are talking about the answers to the questions posed to DPIWE by Forestry Tasmania. Your Honour, I ought to tender that.

HIS HONOUR: Exhibit CP.

15 **EXHIBIT #CP ANSWERS TO QUESTIONS POSED TO DPIWE BY FORESTRY TASMANIA**

20 MS MORTIMER: Now, the first question that is asked is about whether DPIWE has information, quantitative data, expert opinion on the range and number of known nest sites, and they are asked to provide it and then comment on the relationship between survey effort and the number of sites, and this is their answer. They have - the author of this document has some issues with the question, but then goes on to make these statements:

25

In relation to survey effort and number of nests found in a particular area, TSS research indicates that the number of swift parrot nests found within an active breeding area can be largely dependent on survey effort time.

30

And they then talk about the basis for that statement coming from some searches that were conducted in the 2004/2005 breeding season. Now, you are not in a position, Dr Shields, are you, as a matter of fact, to disagree with what is said there?---No. That was the point I was trying to make earlier, about the nest being the best indicator of potential habitat. The number of nests alone is not very informative without a measure of survey effort, which is exactly what they are saying here.

35

So you agree with that?---Yes.

40

All right. Look at the part underneath the table, please, the one that starts, "Searches prior to 2004/2005" - and again, as a matter of fact, you are not in a position to disagree with the statements there, are you?---No.

45 And is there anything that you find objectionable in that paragraph?---No.

And you would be prepared to agree with it?---Yes.

All right. Go to the next one, please. This is an answer to the question:

5 *Does DPIWE have information or quantitative data or expert opinion on the nesting requirements of the swift parrot? Please provide the data or expert opinion in summary form. In particular, please provide and comment on records of nesting and the size of the trees that might be used for nesting.*

10 Now, this is the answer that is given:

No records of swift parrot nesting in forests less than 50 years.

15 Do you know of any records that would enable you, as a matter of fact, to disagree with that statement?---No.

 They then go through what Mr Brereton reported in 1997 and I think you agreed with me yesterday that you didn't have any problems with Mr Brereton's report; is that right?---I agreed that Mr Brereton's report was a good report, yes.

20 Right. They then describe the outcome of Mr James' survey and you will be prepared to accept that that is an accurate description of what he found?---Yes.

25 And they then describe the outcomes of their own surveys, and again you would be prepared to accept that that is an accurate description of what they found?---Yes.

 They then go on to state that - in relation to a different issue not something to do with the size of the trees in which you find the hollows, but in relation to where you find the nests that again they report on what Mr Brereton states and then they say that on the basis of their own research over 90 per cent, if not 100 per cent of nests found, have been located in patches of forest of greater than 100 hectares. Now, again you are not in a position to take with that as a statement of fact, are you?---I am in a position to take issue with that presentation of information. The percentage is a statistic which must be approached with great caution. For instance, 96 per cent of convicted murderers eat tomatoes and yet this dangerous fruit is still readily available. You make the per cent say whatever you want to. So all of this may be true but I always read anything with a per cent figure behind it with great caution.

40 HIS HONOUR: Repeat the question, Ms Mortimer.

45 MS MORTIMER: You are not in a position, Dr Shields, as a matter of fact to disagree with that as a description by DPIWE of the outcome of their research?---I apologise for my former answer, no, I'm not in a position to disagree.

Now, I have dealt with the next part and can you go over the page to the answer to (c) and I will just get you to look at what the question was. 2(c) says:

5 *Comment on nest desertion in relation to disturbance type and proximity to disturbance.*

DPIWE says:

10 *No quantitative information. Refer to Peter Brown's affidavit on this topic as it is a reasonable and accurate summary.*

Where in your affidavit, Dr Shields, do we see any reference to the fact that DPIWE, that is, the organisation responsible for research and surveys into swift parrots in the State of Tasmania, was endorsed aspects of Mr Brown's affidavit? Where do we see that disclosure made by you in your criticisms of Mr Brown's affidavit?---To my knowledge that disclosure is not made.

And again his Honour might have been misled, surely, into thinking that nobody for the State of Tasmania or any of its entities had any agreement with anything that Mr Brown had to say unless you had disclosed this to them - to his Honour; isn't that right?---His Honour might have been so misled.

Have a look at the expert witness guidelines - if Dr Shields could be shown those, please?---I have a copy of them here.

You have a copy of them. I think you have said in your affidavit that before you swore your affidavit that you read and understood them; is that right?---Yes.

Well, can you pull out your copy, please. Now, you haven't in fact included at the end of your affidavit the declaration that is required in paragraph 2.6, but let me just remind you of what it says:

35 *That you have made all the inquiries which you believe are desirable and appropriate and that no matters of significance which you regard as relevant have to your knowledge been withheld from the Court.*

Now, is it your evidence, Dr Shields, that you didn't think it was a matter of significance that DPIWE were telling Forestry Tasmania that certain parts of Mr Brown's affidavit were a reasonable and accurate summary?---No, I did not think that that was necessary beyond the declaration that I did make in my affidavit which resulted in you getting this document and us having this conversation today. If I had been remiss, we would not be having this conversation and it would not have been possible.

Can you go to the answer that DPIWE gives to question 3, which is - the question is:

5 *Does DPIWE have information as quantitative data or expert opinion on whether nesting habitat in general or particular features of nesting habitat such as tree hollows or tree hollows of particular size are limiting across the breeding range of swift parrot?*

10 And then they are asked to comment on some particular issues. And I want to take you through that answer. Firstly, they say that there is no quantitative data on whether nesting habitat in general or particular features of nesting habitat
15 such as tree hollows and rates of land clearance, timber harvesting and development. Well, they say they have no quantitative data. Now, did you think that it might be worth while disclosing that the body in Tasmania that one might expect to be the repository of that information didn't have it and that that might be something that might affect the robustness of any opinion you expressed about whether tree hollows were a limiting factor?---The question was very long. Could you repeat the specific part of it?

20 Did you not think it might be important to disclose that the entity in Tasmania that is supposed to be the repository of this kind of data hasn't got any and therefore that that absence of data might affect how confident you could be in your opinion about tree hollows being a limiting factor?---No, I did not think it was that important to disclose.

25 You have expressed a very confident and sweeping opinion, Dr Shields, about tree hollows not being a limiting factor for swift parrots, haven't you?---I've expressed that opinion, yes.

30 And you have done that in the knowledge that the State organisation with responsibility for gathering that data doesn't have any. Now, wasn't that something that you thought might be significant for the formation of your opinion?---It was something that I thought would be obvious, very seldom do agencies responsible for managing threatened species have the data that they require, that's more or less the status quo. The fact that DPIWE doesn't have any quantitative data doesn't mean that quantitative data doesn't exist, and that's what I used to form my opinion.
35

40 Well, you didn't use any quantitative data about swift parrots to form your opinion, did you, particularly - swift parrots particularly? To form your opinion about tree hollows not being a limiting factor?---I didn't use data on swift parrots because the relevant data is on tree hollows?

45 Well, it is about the use by swift parrots of tree hollows and you didn't use any data about that, did you?---Yes, I did. I used the data on the diameter and the size of hollows that swift parrots use, I used the data that was collected by Taylor et al about the abundance of tree hollows and I based my opinion on the number of hollows of the appropriate size that were relevant to the Taylor study and I - - -

Do you know whether the Taylor study - I withdraw that. The Taylor study looked at four bird species; is that right?---The Taylor - - -

Is that right?---The Taylor study analysed data on four bird species.

5

Was one of them the swift parrot?---No.

And in relation to the data that you say you used about the size of trees in which you might find hollows, that is the bit of your affidavit where you say at paragraph 30:

10

Trees down to at least 45 centimetres DBH are used by swift parrots for nesting.

That is the conclusion you reach isn't it?---Well, that's a statement that I make.

15

And you base that, as I understand it, on your one observation of one tree hollow?---I used that one observation, I didn't base the statement on it, but I used it.

20

I suggest to you, Dr Shields, that aside from your single observation every other piece of information, including the DPIWE material I have just taken you to, is completely contrary to the opinion you express?---I would disagree with that, I had a check of Peter Brown's report to see if I was the only one that had that opinion and if you go through the Peter Brown report he makes note specifically that swift parrots are fortunate in their use of smaller hollows, and if you look at the Burdson's text on the size of nest hollows for birds it is generally known that swift parrots use smaller hollows rather than larger hollows and I used my one real experience of going and measuring one tree to say that it was down to at least 45 centimetres. So my opinion is not by any means out on its own.

25

30

Well, that is your evidence and in order to test that it would be a matter, you say, of going back to what Mr Peter Brown has said and what DPIWE has said and measuring it against that; is that right?---That's true.

35

Right?---I took particular note of Peter Brown's recommendation about management - - -

Now, can I take you back to what DPIWE says about hollow availability because having made the statement that they don't have any quantitative data. They then express some opinions?---Yes.

40

And what they say, what the author of this document says is:

45

Due to the species requiring mature to over-mature trees/forest for nesting hollows.

Stop there. You agree with that, that is the requirement of the species?---No, I don't particularly agree with that. They require trees like that, but not necessarily in forests.

5 And again we ought to take your extensive field experience about swift parrots as the basis for your statement, should we, Dr Shields?---No, you might perhaps like to take Peter Brown's report and the pictures on page 74 where he notes that:

10 *Open woodland where swift parrots regularly breed at Roberts Hill, North Bruny Island; open woodland near Trumpeter Bay, North Bruny Island, this was the area where the Deans brothers collected 20 clutches of eggs in the early 1920s and '30s.*

15 Have you been to Roberts Hill, Dr Shields?---In 1986.

And you are saying that that is an example of what the species not requiring mature to over-mature trees or forests are you?---They require trees - - -

20 No answer my question, please. You are saying that Roberts Hill is an example of swift parrots not requiring mature to over-mature trees or forests are you?---I'm answering the forest part, yes, that's an example. One example.

Now, look at the opinion that DPIWE expresses, please. The author says:

25 *It is probable that -*

And he or she lists three things:

30 *Nest hollow availability is limiting in some areas, some foraging areas have been rendered unusable due to lack of suitable nesting hollows or birds are forced to travel further distances potentially affecting their ability to breed successfully. Birds are forced to use lower quality nesting sites and/or nest hollows potentially affecting their ability to*
35 *breed successfully.*

Now, that is an opinion being express by those within Tasmania responsible for carrying out these surveys. Do you agree with that or not?---Yes, those are obvious ecological truisms.

40 They then say:

45 *It is likely that more nesting sites and nest hollows are required across the breeding range than are used in any given year, depending on the distribution of blue gum flowering in that year. Furthermore many nesting sites and hence hollows contained within them will not be available every year depending on flowering distribution.*

Now, again the source of this are the people within Tasmania responsible for carrying out these surveys; do you agree with that or not?---Yes, an obvious ecological fact, there's nothing particularly controversial about it.

5 All right. The next statement is:

Limited availability of nesting habitat within foraging range of available foraging habitat in any given year is the greatest threat to the species in Tasmania.

10

Now, that again is the opinion of those within the State of Tasmania responsible not only for the protection of threatened species but for research into their status; do you agree with that or disagree with that?---No, I don't agree with that. By agreeing with it implies that it's true, it's not, so - - -

15

Agreeing with it wouldn't be very helpful to the people that are paying you to sit in that witness box, Dr Shields, would it?---Agreeing with it would imply that it was true and that wouldn't be correct which is the point in this exercise, I hope.

20

Do you have a reluctance to agree with that because you are conscious of how damaging that might be to the case of Forestry Tasmania?---No, I disagree with it - I'm not disagreeing with it, any question containing the word "greatest threat" or "least threat" with regard to ecological matters can't be answered with a yes or no answer and I'm not willing to do that.

25

I am not asking you for a yes or no, I am asking you to consider that the source of this, the source of this opinion is the entity within the State of Tasmania responsible for threatened species and the entity within the State of Tasmania who undertakes research into threatened species and that is that entity's opinion. In that context I am asking you whether you agree with it or not. Now, you are saying you don't; is that right?---It's not a very important point, but no I don't agree with that statement. That is a wrong statement.

30

35

And is the source of your disagreement some quarrel with whether it is possible ever to identify what is the greatest threat to a species; is that the source of your disagreement?---Yes.

40

So if that word "greatest" were taken out and perhaps a less inflammatory adjective were substituted like "significant" would you then agree with the statement?---It's not the inflammatory nature of the word it's the exclusiveness of "greatest" and "least" with which I disagree. If you said a "major" or a "significant" cause of threat, that is something that you can agree with.

45

Well, is that something that you can agree with then, Dr Shields, if the word "significant" were to replace the word "greatest"?---Certainly, that's obvious.

Now, the next - well, the next statement that is made is that:

Foraging habitat is capable of regrowing in considerably less time after harvesting than nesting habitat.

5 You wouldn't disagree with that statement, surely?---No. I agree with that statement.

And the next statement that is made, well, that is a statement of opinion, is:

10 *Protecting nesting and foraging habitat away from built up or developed areas is crucial to reducing swift parrot collisions.*

Now, you wouldn't dispute that statement?---No. It's not important, but it is crucial.

15

Well, your opinion is that the level of swift parrot collisions might not be important; that is your opinion, is it?---What I stated there is that the mortality from anthropogenic causes, the appearances are greater than the effect.

20 That of course would put you at odds with some of the statements in the recent Commonwealth generated report about collisions and swift parrots, where collisions to swift parrots are identified as a major issue for that species. You would be at odds with that author as well, Dr Shields, would you?---I am not particularly - no, I am not at odds with the actions in the swift parrot plan about
25 re, ie, collisions, and I am not at odds with the obvious fact that swift parrots collide with human structures.

And that it is a feature of the species, because they are so fast flying; that is right, isn't it, Dr Shields?---It's a feature of the species.

30

HIS HONOUR: I thought DPIWE might have been implying that they collide with each other.

35 MS MORTIMER: I don't know if there has been a report of that, your Honour.

The next opinion that is expressed in this document is this:

40 *The apparent tendency of swift parrots to nest close to one another, or in loose colonies, could be explained -*

and then they list three things. Now, you don't disagree, do you, Dr Shields, with the proposition that that is the apparent tendency of swift parrots, to nest close to one another or in loose colonies?---Yes, it's a trait they share with
45 many parrots of the same genetic background, and with superb and regent parrots.

And are you aware of the - well, you would be, from this table for example, aware of some of the more recent results about the size of colonies that might be found in a given area?---Yes.

5 26 nests in an area of 45 hectares?---Yes.

And the author of this document puts forward three explanations for why they might nest together, and do you agree that each of those are possible explanations?---Yes. They are not the only explanations, but they are all possible.

10 And then there is this conclusion that is drawn at the bottom of the document:

15 *Any of these possibilities highlight the importance of protecting large patches of hollow bearing forest.*

Now, that again is the opinion of the department within the State of Tasmania responsible for threatened species; do you agree with that?---No, not without qualifications.

20 Is it your opinion that it is not important to protect large patches of hollow bearing forest for the swift parrot? Would you like me to repeat the question?---Yes, please.

25 Is it your opinion that it is not important to protect large patches of hollow bearing forest for the swift parrot?---To give a yes/no answer, I would have to give a yes.

30 Yes, it is not important?---If you want to reduce it to that simple of a question, and require a yes/no answer, the answer would have to be yes.

And that is despite the evidence, I suggest to you, which is all one way, that swift parrots prefer to nest in forest patches of greater than 100 hectares?---I would refer you to my comments about the power of the percentage as a statistical tool.

35 My question was, you hold that opinion, despite the evidence being that swift parrots prefer to nest in forest patches greater than 100 hectares?---Without giving reliance to an unreliable statistic, I can't answer that question.

40 Dr Shields, not more 15 minutes ago I put those propositions to you, and you agreed with them. It comes right out of the Brereton report, Dr Shields, which you have endorsed?---Nothing that I have said or endorsed has much bearing with the question before me, as I understand it. Could you repeat the question, please?

45

It is your opinion that protecting large patches of hollow bearing forest for the swift parrot is not important?---I - that's a question totally without context, but I - and could be answered with either a yes or a no. I can only - - -

5 HIS HONOUR: Dr Shields, can you go to the last sentence on this document, which is exhibit CP, and tell me what word in that sentence you disagree with, or words?---I disagree with "any". I disagree with "highlight". I disagree with the use of the word "large." I disagree with the use of the word "protecting".

10 Well, what sentence would you put in its place, if you were the author of this document?---If I was authoring this document, given the three reasonable scenarios that they have put before me, I would say, these three possibilities highlight the importance of protecting - these three possibilities indicate nest colonies - these loose nesting colonies are an important feature of forests. And
15 that would have some meaning about managing the swift parrots. As it is this sentence is almost totally ambiguous. They are saying any of whatever possible scenarios require a certain specific action.

MS MORTIMER: Dr Shields, I suggest to you there is nothing at all
20 ambiguous about what the author of this document is saying. What the author is saying is that when you take all this information together, if you want to protect and recover the swift parrot you must protect large patches of hollow bearing forest. Isn't that a fundamental proposition for the swift parrot?---A fundamental proposition? No, it's not a fundamental proposition.

25 And that opinion, Dr Shields, I suggest to you puts you at odds with every single other person who has worked on the swift parrot, Mr Brown, Mr Brereton, the people at DPIWE, Mr Kennedy, it puts you at odds with all of them?---No. It puts me at odds with the way you framed that question.

30 HIS HONOUR: Ms Mortimer, how much - have you finished with this line of questioning?

MS MORTIMER: I have finished with that document, your Honour, for the
35 moment.

HIS HONOUR: Right. How much longer do you expect to be with cross-examination?

40 MS MORTIMER: I would be fairly confident of finishing before lunch, your Honour.

HIS HONOUR: All right. Even with a 15 minute break?

45 MS MORTIMER: Even with a 15 minute break, but might I just give - if we are going to take a break now, might I just give - - -

HIS HONOUR: Oh, it doesn't have to be now.

MS MORTIMER: - - - Dr Shields a document to read over the break.

5 HIS HONOUR: Some time in the next between - if you needed a break now, or break at 11. Whatever you prefer.

MS MORTIMER: Well, your Honour, it might be convenient, if it is convenient to everyone else, to break now, because then I can give Dr Shields this document and ask him to read it.

10 HIS HONOUR: All right. Well, give him the document, and we will deal with the document at 11 o'clock. The Court will now adjourn until then.

15 **ADJOURNED** [10.46am]

RESUMED [11.00am]

20 HIS HONOUR: Yes, Ms Mortimer?

MS MORTIMER: Now, Dr Shields, have you had an opportunity that you were given just before the break?---I have had an opportunity to look through it, yes.

Your Honour, I will hand a copy to your Honour and to my learned friend. Now, you can see that the first page is an email with the address FPB and it is to Mr Webb, and you can see that the attachment is a report, obviously described, I think, as a draft, by Mr Webb, who is, according to the document, in the Threatened Species Unit, Nature Conservation Branch, Department of Primary Industries, Water and Environment. Now, I think you have already told his Honour that you have not had any personal contact with Mr Webb in relation to preparing your affidavit; is that right?---That's right.

35 Would I be correct, Dr Shields, in assuming that you have not seen this document before?---No.

40 Do you agree with me, having now read it, that it might have been a helpful document for you to have been provided with before you were asked to express your opinions in relation to the swift parrot and protection of nesting habitat?---It doesn't provide me with any information over and above what I knew from other sources.

45 Do you need to read the document again, Dr Shields, before you endorse that answer?---Perhaps the wording of the answer, but the information and the principles contained in this document are well known and not at any conflict - wouldn't cause me to change any of the things I said in my affidavit. I would -

they have actually done some work on the issue which I was talking about concerning survey effort and the importance of location of nesting trees. It's a nice bit of work and could be used in a directed manner.

5 Well, that is information that you didn't have without having this document, isn't that right, Dr Shields, about what had actually been going on in Tasmania?---Well, the action to produce this report, certainly, yes.

10 Nevertheless, your evidence is that there is nothing in this report that would cause you to alter any of the opinions that you have expressed in your affidavit; is that your evidence?---It would allow me to be more explicit about some of my comments, but it wouldn't change the principles that I've recommended, yes.

15 So let us take, for example, the statement in the first paragraph by Mr Webb where he says:

20 *The breeding range of the swift parrot is under considerable pressure from land clearance for urban and rural development and timber harvesting.*

25 That is not what you say in your affidavit, is it, you make a distinction between timber harvesting and other kinds of land clearance, don't you?---I do, and if you go on to observe I think it's fairly obvious that my position is not controversial but simply stating what happens when you harvest a forest for timber in perpetuity and when you clear it for agriculture or to put buildings on it.

30 Well, you are then expressing some, again, are you, some disagreement with Mr Webb from DPIWE about being able to classify those three processes together as placing the swift parrot - the breeding range of the swift parrot under considerable pressure? You are disagreeing with that again?---I would certainly disagree that clearing for - if you are putting that his proposition and said land clearing for suburban development and agriculture and a continual program of timber harvest and management, if you are saying those are the same things, I certainly disagree with that.

40 And where in your affidavit do we find any reference to what Mr Webb then says that from his point of view within DPIWE that nesting habitat - protection of nesting habitat has not received the same level of attention in Tasmania? That doesn't seem to be a fact or an opinion, depending on how you want to classify it, to which you have referred in your affidavit. Do you agree with it?---Do I agree with what?

45 That protection of nesting habitat in Tasmania has not received the same level of attention as protection of foraging habitat for the swift parrot?---I do not feel qualified to make an answer of levels of attention that things have received. From whom, and what do you mean by attention?

Well, Dr Shields, if your answer is that you don't feel qualified to express an opinion on that you should say so?---Given the way that question is phrased, I don't feel at all qualified to give an answer on levels of attention from parties unknown.

All right. And you are not disagreeing, as I take it your evidence that you gave a moment ago, with the reports in this document of the outcome of the surveys that Mr Webb is talking about? You are not quarrelling with those reports, are you?---No.

And you are also, as I understand it, not quarrelling with Mr Webb's conclusions that he draws from those reports that - at the top of the second page of this document, that the figures show that what is required by way of effort to determine density and extent of nesting sites? You don't disagree with the conclusions he is drawing from the surveys, do you?---What conclusions would those be?

Well, that the more effort that is put in, in terms of survey hours in particular seems to produce better results in relation to density and extent of nesting sites?---No, I would not disagree with that, that was the point I made earlier in the day.

And underneath that table on the second page, Mr Webb then goes on to talk about the implications that these findings might have for land managers and for the conservation of the swift parrot - of swift parrot nesting habitat. And he says this:

The protection of nest trees and habitat clumps is reliant on finding nests either through directed surveys or opportunistic discoveries. In the absence of detailed surveys around known nest trees this approach is likely to provide little protection for nests beyond the immediate site.

Do you agree with that?---Yes.

Currently, there is no requirement within an environmental impact assessment or timber harvest plan in Tasmania for swift parrot nest surveys.

That is the man from DPIWE, Dr Shields, saying that, you are not in a position to disagree with that, are you, as a fact?---Well, no, no, I'm not.

And that is why when you talk in your affidavit about these management prescriptions requiring surveys it is very misleading, isn't it, Dr Shields?---No, my affidavit isn't misleading. What I said was that in the process that is put forward for timber harvesting the planners seek to find swift parrot nests and swift parrot habitat and that is true.

I will just stop you there, Dr Shields. You don't know, from your personal knowledge, whether that is true or not, do you, as you sit there in the witness box, you don't know what they do in the field in relation to each coupe?---No, I do not, no.

5

Then why did you say it was true?---Because they - I didn't say that they tried to find swift parrot surveys in each compartment, what I said, in my affidavit, and what I've said now is that part of the planning process is that they seek to find swift parrots and their habitat.

10

You are prepared, Dr Shields, generally I suggest to you, in your evidence, to pick up an isolated fact and then make a generally sweeping statement of opinion based on it. That is what I am going to submit to his Honour at the end of this case that you are doing in your evidence. Now, is there any comment you want to make about that?---If I'm being invited to comment I would like to say that "seek to find" is hardly a sweeping statement, and there is nothing in my affidavit that would lead his Honour to conclude that I think the prescriptions are based on intensive surveys of every compartment.

15

20 All right. Can you go to the next part of Mr Webb's document, please, the one that starts with:

The depletion of hollow-bearing trees is serious threat to hollow-dependent fauna in many countries.

25

That is not a controversial proposition, Dr Shields, is it?---No.

And then his next statement is:

30

Few codes of practice regulations in Australia regarding the retention of hollows are based on a sound understanding of the requirements of hollow-dependent fauna being targeted.

35 And that is not a controversial statement either, is it?---Yes, it is. It's a very controversial statement.

40 Why?---Given the Lindenmeyer paper to which they referred, 2004, written by Phil Gibbons and David Lindenmeyer, people who are well known to me, and are colleagues for a long time, I am astounded that they chose to write that in 2004 when the Codes of Practice in Victoria and New South Wales certainly are based upon very complex yields, schedules and models which are based on real data concerning tree hollows, their abundance, their recruitment and their importance to fauna.

45 You would be surprised would you, Dr Shields, to see other research scientists working in this area, particularly in any work they are doing about hollow-bearing trees, relying on that report from Gibbons and Lindenmeyer, would you?---No, a tremendous number of people look at it as the bible.

Right. Not you, though?---No.

5 Can - no, I withdraw that. Would you be surprised to learn that Dr Munks and Mr Wapstra rely on that paper?---Not at all. There's a lot of good things in it.

10 Can Dr Shields be shown exhibit AV, please? Have you seen that paper before?---Seen being the operative word. I have seen it before; I am not familiar with it in detail.

Have you read it?---No.

15 Well then, I won't ask any questions about it, Dr Shields. Well, perhaps except this - just keep it in front of you for a moment?---I've read the abstract.

Oh, you have read the abstract?---Yes.

20 Did you think that in forming your opinions for this case about the usefulness of tree hollows and the effectiveness of management prescriptions in the State of Tasmania, that this might have been a source that you ought to have fairly closely consulted?---That's why I read the abstract.

Pardon?---Yes, that's why I read the abstract.

25 That is how you do your research, Dr Shields, is it? You just read the abstract?---This isn't research.

30 That is how you prepare for giving expert evidence, Dr Shields? You just read the abstract of a relevant document; is that right?---When it's the only possibility, yes.

Go back to Mr Webb's paper, please. The next opinion that Mr Webb expresses is:

35 *Without adequate identification of swift parrot nesting areas, the species is vulnerable to both small and large-scale land clearing, particularly during the breeding season.*

40 Is that an opinion with which you agree?---Yes, that's fairly non-controversial.

And then he makes four recommendations, three of which you see on that page and then there is an additional one over the page. The first is - and he prefaces it by this:

45 *Until a better understanding of the species breeding behaviour is obtained, (1) all potential habitat within a large area around known nests should be protected until a detailed assessment is carried out.*

Do you agree that that is an appropriate recommendation for swift parrots in Tasmania?---Given the wording that has gone before it, I can't agree with that statement, no.

5 It would fly in the face of most of the opinions you have expressed in your affidavit for you to agree with that, Dr Shields, wouldn't it?---Can you repeat the question?

10 It would fly in the face of most of the opinions that you have expressed in your affidavit for you to agree with that statement?---No. No, it wouldn't.

15 Well, I suggest to you it would, for two reasons. First, one of the things in your affidavit is that swift parrots can go somewhere else apart from Wielangta, and so long as you hold that opinion, to agree with number 1 would be inconsistent, wouldn't it?---No, that's not my opinion at all and you have been sadly misled if that's what you've concluded from reading my affidavit.

Have a look, please, at paragraph 68:

20 *I don't often support the argument that the birds can just go somewhere else, but for the swift parrots in the Wielangta coupes, I believe that's likely to be the case.*

25 Now, I suggest to you that you can't on the one hand adhere to that opinion and agree with what Mr Webb is saying in that first recommendation on the second page of this document, can you? They are inconsistent?---No, they're not about the same subject.

30 What about the second recommendation, Dr Shields:

A significant increase -

35 Until - so that they are all premised on "until a better understanding of the species breeding behaviour is obtained". Mr Webb says - - -?---That's one of the main problems why I can't agree with number 1. How can you agree with something that is completely undefined? What's "a better understanding"? What do we need to know? If he wants to have more information, if I'm going to agree with it, he should say, "Until we know X, Y and Z," then I might be able to agree with it, but - - -

40 You are not therefore suggesting, Dr Shields, that there is such a complete understanding of the breeding behaviour of the swift parrot that all management decisions can be made in complete confidence that there is not likely to be any adverse impacts on the species? You are not suggesting that, are you?---No.

Right. So why isn't it fairly plain, Dr Shields, that all Mr Webb is saying is, until we know more about this species breeding behaviour, the following

things should happen? That is what he is saying, isn't it?---That's what he is saying, yes. Yes.

5 But you don't think we need to wait? You think we can carry on cutting down mature eucalyptus ovata in areas like Wielangta regardless, do you?---That's not at all what I said and not at all what I meant.

10 So what is your problem then with agreeing with Mr Webb's recommendation that until we know more about the breeding behaviour of the swift parrot, all potential habitat within a large area around known nests should be protected until a decent assessment has been carried out - detailed assessment?---My problem with that is the continual moving back of the goal posts. A better understanding implies that we understand everything and will be able to, as you say - - -

15 HIS HONOUR: No, the question has moved from a better understanding. Put it again, please, Ms Mortimer?---Thank you.

20 MS MORTIMER:

Until we know more about the breeding behaviour of the swift parrot, all potential habitat within a large area around known nests should be protected until a detailed assessment has been carried out.

25 What is wrong with that recommendation?---It is totally ambiguous from beginning to end. Agreement implies correctness. The - I - - -

30 HIS HONOUR: I am getting a little tired of witnesses in this case trying to construe cross-examination as if it was a statute requiring construction. It is not helpful to me and it is going to make it very difficult when I come to read the transcript. Would it be possible for you to consider items 1, 2 and 3 and comment on them for me?---Yes. I apologise for any inconvenience to the Court. Items 1, 2 and 3 are a summary of the author's conclusions as to what might improve management for the swift parrot in the context of development.
35 On the face of them, they all have good points and are reasonable. In detail, the first one and to a certain extent all of them are ambiguous enough to lead to difficulty rather than solution in managing the swift parrot. And they - - -

40 Thank you.

MS MORTIMER: Turn over the page, please, Dr Shields. The fourth recommendation that Mr Webb makes is that based on anecdotal evidence suggesting that some nesting sites are used only in some seasons:

45 *Until further research is conducted, the absence of breeding birds during a nest survey and potential habitat during the breeding season should not preclude an area from protection.*

Now, are you able to tell his Honour whether you agree with that or not, or do you just need to make a comment on it?---I would prefer to just make a comment on it.

5 What is your comment?---It is almost impossible to prove absence in nature. Proving absence is a very difficult situation for any ecologist or land manager. And this statement indicates that we should only proceed when we have very serious data to indicate absence, and that's a difficult subject.

10 Dr Shields, is it your evidence to his Honour that if you had carefully considered both these documents from DPIWE, the one that you had and this one, in a way that we have this morning, you would not have changed any aspects of your opinion in your affidavit?---That's true.

15 Your Honour, I tender that document.

HIS HONOUR: Exhibit CQ.

20 **EXHIBIT #CQ MR WEBB'S RECOMMENDATIONS**

HIS HONOUR: Ms Mortimer, I also have here something you handed up previously.

25 MS MORTIMER: Yes.

HIS HONOUR: Would you like me to return it?

30 MS MORTIMER: I propose to tender that, your Honour, as Dr Shields' account to Forestry Tasmania.

HIS HONOUR: What was then handed to me has an email on the other side.

35 MS MORTIMER: It is double-sided copying, yes, I realise that, your Honour.

HIS HONOUR: Should I disregard what is on the other side?

40 MS MORTIMER: Yes, your Honour.

HIS HONOUR: Well, should I have my associate photocopy one side just with the tax invoice and return the document to you?

45 MS MORTIMER: That would be a better idea, your Honour, yes.

HIS HONOUR: All right. The tax invoice will be CR, exhibit CR.

EXHIBIT #CR TAX INVOICE - DR SHIELDS' ACCOUNT TO FORESTRY TASMANIA

5 MS MORTIMER: Now, I just want to run through some other documents that you produced yesterday, Dr Shields. I hand you this document. That I think is what you produced as constituting your instructions from Forestry Tasmania in relation to the preparation of your affidavit; is that right?---Very early correspondence discussing what was - what the job specifications were, yes.

10

And I think if we put that together with the questions and answers document from DPIWE we can understand that at least originally, Dr Shields, you were asked to appear in this case as both an expert on both swift parrots and wedge-tailed eagles; is that right?---Yes.

15

And when were you informed that your services wouldn't be required in relation to wedge-tailed eagles?---As I say, this is a very early document. We discussed - - -

20

Dr Shields, it is quite a simple question?---Sorry, yes, sorry.

When were you informed that your services would not be required in relation to wedge-tailed eagles?---November 18th.

25

18 November 2005?---Yes.

That is about four days before you prepared the affidavit that we see in the - or filed the - it is about four days before your affidavit was filed in relation to swift parrots?---Yes.

30

HIS HONOUR: Sorry, the filing of I think was 25 November.

MS MORTIMER: I am sorry, your Honour.

35

HIS HONOUR: The swearing was the 22nd in Merimbula.

MS MORTIMER: Had you prepared a document in relation to wedge-tailed eagles, Dr Shields?---No.

40

And from that document that you say constituted your initial instructions, how did you end up understanding that what you were to do was what you say in paragraph 1 of your affidavit? They don't seem to be quite the same thing?---No, they're not. As I say, that was an initial email within hours of having a phone conversation. They're not at all the same thing.

45

All right. So the tasks that you were asked to undertake then developed as a result of conversations between you and people within Forestry Tasmania, is that fair?---With John Hickey, Simon Grove and Maree Yee.

All right. So as a result of discussions with Simon Grove, John Hickey and Maree Yee it was agreed that you would undertake the three tasks that we find in paragraph 1; is that right?---Basically, yes.

5

Part of what you did in preparing your affidavit was to come to Hobart and have a meeting with people who were described as reviewers of Senator Brown's affidavit; is that right?---I came to Hobart to have a meeting to gain information and do other matters necessary to prepare the affidavit.

10

And so you met with those three people did you: Dr Grove, Ms Yee and Mr Hickey?---I met with a large group of people to begin with at a meeting convened by John McDonald, I had discussions with Simon Grove, John Hickey and Maree Yee, yes.

15

And who else was at the large meeting that you can remember?---It was a large meeting.

Mr Miller - I will run through some names for you. Mr

20

Miller?---Hans Drielsma - Dr Drielsma walked into the meeting during the course of it, he'd just returned from Europe. Mick Brown was the only other person who was known to me, Mick Miller was not there to my knowledge and I can't remember any other names.

25

Now, you also produced yesterday some drafts of your affidavit and I want to ask you a couple of questions about those. Oh, yes, your Honour, I tender the email with the instructions.

30

HIS HONOUR: The email dated 25 October 2005 to Dr Shields from Mr Hickey is exhibit CS.

EXHIBIT #CS EMAIL TO DR SHIELDS FROM MR HICKEY DATED 25/10/2005

35

MS MORTIMER: Now, this one that is headed Rough Draft With Some Comments From Myself, was this your first draft was it?---Yes, it was my first working draft and I had written some things in note and outline format in long-hand and I have disposed of the other spare and those jottings and this is the first working draft.

40

Well, just look at page 11 please and read the bit in (c) where you talk about mis-use of conservation resources. Then the parts in capitals, Dr Shields, read on their face as somebody asking you a question, are those your words or are those the words of somebody making a comment to you about this draft?---Those are certainly my words if they're in capitals. It's a writing construct that I use to ask myself questions, "What do you mean?"

45

I see, I understand, so those are your words?---Yes.

I tender that document if your Honour pleases?

5

HIS HONOUR: Exhibit CT, the draft affidavit of Dr Shields.

EXHIBIT #CT DRAFT AFFIDAVIT OF DR SHIELDS

10

MS MORTIMER: I will just ask you to look at this document which is an extract from the diary notes that you produced?---That last document that was tendered could - - -

15

Yes, Dr Shields?---Could I review those comments just a moment, I'm not exactly sure what was in them.

You mean the part that I took you to?---Yes, I have just handed it back.

20

You want to have another look to reconsider whether your answer was right, is that what you want to do?---I'm sure my answer was correct, I'm just not sure what was in them and what I ask.

25

HIS HONOUR: I don't think it is really necessary to pursue that?---Okay.

Not unless Mr Gunson has a contrary view?

30

MR D. GUNSON: I am sorry, your Honour, I didn't catch what your Honour said?

35

HIS HONOUR: I didn't think it was necessary to pursue, it didn't seem to relate to what the witness was asked or anything of that sort, although I would want to give you an opportunity to comment in case I misunderstood something.

MR D. GUNSON: Well, if he has got any uncertainty about what his answer is he should be given the opportunity to clarify.

40

HIS HONOUR: He said he didn't.

MR D. GUNSON: Yes.

HIS HONOUR: It seemed to be unrelated.

45

MS MORTIMER: Now, that is a diary entry of yours for 17 November 2005; is that right, Dr Shields?---Mm.

And seems to record a number of things that you did in relation to the preparation of your affidavit in these proceedings; is that right?---Yes.

One of the things that is recorded there is it says:

5

Read Dickman, Kennedy, Wapstra.

Had you not read those affidavits before 17 November?---Yes, I had, I'd read all of those affidavits before 17 November at a very short time referring to complete task and I was trying to prioritise my tasks and the elements of Dickman I needed to read and Kennedy were well known to me, I just needed to do those while I was writing the text.

10

And do we take it from this diary note that it was after 17 November 2005 that you wrote the section in your affidavit about that made comments on affidavits filed on behalf of the applicant?---Could you repeat the question?

15

Do we take it that from these diary notes that it was after 17 November 2005 that you wrote the section in your affidavit that comments on the affidavits of Professor Dickman, Mr Brown and Mr Kennedy?---No, that shouldn't be taken as a fact. I read those affidavits at the very first of my tasks and wrote notes on them and my - I truly do not remember the scale - the time scale of construction.

20

Thank you, Dr Shields.

25

HIS HONOUR: Do you want anything done with this or should I treat it as a memo of my 50th birthday.

MS MORTIMER: Well, that was lucky coincidence, your Honour.

30

HIS HONOUR: It is a sad day.

MS MORTIMER: Well, I won't inflict any more pain on your Honour by tendering it then. Now, your Honour, subject to we have got to get a clean copy of that MFI document in relation to the draft EIS, but otherwise I have no further questions for Dr Shields.

35

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

40

<RE-EXAMINATION BY MR D. GUNSON

[11.39am]

MR D. GUNSON: You were asked some questions about the Gibbons and Lindenmeyer paper of 2004 by my learned friend. You said you agreed in part with it, but you had some disagreements with the paper. Do you recall that passage of evidence?---I do.

45

With what parts of the Gibbons and Lindenmeyer paper of 2004 do you disagree?---The part that was quoted in the report I was looking at at the time which says that few codes of practices and regulations in Australia take into account the recruitment and need for hollow-bearing trees. Phil Gibbons knows well and truly that the New South Wales Code of Practice is based and our operations are based heavily around the need for biodiversity and their requirement for tree hollows. And they continue to proceed as if there had been no changes in forest practices since 1992 when in fact there have been many.

Thank you.

HIS HONOUR: Can I just ask you about the position in other States?---Queensland by and large recognised the need for habitat trees by stopping logging in the State forests entirely. New South Wales took it on as an active management proposition. Victoria has similar requirements and Western Australia has responded by scaling down the size of its operations.

MR D. GUNSON: You were asked some questions yesterday about a paper entitled Shields, York, Benz, or more correctly by Shields, York, Benz, entitled Flora and Fauna Survey, Mount Royal Management Area, Newcastle Region. Do you recall that series of questions?---I do.

Do you recall a letter from the relevant minister in New South Wales being shown to you concerning their rejection of the EIS?---I do.

What part do you - I withdraw that. Are you familiar with the EIS process that was in operation in New South Wales at that time?---Yes, I am.

Was your report, co-authored with York and Benz, the only document to your knowledge that formed part of the EIS?---No, it wasn't. My document formed an appendix to that EIS.

What other documents formed the EIS, to your knowledge?---The EISs in New South Wales have a required structure, and you can have appended documents to describe certain aspects of the development. Mine was an appended document for flora and fauna. The EIS itself consists of a background statement of place and location, a statement of the development, and what happens, a statement about the impacts, and a statement about the ameliorative effects.

Thank you. To your knowledge were any other documents appended to the EIS in the same manner as your report?---To my knowledge, yes, there were other documents. At least one other one on archaeology.

Thank you. You were asked some questions yesterday by Ms Mortimer about your participation in surveys about the swift parrot in New South Wales; do you recall those questions?---I do.

5 How long have you engaged in the annual surveys of the swift parrot in that State?---Since their inception. I was, at the time they were put forward, I was part of the planning team that designed those surveys.

And for how many years have you been engaged in that?---Eight.

10

Yes. And apart from those surveys, that is, the annual surveys, have you been involved in any other local surveys concerning the swift parrot?---Certainly local ones. I have - I have co-ordinated with a bird club, the Forest South Coast Bird Watchers, and I have done a fair bit of work on my own, working for swift parrots to document their occurrence in our particular area.

15

Yes. I have no further questions of the witness, your Honour.

20

HIS HONOUR: There might be something arising out of one matter, I omitted to ask. You remember, Dr Shields, I was asking you about Lindenmeyer and Gibbons and about the position in the other States?---Yes.

25

If I added Territories to that question, what would your answer be?---The ACT has changed their policies somewhat, and there is very little timber activity in the Northern Territory.

Do you know what the change in policy is in relation to the Lindenmeyer and Gibbons statement that you take issue with?---With regard to the Territories?

30

The Australian Capital Territory?---The Australian Capital Territory. They have cut back their activities in native forests would be the major activity that they have undertaken. It's very minor, your Honour, in that most - that's why I left them out in my original answer. Most of their forests are not native forest in the ACT. It's an amenity situation.

35

Thank you. Mr Gunson?

40

MR D. GUNSON: Nothing arising from that, your Honour. May the witness be relieved, your Honour?

HIS HONOUR: Yes. Is there any reason why Dr Shields should not be excused?

45

MS MORTIMER: No, your Honour.

HIS HONOUR: Dr Shields, thank you for your evidence. You may be excused from further attendance. I don't think there is much to sit around and wait for. I think we are about to conclude for the day?---Thank you.

Ordinarily I would invite you to remain if you wished.

5 <THE WITNESS WITHDREW [11.45am]

MR D. GUNSON: Your Honour, that is the case for the respondent.

10 HIS HONOUR: No Dr Reed?

MR D. GUNSON: No Dr Reed.

15 HIS HONOUR: The surprises keep on coming.

MR D. GUNSON: They do indeed, your Honour.

HIS HONOUR: All right. So there is nothing to do, other than to adjourn formally until that date in August, the 28th?

20 MR D. GUNSON: 28 August, I think it was, your Honour.

25 HIS HONOUR: I don't know that the timetable for submissions was a formal order or not, but the parties consider it, that I am expecting them to comply with it.

MR D. GUNSON: Well, for our part we will.

30 HIS HONOUR: Yes. Mr Broadfoot?

35 MR BROADFOOT: Might I correct a minor transcript matter from yesterday, your Honour. Exhibit CM was described in the transcript as a two page letter authored by Dr Shields. Now, the document purports to be a letter from Robert Webster to Garry West, undated, and I simply seek to correct that, because on re-reading the transcript and the description of the document, one might be left with an erroneous impression as to the provenance of that document.

HIS HONOUR: Anybody got a view about that?

40 MR D. GUNSON: No, your Honour.

HIS HONOUR: Well, I will consider that comment and search back in the transcript for it, when I see your comments.

45 MR BROADFOOT: As your Honour pleases. In fact it is my recollection that Dr Shields gave no evidence to the effect that he had even seen that document before, so it is - - -

MS MORTIMER: Your Honour, this is going right outside.

HIS HONOUR: That is probably not desirable in the present of the witness.

5 MS MORTIMER: Thank you.

MR BROADFOOT: As your Honour pleases.

10 **EXHIBIT #CM (DESCRIPTION CORRECTED) LETTER FROM
ROBERT WEBSTER TO GARRY WEST, UNDATED**

15 HIS HONOUR: All right. Well, I will adjourn now until 10 am on - no, it is
actually a Tuesday, isn't it? I am coming down here Monday to give a talk to
the Industrial Action Society, if I remember anything about that topic.

MS MORTIMER: Don't talk to them about beetles, your Honour.

20 HIS HONOUR: No. I will try not to. 10 am on 29 August is our adjournment
day.

MS MORTIMER: If your Honour pleases.

25 HIS HONOUR: The Court is now adjourned until then.

**MATTER ADJOURNED at 11.47 am UNTIL TUESDAY, 29 AUGUST
2006**

30

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NONE REQUESTED