

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
VALUATION, COMPENSATION AND PLANNING LIST

Not Restricted

S ECI 2020 02658

KINGLAKE FRIENDS OF THE FOREST INC.
(ABN 35 186 838 481)

Plaintiff

v

VICFORESTS

Defendant

JUDGE: Richards J
WHERE HELD: Melbourne
DATE OF HEARING: 1 December 2020
DATE OF JUDGMENT: 23 February 2021
CASE MAY BE CITED AS: Kinglake Friends of the Forest Inc. v VicForests (No 4)
MEDIUM NEUTRAL CITATION: [2021] VSC 70

ENVIRONMENTAL LAW – Proceeding seeking injunctions to restrain defendant from harvesting timber in State forest coupes contrary to the *Sustainable Forests (Timber) Act 2004* (Vic) – Standing of plaintiff – Principles concerning standing – Whether regulatory scheme excludes standing – Whether plaintiff has a special interest in the subject matter of the proceeding – *Sustainable Forests (Timber) Act 2004* (Vic), ss 12A, 13, 14, 15, 16, 37, 45, 46–49, 70, 71, 83A.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiff	Mr J Korman	Oakwood Legal
For the Defendant	Mr E Nekvapil with Ms M Narayan	Johnson Winter & Slattery

HER HONOUR:

- 1 Kinglake Friends of the Forest Inc (**Kinglake FF**) is an association incorporated under the *Associations Incorporation Reform Act 2012* (Vic). The purposes stated in its rules include providing a forum for people to advocate for the preservation of the native forests in Kinglake and the Central Highlands of Victoria. In this proceeding, Kinglake FF seeks permanent injunctions restraining VicForests from engaging in timber harvesting operations that Kinglake FF alleges would contravene the *Sustainable Forests (Timber) Act 2004* (Vic), the *Code of Practice for Timber Production 2014*, and the *Management Standards and Procedures for timber harvesting operations in Victoria's State Forests 2014*.

- 2 The proceeding was commenced on 22 June 2020, and has already been the subject of a number of interlocutory orders:
 - (a) On 24 June 2020, I granted an interim injunction restraining VicForests from felling or cutting trees, as specified in the orders, in 14 coupes in State forest in the Central Highlands forestry management area, until 14 July 2020 or further order.¹ Kinglake FF's summons filed 23 June 2020 was adjourned for further hearing on 14 July 2020, with liberty to apply.

 - (b) On 3 July 2020, John Dixon J extended the interim injunction so that, within any coupes in the Central Highlands Region, VicForests was restrained from:
 - (i) felling or cutting trees or parts of trees within 20 metres of any road or track in any coupe in the Central Highlands Region; and

 - (ii) conducting timber harvesting operations within a nett harvestable area in excess of the nett area identified for that coupe in VicForests' Timber Release Plan dated 19 December 2019, or any varied Timber Release Plan that is gazetted before 14 July 2020.²

¹ *Kinglake Friends of the Forest Inc. v VicForests* [2020] VSC 394 (**Kinglake No 1**).

² *Kinglake Friends of the Forest Inc. v VicForests (No 2)* [2020] VSC 418 (**Kinglake No 2**).

(c) On 14 July 2020, on the return of Kinglake FF's summons, VicForests did not oppose the injunctions being continued until trial. I granted an interlocutory injunction in the following terms:

1. Until the final determination of this proceeding or further order the defendant must not, whether by itself, its servants, agents, contractors or howsoever otherwise, within any coupe in the Central Highlands Region, conduct timber harvesting operations within a net harvestable area in excess of the net area identified for that coupe in the defendant's Timber Release Plan dated 19 December 2019. This order does not prohibit the defendant from felling or cutting trees or parts of trees in order to address a serious risk to human safety.
2. Subject to Order 3, until the final determination of this proceeding or further order, the defendant must not, whether by itself, its servants, agents, contractors or howsoever otherwise, within any coupe in the Central Highlands Region fell or cut trees or parts of trees within 20 metres of any road or track in or adjacent to that coupe.
3. Order 2 does not prohibit the defendant from felling or cutting trees or parts of trees necessary to create road access to the interior of a coupe, as shown on the defendant's published operations map for that coupe on the defendant's website with URL www.vicforests.com.au (including any page within that website), or in order to address a serious risk to human safety.

(d) On 23 November 2020, I gave Kinglake FF leave to file and serve a further amended statement of claim, excluding proposed declarations from the prayer for relief.³

3 By summons filed 27 October 2020, VicForests sought an order under ss 62 and 63(1) of the *Civil Procedure Act 2010* (Vic), that the plaintiff's claim be summarily dismissed altogether; or alternatively, to the extent that it seeks relief in respect of harvesting operations outside Kinglake, on the basis that the plaintiff lacks standing to seek that relief. It also sought an order that Kinglake FF's standing be determined as a separate question before the trial of the proceeding, under r 47.04(a) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic), and that the question be determined in

³ *Kinglake Friends of the Forest Inc. v VicForests* (No 3) [2020] VSC 777 (*Kinglake No 3*).

favour of VicForests.

- 4 On 23 November 2020, I ruled that VicForests' challenge to Kinglake FF's standing to bring the proceeding should be determined before trial.⁴ I heard the question of Kinglake FF's standing on 1 December 2020. For the reasons that follow, I have determined that question in favour of Kinglake FF.

Pleadings

- 5 In its further amended statement of claim dated 24 November 2020, Kinglake FF pleads that it has:⁵

- (a) a special interest in the protection of State forests in the Central Highlands; and
- (b) consequently, a special interest in the observance by the defendant of the limitations upon its conduct of timber harvesting in the Central Highlands that the legislature has imposed; and
- (c) consequently, standing to bring this action.

- 6 Kinglake FF has provided further and better particulars of the matters that it relies on to demonstrate its special interest in the protection of State Forests in the Central Highlands, as follows:⁶

1. The Plaintiff's statement of purpose which is to, among other things, provide a forum for people to advocate for the preservation of the native forests in Kinglake and the Central Highlands of Victoria;
2. The Plaintiff's rules which set out the above statement of purpose;
3. The Plaintiff's organisation of a range of events, including:
 - i. spotlighting nights on 4 May, 29 June and 27 July 2019 at Mt Robertson State Forest;
 - ii. a public meeting on 20 October 2019 to protest logging in local forests;
 - iii. a forest survey on 2 November 2019, recording and classifying habitat trees prior to logging activity, to encourage their retention by VicForests;

⁴ *Kinglake No 3*, [41]-[45].

⁵ Further amended statement of claim filed 24 November 2020 (FASOC), [2].

⁶ Further and better particulars of statement of claim filed 10 November 2020.

- iv. a banner painting afternoon on 20 February 2020, at which a specialist wildlife painter assisted participants to make a series of banners raising awareness of forests, their wildlife, and the need to protect them;
 - v. a public meeting on 9 May 2020 with a guest speaker, discussing the effect of logging in Kinglake on fire intensity, climate and environment;
4. The Plaintiff's co-hosting and co-organizing events including:
- i. a "Possums Not Paper" rally on 22 July 2019;
 - ii. a rally on 22 September 2019 to stop logging in the Toolangi state forest and to demand a review of native forest logging plans in Victorian State forests;
 - iii. a public Toolangi state forest tour in January 2020;
 - iv. a forestry recovery picnic on 13 April 2020;
5. The Plaintiff's arranging tours for parliamentarians, to promote the cause for protection of Central Highlands state forests from logging, including:
- i. showing Green MPs Dr Samantha Ratnam MP, Sam Hibbins MP and Dr Tim Read MP on 2 August 2019, logged State Forest coupes as well as further coupes scheduled for logging; and
 - ii. showing Andy Meddick MP and his team through the Toolangi State Forest on 12 June 2020 to show them the impact of state logging in the State forests;
6. The Plaintiff's actions in boosting media coverage of the case for stopping logging of the Central Highlands state forests, including:
- i. providing articles and contributions advocating protection of the Central Highlands state forests to the local newspaper, Mountain Monthly;
 - ii. appearing on a radio show on Community Radio 3CR to advocate for protection of the local state forest;
 - iii. providing media releases to the press, which resulted in publication of at least four newspaper articles
7. The Plaintiff's maintenance of a popular and regularly updated social media presence on Facebook, which has 2,273 followers, and 2,171 "likes", and includes:
- i. Report of an event: a talk titled The Insect Apocalypse, on 2 December 2019;
 - ii. Report of an event: Nature for Life Rally, held on 28 November

- 2019;
- iii. Report of an event: Logging Issues in Victoria, an introduction, held on 3 June 2020;
 - iv. a video titled Forests for Carbon; and
 - v. 8 pages of photographs from all over the Central Highlands.
8. The Plaintiff carrying out, both prior- and post-incorporation of surveys, on its own and in conjunction with other environmental groups, of flora and fauna in state forests, to assist in advocating for their preservation from logging. These surveys include:
- i. a greater glider detection report in coupe 295-536-0021, 295-539-0001, and 295-548-0020 dated 11 January 2019”, prior to the Plaintiff’s incorporation;
 - ii. survey and mapping of significant habitat trees in coupe 295-395-000 carried out in or about July 2019;
 - iii. a further greater glider detection report in relation to coupe 295-539-0001, dated 1 July 2019;
 - iv. a greater glider detection report in relation to coupe 295-548-0020, dated 7 May 2020; and
 - v. a further Greater Glider detection report in relation to coupe 295-548-0020, dated 7 May 2020,
9. The plaintiff frequently making submissions in relation to logging in the Central Highlands to government, supervisory bodies, and VicForests. These submissions include:
- i. a submission on 14 November 2019 to the Forest Stewardship Council audit of VicForests;
 - ii. a submission to VicForests in November 2019 in relation to its proposed changes to the Timber Release Plan;
 - iii. a submission on 17 April 2020 to the discussion paper reviewing the *Commonwealth Environment Protection and Biodiversity Conservation Act*;
 - iv. a submission on 25 April 2020 to the Department of Environment, Land, Water and Planning (“DELWP”) public consultation program titled “Future of our Forests”;
 - v. a submission to VicForests on 29 May 2020 in relation to the draft for comment of the High Conservation Values status update;
 - vi. a submission with VicForests on 13 September 2020 in relation to VicForests’ proposed Timber Release Plan; and

- vii. a submission to the Inquiry into Environmental Infrastructure for Growing Populations on 5 October 2020, raising matters of importance for the whole of the Central Highlands, including threats from logging throughout the Central Highlands, Greater Glider tours in Kinglake and Narbethong, trailbike and 4WD tracks in Toolangi and Mt Disappointment, and tourist attractions throughout the highlands.
10. The Plaintiff arranging for an expert report by Associate Professor Emeritus Michael Feller, of the University of British Columbia, assessing the fire hazard in logging coupe 295-527-0003.
 11. The Plaintiff making frequent reports to DELWP, bringing the Department's attention to timber harvesting that has occurred in breach of the applicable regulatory framework, throughout the Central Highlands. These reports include:
 - i. breach reports regarding logging at Hubba Bubba, Castella Quarry and Spyglass coupes made on 12 August 2019;
 - ii. a breach report regarding logging at Zurich coupe near Marysville, on 13 March 2020;
 - iii. a breach report regarding proposed logging at Snobs Creek, with photographs, on 5 April 2020;
 - iv. a breach report regarding proposed logging at Pat's Corner, near Warburton, on 30 April 2020;
 - v. a breach report regarding logging at Shetlands Carriage coupe, submitted on 12 May 2020;
 - vi. two breach reports regarding logging at Cameron Rd Taggerty, dated 25 August 2020;
 - vii. a breach report dated 22 August 2020 regarding logging at Castella;
 - viii. a breach report dated 6 August 2020 regarding logging at Kinglake (Hunter Coupe)
 - ix. a breach report dated 22 August 2020 and amended on 25 August 2020, regarding logging at Mohican East;
 - x. a breach report dated 22 August 2020 regarding logging at Narbethong;
 - xi. a breach report regarding logging at Flowerdale (Neils Flower coupe) based on surveys conducted on 28-29 July 2020 and 1 August 2020;
 - xii. a breach report dated 6 August 2020 regarding logging at Clonbinane;

- xiii. a breach report dated 31 August 2020 regarding logging at Powelltown South;
 - xiv. a breach report dated 22 August 2020 regarding logging at Mt Disappointment; and
 - xv. three breach reports dated 30 August 2020, 3 November 2020 and 4 November 2020, regarding logging at Matlock.
12. Receipt by the plaintiff of two grants from the Field Naturalists Club of Victoria Environment Fund, to support its Greater Glider detection activities.
 13. Presentation, in February 2020, of a petition signed by 633 petitioners to the Victorian Legislative Council seeking cessation of logging in the Central Highlands state forests by July 2020.
 14. Receipt, on 20 April 2020, of a letter of support from Murrindindi Shire Council, in recognition of its work advocating for protection of the Greater Glider population.
 15. Commencement of court proceedings (S ECI 2020 04058), against VicForests on 26 October 2020, alleging overharvesting of bushfire management zones in the vicinity of Mohican, Mt Disappointment, Taggerty, Powelltown, Kinglake and Toolangi.

7 Evidence in support of these particulars is set out in two affidavits of Susan McKinnon, the President of Kinglake FF, dated 22 June 2020 and 9 November 2020.

8 VicForests' defence simply denies that Kinglake FF has standing to bring the proceeding.⁷

9 VicForests did not contest the factual basis on which Kinglake FF claims standing. Its contention was that the matters relied on by Kinglake FF were not sufficient to establish standing, in the statutory context of this proceeding. As foreshadowed during the hearing, I have determined the question of standing as a separate question, on the evidence now before the Court.⁸

10 VicForests' primary contention was that the regulatory scheme in the *Sustainable Forests (Timber) Act 2004* (Vic) (**Timber Act**) does not allow for an organisation such as

⁷ Defence filed 11 August 2020, [2]. VicForests has not been ordered to file a defence to the FASOC, pending determination of its summary dismissal application.

⁸ Transcript, 1 December 2020, 76:23–77:5.

Kinglake FF to act as a de facto regulator of timber harvesting. Further, it argued that Kinglake FF's pleaded interests are insufficient to establish standing, or alternatively that it does not have standing beyond the Kinglake area.

Principles

- 11 In contrast with some other statutory schemes,⁹ there is no provision of the Timber Act that enables an 'interested person' or a 'person aggrieved' to apply for an injunction. In order to seek injunctions to enforce compliance with the Timber Act, Kinglake FF must satisfy the general law test for standing – that is, it must demonstrate a 'special interest' in the subject matter of the proceeding.¹⁰
- 12 The general law as to the standing of a private person to bring a proceeding to enforce a public right or duty was recently considered by the Court of Appeal in *Maguire v Parks Victoria*.¹¹ The principles were set out as follows:
- (a) Standing requires a special interest in the subject matter of the proceeding beyond a 'mere intellectual or emotional concern' or a strongly felt belief that the law should be observed.¹²
 - (b) The special interest test is flexible, and its content in a given case depends on the nature and subject matter of the litigation. There is no precise formula as to what amounts to a special interest in the subject matter of a particular proceeding.¹³
 - (c) A 'special interest' sufficient to enliven equitable intervention in public law is not limited to the legal, proprietary or financial interests that are protected by

⁹ For example, *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 475, *Administrative Decisions (Judicial Review) Act 1977*, Cth, ss 5, 16. See *Maguire v Parks Victoria* [2020] VSCA 172, [73] concerning the distinction between statutory and general law standing.

¹⁰ *Australian Conversation Foundation v Commonwealth* (1980) 146 CLR 493 (ACF), 530–531 (Gibbs J), 538–539 (Stephen J), 547–548 (Mason J).

¹¹ [2020] VSCA 172.

¹² *Maguire*, [63], citing ACF, 530–1 (Gibbs J).

¹³ *Maguire*, [64], citing *Shop Distributive and Allied Employees Association v Minister for Industrial Affairs (SA)* (1995) 183 CLR 552, 558 and *Bateman's Bay Local Aboriginal Land Council v The Aboriginal Community Benefit Fund Pty Ltd* (1998) 194 CLR 247, [46] (Gaudron, Gummow and Kirby JJ).

the private law.¹⁴

- (d) The requirements of standing serve to keep the exercise of judicial power within proper bounds, namely the resolution of legal controversies between parties who are affected by the outcome.¹⁵
- (e) The special interest test requires an intersection between the interest identified by the plaintiff and the subject matter of the proceeding. It is necessary to assess how the plaintiff's interest may be affected by the matter in respect of which it seeks relief.¹⁶
- (f) The statutory context is important. It will be relevant whether and to what extent the statute accommodates the plaintiff's interest, and how it intersects with that interest. However, the statutory context does not control standing: a 'plaintiff may have standing to challenge the exercise of power because of its practical or legal effect'.¹⁷

13 The parties drew my attention to a number of environmental cases in which these principles have been applied to determine the standing of an incorporated plaintiff seeking a public law remedy.

14 The first was *Australian Conservation Foundation Inc v Commonwealth (ACF)*,¹⁸ a challenge by the Australian Conservation **Foundation** to approvals granted by Commonwealth Ministers under the *Environment Protection (Impact of Proposals) Act 1974* (Cth) in relation to a proposed tourist resort in Farnborough, Queensland. The orders sought included declarations and injunctions. At first instance, Aickin J held that the Foundation did not have a 'special interest' in enforcing the provisions of the

¹⁴ *Maguire*, [65], citing *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27, 73 (Brennan J).

¹⁵ *Maguire*, [66]–[67], citing *Kuczborski v Queensland* (2014) 254 CLR 51, [182]–[184] (Crennan, Kiefel, Gageler and Keane JJ).

¹⁶ *Maguire*, [76].

¹⁷ *Maguire*, [77]–[80].

¹⁸ (1980) 146 CLR 493.

Act, beyond the interest of members of the public generally.¹⁹ The Foundation claimed an interest based on its exercise of a right to provide written comments on the proponent's draft environmental impact statement, before the approvals were granted. This was held not to give the Foundation a sufficient interest to support the proceeding.²⁰ The proceeding was dismissed on the basis that the Foundation lacked standing.

15 An appeal to the Full Court was dismissed. Gibbs J described the Foundation as:²¹

... a body well-known for its involvement in the public discussion of issues affecting the environment in Australia. It is a body corporate under the laws of the Australian Capital Territory. Its objects include the following:

“(i) to make every effort to ensure that the air, land and waters of Australia are used with wisdom and foresight and that competing demands upon them are resolved in the best long-term interest of the nation;

(ii) to foster the conservation of the distinctive vegetation and fauna and important natural and archaeological features of Australia;

(viii) generally, to take such action as it considers necessary or appropriate in the interests of promoting conservation ...”

The Foundation has about 6,500 members drawn from all States and Territories of the Commonwealth. It has received annually grants made by the Commonwealth as a contribution towards its administrative expenses, and these grants appear to form a not insubstantial proportion of its income. It endeavours to influence national policy on matters affecting the environment and, for that purpose, it has made submissions to governments and public authorities in respect of environmental matters, including comments made pursuant to the provisions of the *Environment Protection (Impact of Proposals) Act 1974* (Cth) ...

16 His Honour stated the relevant principle as follows:²²

I would not deny that a person might have a special interest in the preservation of a particular environment. However, an interest, for present purposes, does not mean a mere intellectual or emotional concern. A person is not interested within the meaning of the rule, unless he is likely to gain some advantage, other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense

¹⁹ ACF, 505 (Aickin J).

²⁰ ACF, 505 (Aickin J).

²¹ ACF, 518–519 (Gibbs J); see also 533 (Stephen J).

²² ACF, 530 (Gibbs J); see also 538 (Stephen J), 547–548 (Mason J).

of grievance or a debt for costs, if his action fails. A belief, however strongly felt, that the law generally, or a particular law, should be observed, or that conduct of a particular kind should be prevented, does not suffice to give its possessor locus standi.

17 Applying that principle, the Foundation had not demonstrated any special interest in the environment at Farnborough or in the approvals, beyond that of the general public. The fact that the Foundation had submitted written comments on the draft impact statement did not give it standing. It was significant that, having made a submission, the Foundation had no further right to participate in the approval process. Nor did the Foundation acquire standing based on its stated objects, which were equated with beliefs or concerns held by an individual.²³

18 The next case was *North Coast Environment Council Inc v Minister for Resources*,²⁴ which concerned a request, made under s 13 of the *Administrative Decisions (Judicial Review) Act 1977 (Cth) (ADJR Act)*, for a statement of reasons for a decision to grant a licence to export woodchips from an area on the north coast of New South Wales. Sackville J held that the applicant had standing because:²⁵

- (a) It was the peak environmental organisation in the north coast region, and its activities related to the areas affected by the woodchip operations the subject of the export licences.
- (b) It had been recognised by the Commonwealth as a significant and responsible environmental organisation, including in the form of regular financial grants. It had also been recognised by the New South Wales government as a body that should represent environmental concerns on advisory committees.
- (c) It had conducted or co-ordinated projects and conferences on matters of environmental concern, with significant Commonwealth funding.
- (d) It had made submissions on forestry management issues and funded a study

²³ ACF, 531-532 (Gibbs J); see also 538-539, 544 (Stephen J).

²⁴ (1994) 55 FCR 492 (*North Coast*).

²⁵ *North Coast*, 512-513.

on old growth forests.

19 While the applicant's standing in *North Coast* was determined by reference to the requirement of the ADJR Act that it be a person aggrieved by the decision, and not under the general law, the interests relevant to standing are similar in both contexts.²⁶

20 The statutory context of the third case, *Environment East Gippsland Inc v VicForests (Brown Mountain)*,²⁷ is much closer to the present. The plaintiff (EEG) sought an injunction restraining VicForests from harvesting certain coupes on Brown Mountain, and declarations to the effect that timber harvesting in those coupes would be unlawful. EEG was an association with about 420 members, with the objects of 'promoting conservation values, environmental awareness about East Gippsland, and sustainability, making representations to government about land use and management, and undertaking research relevant to these matters'.²⁸ It was incorporated in 1991, and before that had been involved in environmental issues in East Gippsland since 1982.

21 The central claim made by EEG was that VicForests' proposed timber harvesting in the Brown Mountain coupes was unlawful because conservation measures taken in respect of the Brown Mountain area did not meet the requirements of the labyrinthine statutory framework, which included the Timber Act, the Code, and a forestry management plan or **FMP** developed under the Code. Osborn J held that EEG had standing to bring the proceeding, by reason of the following factors:²⁹

- (a) The unincorporated predecessor of EEG was represented in the consultative process undertaken with respect to the formulation of the FMP. Since the formulation of the FMP, it has engaged in an on-going basis with considerations arising from the terms of the FMP including specifically those relating to the conservation of endangered species.

²⁶ *Maguire*, [73]. See also, s 5(1) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth), and the definition of 'person aggrieved' in s 3(4).

²⁷ (2010) 30 VR 1 (*Brown Mountain*).

²⁸ *Brown Mountain*, [20].

²⁹ *Brown Mountain*, [80] (citations omitted). See also *Environment East Gippsland Inc v VicForests* [2009] VSC 386 for the interlocutory ruling on standing.

- (b) EEG has been and continues to be an actual user of the coupes comprising “The Walk”, in a manner and to a degree which gives it a greater degree of interest in those coupes than that of members of the public.
- (c) EEG made submissions to DSE30 which resulted in a moratorium with respect to logging at Brown Mountain in 2009. The case is in a fundamental sense concerned with the question of whether that moratorium should continue.
- (d) Government has recognised EEG’s status as a body representing a particular sector of the public interest by financial grant and by the award referred to above.

22 After elaborating on each of these factors, his Honour concluded:³¹

EEG’s interest in the enforcement of the law with respect to proposed logging at Brown Mountain does not simply derive from intellectual or emotional concern, nor from its ostensible objects. Although it is not a peak environmental association of the type with which Sackville J was concerned in the two cases I have referred to above,³² it does have a special interest in the implementation of the FMP and the enforcement of the statutory framework governing logging at Brown Mountain Creek.

23 More recently, in *WOTCH Inc v VicForests (No 6)* (**WOTCH No 6**),³³ Keogh J ruled on the standing of **WOTCH** Inc, in a proceeding for an injunction to restrain VicForests from engaging in timber harvesting operations that **WOTCH** claims would contravene the Timber Act and the Code. VicForests accepted that **WOTCH** had standing to seek relief in relation to coupes in the Central Highlands, but challenged its standing beyond that region.

24 Until August 2020, **WOTCH**’s rules of association recorded its purposes to be:³⁴

- 1. To historically record flora and fauna found within the Central Highlands of Victoria; and
- 2. To promote and educate the public about the importance of biodiversity in this area.

³⁰ Department of Sustainability and Environment, a predecessor to the current Department of Environment, Land, Water and Planning or DELWP.

³¹ *Brown Mountain*, [88].

³² *North Coast and Tasmanian Conservation Trust Inc v Minister for Resources* (1995) 55 FCR 516.

³³ [2020] VSC 674 (**WOTCH No 6**).

³⁴ *WOTCH No 6*, [10].

Its purposes were changed in August 2020 to ‘protect Victoria’s native forests through the use of citizen science, community engagement and advocacy’.³⁵ There was evidence that WOTCH had engaged in activities within and beyond the Central Highlands, including conducting surveys for threatened species in State forest earmarked for logging, training others in survey methods, public education, and advocacy to government for forest protection.

25 Keogh J found that WOTCH had, by and large, confined its activities to the Central Highlands. However, there was strong evidence of advocacy directed to protecting the Greater Glider against threats from timber harvesting, in and outside the Central Highlands. His Honour held that WOTCH had a special interest in protecting that species generally, although it had failed to establish standing in relation to the broader subject matter of the proceeding beyond the Central Highlands. Explaining that conclusion, his Honour said:³⁶

Some of the features which led to standing being established by the plaintiffs in *Onus*, *Brown Mountain* and *North Coast* are absent in this case. Outside the Central Highlands, WOTCH has not engaged in the sort of activities on the ground which were central to the plaintiffs establishing standing in *Onus* and *Brown Mountain*. WOTCH is not the peak environmental organisation in relation to the subject matter of the proceeding, as was the case in *North Coast*. However, each case in which the standing of the plaintiff is in issue must be decided on its own facts. It is therefore important to consider what the evidence does establish in relation to WOTCH’s interest in relation to the subject matter of the proceeding.

26 *WOTCH No 6* illustrates the flexibility of the special interest test, and how its content depends on the nature and subject matter of the litigation.

Does the regulatory scheme exclude standing?

27 The principal submission advanced by VicForests in support of its summons was that Kinglake FF’s claimed ‘special interest’ is at odds with the terms and operation of the regulatory scheme for timber harvesting enacted by Parliament and implemented by the Executive. It argued that allowing Kinglake FF to position itself as the ‘de facto

³⁵ *WOTCH No 6*, [11].

³⁶ *WOTCH No 6*, [96].

regulator' would subvert a number of features of this scheme.

28 VicForests pointed out that there is no provision in the Timber Act enabling a private body such as Kinglake FF to seek equitable relief to enforce compliance with the obligations it imposes – such as, for example, s 475 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**). It said that this indicated Parliament's intention to exclude private standing from the regulatory scheme.

29 VicForests highlighted the following aspects of the regulatory scheme, which it said manifest a clear intention that enforcement may be achieved by mechanisms other than prosecution or coercive court order:

- (a) The Timber Act provides that the Minister³⁷ may take into account VicForests' compliance with an allocation order or a code of practice when determining the amount of timber resources to be allocated to it;³⁸
- (b) The Minister may arrange an audit of VicForests' compliance with a code of practice, and may publish any adverse findings against VicForests;³⁹
- (c) An authorised officer may give VicForests directions as to its conduct of timber harvesting operations in a State forest. Failure to comply with such a direction is an offence, and a basis for an authorised officer to issue a suspension notice to suspend timber harvesting;⁴⁰
- (d) The Secretary of the Department of Environment, Land, Water and Planning (**DELWP**) may enter into an enforceable undertaking with a person, instead of prosecuting a person for a contravention of the Timber Act.⁴¹

30 The Office of the Conservation Regulator (**OCR**), established in response to the

³⁷ The Minister for Agriculture is responsible for the relevant provisions of the Timber Act.

³⁸ Timber Act, ss 19(d) and (f), 20(2)(b).

³⁹ Timber Act, ss 47(a), 49.

⁴⁰ Timber Act, Pt 7 – in particular, ss 70, 71. An 'authorised officer' in the Timber Act is an authorised officer appointed under Pt 9 of the *Conservation, Forests and Lands Act 1987* (Vic).

⁴¹ Timber Act, Pt 8A.

recommendations of the 2018 report of the **Independent Review** of Timber Harvesting Regulation, was said to sit at the centre of the regulatory scheme. VicForests relied on a number of Victorian government documents, including the report of the Independent Review, the response of DELWP to that review, a document entitled 'DELWP Regulatory Framework', and the OCR's compliance and enforcement policy. It submitted that these documents demonstrated that the regulatory scheme was characterised by a 'balanced, risk-based regulatory approach', which uses 'a mix of education, support and deterrence to deliver improved environmental outcomes'.⁴² VicForests argued that the policies and procedures set out in the documents were central to ensuring the efficacy of, and public confidence in, the regulatory system – which would be circumvented by allowing Kinglake FF to conduct a private enforcement action through this proceeding.

31 In response, Kinglake FF disavowed any intention to act as a de facto regulator. It was, it submitted, no more than a litigant seeking orders to enforce obligations that protect the forests of the Central Highlands, in which it has a special interest.

32 Kinglake FF refuted VicForests' argument that there is a comprehensive regulatory scheme for timber harvesting in Victoria. It submitted that the regulatory scheme is in fact rather spartan, and that there is no regulator in the accepted sense of the word. It directed my attention to the following provisions:

- (a) The *Forests Act 1958* (Vic) provides that the 'land manager' for State forests is the Secretary of DELWP.⁴³ Section 18 of the *Forests Act* provides that the land manager shall protect State forests, and have the control and management of State forests;
- (b) Section 83A of the *Timber Act* enables the Secretary to enter into a written undertaking with a person who has allegedly contravened s 45, instead of a

⁴² Consolidated submissions of the defendant dated 11 November 2020 (**Defendant's submissions**), [50].

⁴³ *Forests Act 1958* (Vic), s 3 – definition of 'land manager'.

proceeding for an offence constituted by the contravention; and

(c) Section 70(1) of the Timber Act provides that an authorised officer may give directions as to the conduct of timber harvesting operations in a State forest.

33 Kinglake FF emphasised that the OCR is not established by statute, and is no more than an organisational unit of DELWP. The OCR lacks the independence of a true regulator, given that it – like VicForests – is appointed by and accountable to the Victorian government.

34 Kinglake FF submitted that there was no authority for the proposition that general law standing is excluded where a statute provides for enforcement by the executive. It argued that the statutory enforcement scheme neither conferred standing nor excluded the standing of a person with a special interest in enforcing some aspect of the scheme.

Consideration

35 It is not to the point that the Timber Act contains no standing provision equivalent to s 475 of the EPBC Act. The effect of the authorities discussed above is that the general law gives standing to a private person to enforce a public obligation where the private person has a special interest in securing compliance with that obligation. If Parliament had intended to exclude the general law concerning standing from the regulatory scheme established by the Timber Act, it could have made express provision to that effect. It did not do so, and so the question remains whether Kinglake FF can demonstrate a special interest in the subject matter of this proceeding.

36 Although there is a labyrinthine network of interrelated provisions that regulate timber harvesting operations in State forests,⁴⁴ the regulatory mechanisms provided by the legislation are fairly basic. They do not resemble the sophisticated mix of investigative and enforcement powers with which a modern regulator is usually

⁴⁴ *Brown Mountain*, [89]; see also *Independent Review of Timber Harvesting Regulation: Panel Report to the Secretary of the Department of Environment, Land, Water and Planning*, 24 October 2018, 12, 25.

armed.⁴⁵ In summary:

- (a) The Secretary of DELWP has general responsibility for the protection, control, and management of State forests.⁴⁶
- (b) Timber resources in State forests are the property of the Crown, unless allocated in accordance with the Timber Act. The Minister may make an order allocating timber to VicForests, at which point property in the timber allocated passes to VicForests.⁴⁷
- (c) VicForests may only harvest and sell timber resources in accordance with the Minister's allocation order.⁴⁸ The current allocation order requires VicForests to comply with all relevant laws and codes of practice, including the Code and the Standards.⁴⁹
- (d) VicForests must prepare and publish a timber release plan in respect of an area to which an allocation order applies, and must carry out timber harvesting operations in accordance with the relevant timber release plan. A timber release plan must be consistent with both the allocation order and any relevant code of practice relating to timber harvesting.⁵⁰
- (e) It is an offence under s 45 of the Timber Act to undertake timber harvesting operations other than in accordance with an allocation order and a timber release plan.
- (f) A prosecution for an offence is commenced under the *Criminal Procedure Act 2009* (Vic), by a police officer or a 'public official acting in the performance of

⁴⁵ Compare, for example, *Occupational Health and Safety Act 2004* (Vic), Pts 9, 11; *Environment Protection Act 1970* (Vic), Pt X; *Competition and Consumer Act 2010* (Cth), Pts VI, XID, XII.

⁴⁶ Forests Act, s 18.

⁴⁷ Timber Act, ss 12A, 13, 14(1).

⁴⁸ Timber Act, ss 14–16.

⁴⁹ Allocation (Amendment) Order 2019, published in Government Gazette No. S 153, 24 April 2019, cl 8, substituting cl 10.

⁵⁰ Timber Act, s 37.

his or her duty' signing and filing a charge sheet with the Magistrates' Court.⁵¹ The public officials who may commence a prosecution for an offence under s 45 are not specified in the Timber Act, but presumably include the Secretary and authorised officers.⁵²

- (g) As an alternative to a prosecution of an alleged contravention of s 45, the Secretary may enter into an enforceable undertaking under s 83A of the Timber Act.
- (h) Authorised officers have power to give directions as to the conduct of timber harvesting operations in a State forest.⁵³ The permitted subject matter and scope of these directions is not specified in the Timber Act. A failure to comply with a direction may result in prosecution for an offence, or the suspension of timber harvesting operations by an authorised officer.⁵⁴ A timber harvesting operation may also be suspended by an authorised officer who considers that its continuation would cause imminent damage to the environment or a serious risk to the safety of any person.⁵⁵
- (i) A person undertaking timber harvesting operations in a State forest, including VicForests, must comply with any relevant Code of Practice relating to timber harvesting. The Minister may arrange for an audit of compliance with the Code, and may publish any adverse findings on the internet.⁵⁶

37 The current statutory scheme is similar to, but not the same as, the scheme that was in place at the time *Brown Mountain* was decided in 2010.⁵⁷ VicForests did not submit

⁵¹ *Criminal Procedure Act 2009* (Vic), ss 5, 14.

⁵² In the Criminal Procedure Act, a 'public official' is defined, relevantly, to be a public sector employee, which includes public servants employed under Part 3 of the *Public Administration Act 2004* (Vic). See Criminal Procedure Act, s 3 – definition of 'public official' and Public Administration Act, s 4 – definitions of 'public official', 'public sector employee', and 'employee'.

⁵³ Timber Act, s 70.

⁵⁴ Timber Act, ss 70(2), 71(1)(a).

⁵⁵ Timber Act, s 71(1)(b).

⁵⁶ Timber Act, ss 46–49.

⁵⁷ See, in particular, the amendments made by the *Sustainable Forests (Timber) Amendment Act 2013* (Vic) and the *Sustainable Forests (Timber) and Wildlife Amendment Act 2014* (Vic).

that any legislative amendment since 2010 assisted its argument that the statutory scheme excludes standing for an organisation such as Kinglake FF.⁵⁸

38 The arrangements made by the Victorian government to administer this statutory scheme were the subject of a review in 2018, prompted by a failed prosecution of VicForests for an alleged contravention of the Timber Act. The report of the Independent Review was critical of the existing arrangements, including the fact that there was no single and identifiable regulator within DELWP, which led to ‘inefficiencies, breakdown in communication and poor accountability’.⁵⁹ It recommended that DELWP review the governance and management reporting arrangements for the regulation of native timber harvesting.⁶⁰ DELWP’s response to this recommendation included establishing the OCR, with the intention of bringing together ‘the parts of the department with regulatory responsibilities into a single division that is focused on best-practice regulation’.⁶¹

39 The Independent Review also found that the regulatory framework, tools, and sanctions provided in the existing legislation were not fit for purpose.⁶² This was compounded by the fact that the legislation did not give the regulator guidance as to how to balance the competing values of commercial timber harvesting and forest and biodiversity conservation.⁶³

40 The Independent Review made a number of recommendations to review and modernise the legislation.⁶⁴ These recommendations were accepted by DELWP, but have not yet resulted in any amendments to the Timber Act. The OCR is not established by statute; it appears to be an administrative division of DELWP.⁶⁵

⁵⁸ Transcript, 1 December 2020, 41:13–20.

⁵⁹ Independent Review, 37–38.

⁶⁰ Independent Review, 9, Recommendation 5.

⁶¹ *Response to the Independent Review of Timber Harvesting Regulation*, March 2019, 9.

⁶² Independent Review, 38.

⁶³ Independent Review, 31.

⁶⁴ Independent Review, 10, Recommendations 10, 12, 14.

⁶⁵ In comparison with, for example, the Victorian WorkCover Authority, established under Pt 11 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic), the Environment Protection Authority,

- 41 It is significant that the Independent Review noted the role of environmental non-government organisations, or **ENGOS**, who were likely to have standing to enforce the law. The *Brown Mountain* litigation was discussed, with favourable comment on the role taken by EEG in that case. The Independent Review did not recommend any legislative amendment to prevent ENGOS from bringing proceedings to enforce compliance with the Timber Act. Rather, it remarked that ‘DELWP must therefore cooperate with the ENGOS in its administration and enforcement of the statutory scheme’.⁶⁶ It also observed that ENGOS ‘are increasingly involved in co-regulating timber harvesting in Victoria ... through intelligence monitoring, preparing forest reports and bringing civil litigation’.⁶⁷
- 42 VicForests relied heavily on the establishment of the OCR as the regulator, and on a number of policy and procedure documents published by DELWP and the OCR about their approach to regulation of timber harvesting. While these matters indicate that DELWP has taken some steps to improve its regulatory approach, they give no indication that Parliament intended to exclude a private litigant from seeking remedies to secure compliance with the Timber Act. The statutory scheme is the same now as it was in 2018, when the Independent Review acknowledged with approval the role played by ENGOS as ‘third party regulators’.⁶⁸
- 43 For these reasons, I reject VicForests’ submission that the statutory scheme is inconsistent with Kinglake FF having standing to bring this proceeding. The position now is the same as it was when Osborn J determined the question of standing in *Brown Mountain*. The question remains whether the plaintiff has a special interest in the subject matter of the proceeding, beyond a mere intellectual or emotional concern.

established under the *Environment Protection Act 2017* (Vic), and the Australian Competition and Consumer Commission, established under Pt II of the *Competition and Consumer Act 2010* (Cth).

⁶⁶ Independent Review, 26 – Case Study 4 Third party regulators.

⁶⁷ Ibid.

⁶⁸ Ibid.

A special interest in the subject matter of the proceeding?

44 Kinglake FF submitted that it had a special interest in this subject matter because, viewed in its totality, its evidence in relation to standing establishes that it has ‘a specific involvement in the protection of the forests of the Central Highlands, which goes well beyond a mere intellectual or emotional concern’.⁶⁹ In addition to the matters set out at [6] above, Kinglake FF relied on the vision statement adopted in its rules:

Kinglake Friends of the Forest Inc is a not for profit environmental organisation established for people who want to learn about, discuss and advocate for the preservation of the native forests in Kinglake and the Central Highlands.

It accepted that an organisation’s purposes are not sufficient to establish standing, but submitted that they provide a lens through which its activities should be viewed.⁷⁰

45 It argued that its special interest in preserving the native forests of the Central Highlands was demonstrated by the following activities:⁷¹

- a. organization of multiple public events including wildlife spotlighting nights, public meetings, forest habitat tree surveys, and a banner painting afternoon;
- b. co-hosting and co-organizing events in conjunction with other organisations, including several rallies, a public forest tour, and forest recovery picnic
- c. arranging tours for parliamentarians to promote the cause for protection of Central Highlands state forests from logging;
- d. boosting media coverage of the case for stopping logging of the Central Highlands state forests;
- e. maintenance of a Facebook media presence advocating for the protection of the Central Highlands state forests. In this age of social media, an organisation’s Facebook following is the surest guide to its level of communal support: as at June 2020, the plaintiff had 2,273 Facebook followers;
- f. carrying out five flora and fauna surveys in various logging coupes in Central Highlands state forests;
- g. preparing and lodging seven separate submissions in relation to

⁶⁹ Plaintiff’s consolidated submissions dated 11 November 2020 (**Plaintiff’s submissions**), [17].

⁷⁰ Plaintiff’s submissions, [18]–[19].

⁷¹ Plaintiff’s submissions, [21].

logging in the Central Highlands to government, supervisory bodies, and VicForests;

- h. arranging for an expert report to be prepared by a Canadian academic assessing the fire hazards in a Central Highlands logging coupe;
- i. researching, preparing and lodging 18 breach reports in relation to VicForests' logging activities in the Central Highlands, with the Department of Land, Water and Planning ("DELWP");
- j. receipt of two grants from the Field Naturalists Club of Victoria to support the plaintiff's Greater Glider detection activities;
- k. presentation of a petition signed by 633 petitioners to the Victorian Legislative Council seeking cessation of logging in the Central Highlands state forests by July 2020;
- l. receipt of a letter of support from Murrindindi Shire Council, in recognition of the plaintiff's work advocating for protection of the Greater Glider population; and
- m. conduct of court proceedings (S ECI 2020 04058) against VicForests on 26 October 2020, alleging overharvesting of bushfire moderation zones in various locations in the Central Highlands state forests.

46 Kinglake FF contrasted these activities with the facts of *ACF* and *Maguire*. It said that in neither case were the matters relied on to establish standing as wide-ranging or persistent as its own efforts to protect native forests in the Central Highlands.

47 VicForests submitted that the evidence relied on by Kinglake FF did not:⁷²

... establish a sufficient interest to play an ongoing regulatory role in VicForests' conduct across the Central Highlands. Nor does it establish that the plaintiff has a stake in the regulatory scheme sufficient to give rise to a "special interest" in enforcement of that scheme.

48 VicForests sought to distinguish Kinglake FF's activities from cases such as *Brown Mountain*. It emphasised that Kinglake FF's expertise or input had not been used by government to inform the design or operation of the regulatory scheme, it was not recognised by government as representative of any environmental interest, and was not a peak environmental organisation in the Central Highlands region. The mere fact that Kinglake FF had commenced another proceeding against VicForests in this Court could not assist it to establish standing, given that standing is contested in both

⁷² Defendant's submissions, [60].

proceedings. In addition, VicForests submitted that there was no evidence that Kinglake FF has 'specialist expertise of a kind that would enable it to make the complex evaluative judgments which are required to enforce the regulatory scheme'.⁷³

49 VicForests' summons and the evidence filed in support of it raised an alternative contention that, if Kinglake FF did have standing, its standing did not extend beyond the Kinglake area. It relied on an affidavit of Erin Condello dated 22 October 2020 that exhibited maps showing the location of Kinglake, including Kinglake West and the Kinglake National Park, relative to the greater Central Highlands region. Ms Condello's affidavit also contained what I took to be a submission that the evidence demonstrated that Kinglake FF's activities were limited to the Kinglake area.

50 This submission was pressed only faintly in VicForests' written submissions, and did not feature at all in oral submissions. Kinglake FF's response was that the submission was factually incorrect. It directed my attention to evidence of its activities in relation to the entire Central Highlands region, which were plotted onto a map.⁷⁴ It reiterated that its purpose was to advocate for the preservation of the native forests in both Kinglake and the Central Highlands.

Consideration

51 At this point, it is necessary to identify the subject matter of the proceeding. VicForests did not directly address this question, although its oral submissions suggested it considered the proceeding to be about the enforcement of the rules about screening and nett harvestable area.⁷⁵ Kinglake FF's position was that the subject matter of its case is restricting logging activity in order to protect State forest in the Central Highlands.

52 Unlike *ACF*, this is not a judicial review proceeding, in which the plaintiff challenges the validity of an administrative decision. Rather, Kinglake FF seeks equitable

⁷³ Defendant's submissions, [61]–[67].

⁷⁴ **Fifth affidavit of Susan Mary McKinnon** dated 9 November 2020, [11]–[12], exhibit SMM-103.

⁷⁵ Transcript, 1 December 2020, 30:8–31:3.

remedies to restrain VicForests from harvesting timber that Kinglake FF contends VicForests is not lawfully entitled to harvest. The subject matter of the proceeding is the trees in State forests in the Central Highlands region of Victoria that VicForests proposes to cut down, remove, and sell, and which Kinglake FF seeks to protect.

53 Having identified the disputed trees as the subject matter of the proceeding, it becomes apparent that this is a case in which standing turns on the practical or legal effect of the relevant exercise of power – namely, VicForests’ harvesting of timber in the Central Highlands allocated to it under s 13 of the Timber Act – rather than on some form of recognition of Kinglake FF as a participant in the regulatory scheme.

54 I am satisfied on the totality of the evidence that Kinglake FF has a special interest in the preservation of the native forests of Kinglake and the Central Highlands, beyond a mere intellectual or emotional concern, and that its interest is greater than that of the general public. Both before and since its incorporation in 2019, it has demonstrated its interest in protecting those State forests through a wide range of activities in and about the forests. I place particular weight on the wildlife spotting nights and forest surveys conducted by Kinglake FF, and the events it has organised for its members and other interested people in the forests. It is significant that Kinglake FF has directed considerable effort towards community engagement and education about its ‘mission’ of preserving the State forests of the Central Highlands. It has notified the OCR of a large number of instances of alleged overharvesting by VicForests throughout the Central Highlands.

55 Kinglake FF’s interest in forest preservation intersects directly with the subject matter of the proceeding. Its interest will be diminished if VicForests harvests more trees than it is entitled to – put simply, there will be less forest remaining for Kinglake FF to preserve and conduct its activities in. Conversely, its interest will be enhanced by securing VicForests’ compliance with the allocation order.

56 As was the case in *WOTCH No 6*, there are some features that were critical to the

standing of other plaintiffs in other cases that are not present here. Kinglake FF is not a peak environmental organisation, it was not involved in the development of the Code, the Standards, or the relevant timber release place, it has received little government recognition of its advocacy, and has no government funding. However, none of these is an essential feature of the special interest test, which is flexible and depends on the subject matter of the litigation.

57 VicForests placed a good deal of emphasis on the fact that Kinglake FF had played no role in designing the regulatory scheme and was not a recognised participant in it. I cannot accept that the standing of a community organisation depends on it having been favoured with government recognition or approval. That is only one of many relevant factors, and one which is less significant to the subject matter of this proceeding. I also note that the Independent Review observed that ENGOs were involved in co-regulating timber harvesting in Victoria, and made no recommendation to restrict that involvement.⁷⁶

58 I disregarded the second proceeding commenced by Kinglake FF in this Court,⁷⁷ in which it seeks remedies in relation to alleged overharvesting of bushfire moderation zones in various locations in Central Highlands State forests. VicForests contests standing in that proceeding, and the question remains to be determined. I accepted VicForests' submission that Kinglake FF's standing in this proceeding is not assisted by its commencement of the second proceeding.

59 Contrary to VicForests' submission, Kinglake FF's standing is not conditional on it demonstrating some specialist expertise in the regulation of timber harvesting. VicForests did not explain why a 'complex evaluative judgment' was required to contest the extent to which VicForests is entitled to harvest timber in the Central Highlands. Its submission also overlooked the fact that, early in this proceeding,

⁷⁶ Independent Review, 26, discussed at [41] above.

⁷⁷ S ECI 2020 04058. The trial of the proceeding was heard by Ginnane J on 8-11 February 2021, and judgment is reserved.

Kinglake FF established a serious question to be tried that VicForests proposes to harvest timber beyond its entitlement under the Timber Act.⁷⁸ In any event, the numerous breach reports and submissions made by Kinglake FF provide a solid basis for concluding that it has a good understanding of the regulatory scheme.

60 The evidence established Kinglake FF's standing throughout the Central Highlands region. The geographical extent of its activities was clear from the map exhibited to Ms McKinnon's affidavit of 9 November 2020.⁷⁹

Disposition

61 Paragraph 1 of VicForests' summons filed 27 October 2020, in which it sought summary dismissal of the proceeding, will be dismissed.

62 In relation to paragraph 2 of VicForests' summons, I will make orders that:

- (a) under r 47.04(a) of the Rules, the question whether the plaintiff has standing to bring the proceeding is to be determined before trial; and
- (b) the question of standing is determined in favour of the plaintiff.

63 As discussed during the hearing on 1 December 2020, I will also give directions for VicForests to file and serve a defence to the further amended statement of claim, and for Kinglake FF to file and serve any reply, after which I will list the matter for further directions. If necessary, I will hear the parties then on the question of the costs of Kinglake FF's summons filed 6 October 2020 and VicForests' summons filed 27 October 2020.

⁷⁸ *Kinglake No 1*, [8]-[35]; *Kinglake No 2*, [11], [13], [26]-[29].

⁷⁹ Fifth affidavit of Susan Mary McKinnon, [11]-[12], exhibit SMM-103.

CERTIFICATE

I certify that this and the 27 preceding pages are a true copy of the reasons for ruling of Justice Richards of the Supreme Court of Victoria delivered on 23 February 2021.

DATED this twenty-third day of February 2021.



Madeira Baker

Associate