



Goongerah Environment Centre

C/O Friends of the Earth

PO Box 222, Fitzroy

To: The Honourable Lily D'Ambrosio Minister
for the Environment and climate change

By email: November 10th, 2017

Cc: Forest.Reports@delwp.vic.gov.au, [REDACTED],
[REDACTED]

Re: Unlawful logging in the Boarfish coupe, Mt Jersey East Gippsland

Dear Minister D'Ambrosio,

We write to draw your attention to current logging operations in the Goongerah forest block in East Gippsland. Coupe 891-512-0004 "Boarfish" is actively being logged as of late last week. This coupe contains a number of very significant conservation values including high numbers of large old hollow bearing trees and habitat for a number of rare, threatened and endangered species.

A direction to halt logging in this coupe (under section 70 of the Sustainable Forests and Timber Act) was issued by DELWP 12 months ago, in November 2016.

The direction was issued after concerns were raised by our organisation that the absence of a survey for the Flora and Fauna Guarantee Act listed Large Brown Tree-frog was in breach of VicForests obligations to apply the precautionary principle (as required by 2.2.2.2 and 2.2.2.3 of the Code of Practice).

Our organisation also reported a high density of Yellow Bellied Gliders that triggers the requirement for a 100-hectare special protection zone.

DELWP wrote to our organisations last month to inform us that the direction to suspend logging operations has now been lifted. VicForests surveys did not detect Large Brown Tree-frogs in the coupe and do not conduct any surveys during the species winter calling season. While DELWP verification surveys found 4-5 Yellow Bellied Gliders in the coupe they failed to find the required number (6) of Yellow Bellied Gliders that would trigger one of the protection measures under the regulatory framework.

Since logging was temporarily halted in this coupe by DELWP, the Greater Glider has been listed as vulnerable to extinction under the Flora and Fauna Guarantee Act. Greater Gliders have been recorded several times in the Boarfish coupe, they were noted and reported to DELWP in the survey reports submitted by our organisation that documented a high density of Yellow Bellied Gliders. Greater Gliders were also detected by DELWP consultants who conducted verification surveys in the coupe.

In total there are three locations in the coupe where Greater Gliders have been observed, either by DELWP commissioned surveys or GECO surveys.

Greater Gliders detected at this location constitute a "*substantial population located in isolated or unusual habitat*" including because of the paucity of records of Greater Gliders obtained following the large fires of 2014. That fire left an area of largely unburnt forest in the area where the "Boarfish" coupe is located. Further, no follow up targeted surveys for the Greater Glider or the

density of this species have been undertaken within this and the nearby coupe despite the species being detected incidentally during surveys for other nocturnal fauna.

The requirement to protect this population of Greater Gliders is found within Table 4. on page 43 of the *Planning Standards for Timber Harvesting in Victoria's State Forests 2014 (the Planning Standards)* and requires that a 100 ha Special Protection Zone be established to protect this population.

Greater Gliders have also been detected, or are likely to be present in the follow coupes in this area that are within the largely unburnt area where the Boarfish coupe is located, 891-513-0016, 891-513-0009, 891-514-0009, 891-514-0011, 891-509-0008, 891-507-0006, 891-509-0003.

Targeted surveys for Greater Gliders in the above listed coupes, post the 2014 fires and the Greater Glider listing on the FFG Act, have not been undertaken and are required in order to satisfy obligations to comply with the precautionary principle and any zoning amendments that may need to be implemented to protect Greater Glider populations occurring in isolated or unusual habitat.

The Greater Glider is now listed on the Flora and Fauna Guarantee Act and new protections are currently being developed by DELWP through an Action Statement, we have serious concerns that logging in the Boarfish coupe is currently occurring unlawfully in breach of section 2.2.2.2 of the Code of Practice that requires VicForests to apply the precautionary principle, and section 2.2.2.3, that requires the consideration of relevant experts and research when planning and conducting timber harvesting operations.

Failure to apply the Precautionary Principle in breach of 2.2.2.2 of the Code.

The forest in coupe 891-512-0004 is good quality habitat for a number of protected species such as the Long-footed Potoroo, Greater Glider, Yellow Bellied Glider, Orbost Spiny Crayfish, Sooty and Powerful Owl.

Logging in coupe 891-512-0004 would breach VicForests legal obligations to comply with the precautionary principle and sections 2.2.2.2 and 2.2.2.3 of the Code of Practice for Timber Production.

"2.2.2.2

*The **precautionary principle** must be applied to the conservation of biodiversity values. The application of the precautionary principle will be consistent with relevant monitoring and research that has improved the understanding of the effects of forest management on forest ecology and conservation values. ...*

2.2.2.3

The advice of relevant experts and relevant research in conservation biology and flora and fauna management must be considered when planning and conducting timber harvesting operations.

The *Code of Practice for Timber Production 2014* defines the precautionary principle as:

“precautionary principle’ means when contemplating decisions that will affect the environment, careful evaluation of management options be undertaken to wherever practical avoid serious or irreversible damage to the environment; and to properly assess the risk-weighted consequences of various options. When dealing with threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”

As DELWP are responsible for enforcing VicForests compliance with the Code of Practice, as stated in 1.2.6 below, action must be taken immediately to prevent the breaches of the Code detailed above from occurring.

“1.2.6 Compliance on State forest

*The Code is a prescribed legislative instrument made and enforced under relevant law listed in the Conservation, Forests and Lands Act 1987. For the purposes of each relevant law the **Secretary** is an **authorised officer** and is therefore responsible for ensuring compliance with the Code on State forest. Compliance is also monitored by other authorised officers appointed by the Secretary pursuant to the Conservation, Forests and Lands Act 1987.”*

Please see the itemised list of facts below detailing the circumstances surrounding this operation and its non compliance with the *Code of Practice for Timber Production in Victoria’s state forests, 2014*.

1. On November 7th, 2017 Goongerah Environment Centre submitted a report to the Department of Environment Land Water and Planning detailing the presence of arboreal mammals, including one Greater Glider at location 646270 / 5868528, inside VicForests coupe “Boarfish” 891-512-0004
2. On January 25th, 2017 Wildlife Unlimited conducted a Yellow Bellied Glider verification survey of the Boarfish coupe, the survey was commissioned by DELWP and two Greater Gliders were recorded at locations 646374 /5868650 and 646219 / 5868084
3. On April 26th, 2017 VicForests produced a survey report for Large Brown Tree Frog survey conducted in the ‘Boarfish’ coupe. This document stated ‘VicForests recognises that the Code contains an obligation to adhere to the *Precautionary Principle*’ (Page 5) and that an ‘action statement is required to be produced in a precautionary manner’ (Page 5)
4. On 08 June 2017 in General Government Gazette “GG2017G023” Lily D’Ambrosio, Minister for Energy, Environment and Climate Change, and Jaala Pulford, Minister for Agriculture “ decided to recommend to the Governor in Council that the [Greater Glider] be added to the Threatened List for the reasons that [the Greater Glider] ... is in a demonstrable state of decline which is likely to result in extinction [the Greater Glider] is significantly prone to future threats which are likely to result in extinction [and] the threat is currently operating and is expected to operate at a level in the future which is likely to result in the extinction of the taxon.”

5. On 14 June 2017 the Greater Glider was added to the “Threatened List” under the Flora and Fauna Guarantee Act, and notice was given of this on 15 June 2017 in the Victorian Government Gazette no. G24

Applicable law:

6. Section 46 of the SFT Act requires VicForests to comply with the Code.
7. 2.2.2.2 of the Code requires VicForests to comply with the precautionary principle. 2.2.2.3 of the Code requires VicForests to consider the advice of relevant experts and relevant research in conservation biology and flora and fauna management when planning and conducting timber harvesting operations. VicForests must also comply with relevant biodiversity conservation measures specified in the *Management Standards and Procedures for timber harvesting operations in Victoria’s State Forests 2014* (the **Management Standards**) and the *Planning Standards for Timber Harvesting in Victoria’s State Forests 2014* (the **Planning Standards**), per 2.2.2.1 of the Code.
8. Logging at the Boarfish Coupe is contrary to the precautionary principle and is being undertaken without consideration of the advice of relevant experts and research into the Greater Glider and its management, contrary to 2.2.2.2 and 2.2.2.3 of the Code.
9. DELWP is responsible for enforcing compliance with the Code. DELWP is also responsible for maintaining the Forest Management Zone scheme and preparing Action Statements for species listed under the FFG Act.
10. The precautionary principle requires that VicForests:
 - (a) wherever practical avoid serious or irreversible damage to the environment, per p15 of the Code;
 - (b) when dealing with threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation, per p15 of the Code;
 - (c) apply proportionate and appropriate management in response to a threat of serious or irreversible environmental harm and scientific uncertainty, per *Environment East Gippsland Inc v VicForests* (2010) 30 VR 1 (**Brown Mountain**).
11. Logging at the Boarfish coupe poses a serious or irreversible threat to Greater Gliders, including a high likelihood of Greater Glider deaths and a serious possibility of localised extinction. This threat is accompanied by scientific uncertainty, including satisfying the pre-conditions for application of the precautionary principle as stipulated at [183], [187], [194] and [212] in *Brown Mountain*.
12. Relevant scientific information and advice includes that: (a) the species is “scarce or absent in recently logged forests”, see [648]; (b) there is a likelihood and a degree of scientific uncertainty as to the presence, density and location of Greater Gliders in the Boarfish coupe; (c) on 14 June 2017, the Greater Glider was included in the threatened list under s10 of FFG Act; (d) the final recommendation on a nomination for listing the Greater Glider prepared by the Flora and Fauna Scientific Advisory Committee under s15 of the FFG Act:

- i. states that *“the [Greater Glider] is in a demonstrable state of decline likely to result in extinction”* and *“the threat is currently operating and is expected to operate at a level in the future which is likely to result in extinction”*;
 - ii. identifies timber harvesting as one such threat operating on the species, including that *“Timber harvesting in greater glider habitat has been proven to cause declines and/or local extinctions of greater glider populations .. the species does not cope well with habitat change .. Although all animals may not die from the initial impact they will die shortly afterwards. This is due to life history traits: affinity with home range, small home ranges, attachment to hollow bearing trees they use for denning and their specialist diet .. In Victoria timber harvesting is widespread in the eastern and central parts of state. This is also the main distribution and habitat of the greater glider. Considering the known impacts of timber harvesting on gliders .. it is likely that other local extinctions of this species have already occurred and will continue to occur in the future”*, p3.
13. There is a likelihood coupled with a degree of scientific uncertainty that the Greater Glider Action Statement currently in preparation, but not yet complete, will require that the coupe, or parts thereof, be included in a Special Protection Zone (**SPZ**) to protect the Greater Gliders already detected and any new detections in further field surveys.



Photo: Hollow bearing tree felled during logging operations in the Boarfish coupe in November 2016, potential habitat for Greater Glider

Orbost Spiny Crayfish zoning amendment and surveys required for Boarfish coupe

Analysis of the Victorian Biodiversity Atlas (VBA_Fauna_25_EG) has revealed an Orbost Spiny Crayfish record within 1km of the Boarfish coupe. The presence of an Orbost Spiny Crayfish in the location displayed on the map in figure 1 indicates that Orbost Spiny Crayfish are likely to be present in the stream that borders the Boarfish coupe.

VicForests has not conducted surveys for Orbost Spiny Crayfish in the stream bordering the Boarfish coupe. This is a breach of their obligations under the Code of Practice to identify protected species prior to logging (s2.2.2.1) and apply the precautionary principle (s2.2.2.2 and s2.2.2.3).

DELWP should immediately direct VicForests to stop logging in the Boarfish coupe and carry out Orbost Spiny Crayfish surveys in the stream bordering the coupe so that required zoning amendments can be implemented.

Crayfish habitat in the stream bordering the Boarfish coupe, within the required protection zone for the Orbost Spiny Crayfish record displayed on the map in figure 1 (100m buffer extending 1km upstream and downstream from the detection site) is currently not zoned as a Special Protection Zone and logging is likely to have occurred within 1km of the stream that requires a 100m buffer.

In November 2016, VicForests commenced logging in the Panama coupe (891-513-0010) where they had breache section 2.2.2.1 of the Code by failing to identify Orbost Spiny Crayfish. We note that this case is under current investigation by DELWP and we expect DELWP to prosecute VicForests for this breach.

In order to avoid VicForests further non compliance with section 2.2.2.1 of the Code in the Boarfish coupe, a direction must be issued by DELWP to stop logging so that surveys for Orbost Spiny Crayfish can be conducted in the stream bordering the Boarfish coupe and required zoning amendments implemented. See the attached correspondence, sent to DELWP earlier today, from GECO surveyors Owen Hanson and Joe Henderson providing further details about the threat to Orbost Spiny Crayfish and required actions from DELWP.

We formally request urgent updates and information in a timely manner on the the following issues listed below:

- Please inform our organisation what actions DELWP will take to ensure VicForests logging operations in the Boarfish coupe will not commit any further breaches to the Code of Practice, such as those outlined above.
- Specifically inform our organistaion what actions DELWP will take to ensure a precautionary principle is applied in relation to the protection of Greater Gliders within the Boarfish coupe
- Inform our organisations what actions will be taken to ensure that VicForests obligations relating to the protection of the Orbost Spiny Crayfish have been adhered to (implementation of required buffers and zoning amendments and application of the precautionary principle by conducting Orbost spiny crayfish surveys in the stream bordering the coupe)
- Provide an update on the progress of Department's proposed interim protection measures for Greater Gliders that were supposed to provide precautionary protection for the species whilst an action statement is finalised.

Regards,
Ed Hill - **Goongerah Environment Centre (GECO)**



Photo: (above and below) Forest within the Boarfish coupe, prior to the commencement of logging



Figure 1:

Vicforest logging coupe 891-512-0004 - Mt Jersey Rd

Presence of Orbost Spiny Crayfish within 1km (550m) of logging coupe, and within 1km (800m) down stream from logging coupe.

