

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

WARBURTON ENVIRONMENT INC. (ABN 28 781 873 830)

Plaintiff

- and -

VICFORESTS

Defendant

ORDER

JUDGE: The Honourable Justice Garde

DATE MADE: 1 September 2021

ORIGINATING PROCESS: Writ filed 5 June 2020

HOW OBTAINED: Defendant's summons filed 2 August 2021

ATTENDANCE: Mr J Korman of counsel for the plaintiff

Mr E Nekvapil with Ms M Narayan of counsel for the defendant

OTHER MATTERS: This order is signed by a Judge pursuant to r 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)* ('Rules').

THE COURT ORDERS THAT:

1. Pursuant to r 42.04(1) of the Rules, the subpoenas issued by the plaintiff to:

- (a) Fenning Investments Pty Ltd;
- (b) Paper Australia Pty Ltd;
- (c) Ryan & McNulty Pty Ltd;
- (d) Australian Sustainable Hardwoods Pty Ltd;
- (e) Dormit Pty Ltd; and
- (f) Midway Ltd,

are set aside.



2. Pursuant to r 42.04(1) of the Rules, paragraph 1 of the subpoena issued by the plaintiff to Meyer Log Cartage Pty Ltd is struck out.
3. Pursuant to r 42.04(1) of the Rules, the subpoenas issued by the plaintiff to:
 - (a) D M Harvesting Pty Ltd;
 - (b) Holloway Glen Pty Ltd;
 - (c) JD Logging Pty Ltd;
 - (d) Moran Logging Pty Ltd;
 - (e) Robin Logging Pty Ltd; and
 - (f) Meyer Log Cartage Pty Ltd,

need only be complied with insofar as they require the production of documents in the categories listed in the schedule to this order.

4. The Court will destroy, or return to the relevant addressee of a subpoena, any documents produced by the addressees of the subpoenas listed in paragraph 1 as soon as practicable.
5. As soon as practicable:
 - (a) the defendant is to provide a copy of this order to the addressees of the subpoenas referred to in paragraphs 1 to 3; and
 - (b) the defendant's solicitors are to notify the plaintiff's solicitors of the date upon which each addressee of a subpoena listed in paragraph 3 was provided with a copy of this order.
6. Within 21 days of the defendant's solicitors providing such notification in relation to all the subpoenas listed in paragraph 3, the defendant is to access the documents produced by the addressees of the subpoenas listed in paragraph 3, and is to:
 - (a) obtain electronic copies of, or uplift and scan, all documents produced in response to any subpoenas listed in paragraph 3, where such production of documents was made prior to the addressee of the subpoena receiving a copy of this order;
 - (b) redact any part of those documents which does not relate to the categories listed in the schedule to this order or is irrelevant due to paragraph 2 of this order; and
 - (c) produce the redacted documents, and those not requiring redaction, to the plaintiff's solicitors.
7. Subject to further order, the plaintiff or the plaintiff's solicitors must not uplift or access an unredacted copy of any document redacted under paragraph 6 of this order.
8. The summons filed 2 August 2021 is otherwise dismissed.



9. Costs reserved.

DATE AUTHENTICATED: 1 September 2021



The Honourable Justice Garde



SCHEDULE

In this schedule:

‘**Code**’ means the Code of Practice for Timber Production 2014.

‘**Management Standards**’ means the Management Standards and Procedures for timber harvesting operations in Victoria’s State forests 2014.

‘**Precautionary Principle**’ means the Precautionary Principle as defined in the Glossary to the Code.

‘**VicForests**’ means the defendant.

1. Documents including internal emails, communications, memos, reports, coupe diaries, text messages and all other documents, recording or evidencing the actions taken by the addressee of the subpoena or VicForests in relation to the coupes listed in the subpoena to:
 - (a) protect mature individual Tree Geebungs from disturbance where possible as outlined in Appendix 3 Table 14 of the Management Standards;
 - (b) retain and protect Tree Geebungs to provide for, among other things, the continuity and replacement of existing vegetation types within each coupe pursuant to clause 2.2.2.10 of the Code; and
 - (c) apply the Precautionary Principle, pursuant to clause 2.2.2.2 of the Code, in respect of the conservation of Tree Geebungs.
2. Documents including internal emails, communications, memos, reports, coupe diaries, text messages and other documents recording or evidencing disturbance or destruction of mature individual Tree Geebung in the coupes listed in the subpoena.

