

# Destruction of Tree Geebungs Breach Report

Tanjil State Forest  
Central Highlands Immediate Protection Areas  
VicForests logging coupe 459-503-0003 'Saxtons Bend'



Report on the destruction of Tree Geebungs in VicForests coupe 459-503-0003 'Saxtons Bend', Tanjil State Forest, during regeneration works in 2023, and how these operations breach the *Code of Practice for Timber Production*.

## Abstract

VFA surveyors conducted ground and aerial assessments of VicForests coupe 459-503-0003 'Saxtons Bend' on 21 May 2023. The coupe had recently been subject to intensive timber harvesting operations, involving clearfelling of large patches of forest, leaving behind large piles of logging slash, presumably to be burnt. Coupe 459-503-0003 is within the Government announced Immediate Protection Areas (IPAs), and the operation was part of an attempt to regenerate this forest.

Surveyors found the operation to be a complete decimation of regenerating flora, including the destruction of regenerating eucalypts, tree ferns, and endangered Tree Geebungs (*Persoonia arborea*). One Tree Geebung was particularly large and ancient and must have been protected during the initial logging operation. The tree has been destroyed by logging machinery and left atop a pile of logging slash.

This report details how this destruction of Tree Geebungs in VicForests 'Saxtons Bend' coupe is a breach of the *Code of Practice for Timber Production* under cl 2.2.2.2, cl 2.2.2.4, cl 2.2.2.10, and sections 4.2.1.1 and 4.2.1.3 of the *Management Standards and Procedures*.

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**Date of Investigation:** 21/05/2023

**Authors:** Blake Nisbet, Phil Marshall

**Date of Report:** 16/06/2023

## Introduction

This investigation took place within VicForests logging coupe 459-503-0003 ‘Saxtons Bend’ (highlighted in yellow in Figure 1 below), which is located on Saxtons Road just north of the Tanjil Bren township. There were no Timber Harvesting Safety Zone (THSZ) signs present in the field, and no machinery present in the coupe, however timber harvesting operations had very recently occurred in the coupe.

As seen in Figure 2, coupe 459-503-0003 is within the Central Highlands ‘Immediate Protection Areas (IPAs)’ announced by the Victorian Government in 2019. The announcement stated that the IPAs will protect 146,000 hectares of forest which will help to protect the future of threatened species.<sup>1</sup> This coupe was initially logged between 2013–2015, and subsequently burnt in 2016 (see Figure 14).

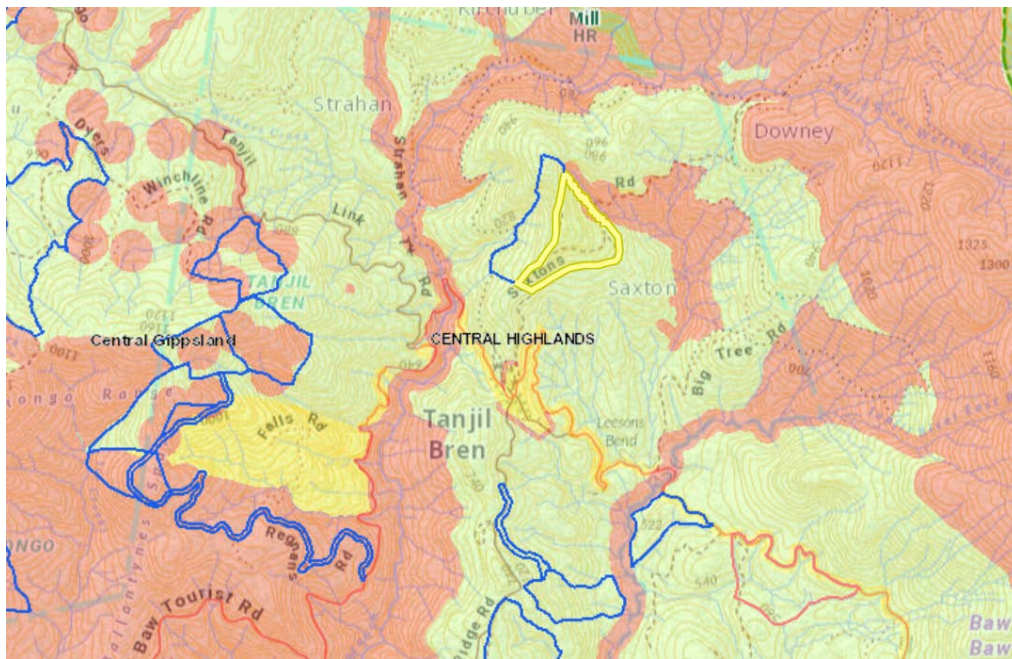


Figure 1: Investigation location (highlighted in yellow) along Saxtons Road, Tanjil Bren<sup>2</sup>

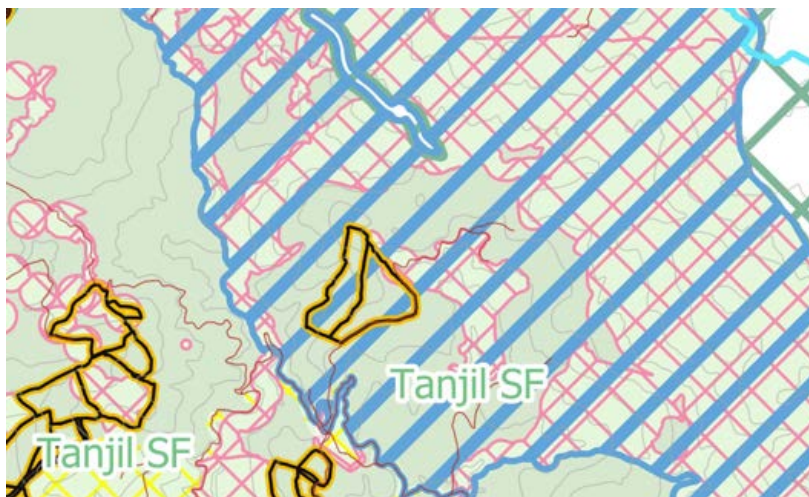


Figure 2: Investigation location in relation to the government-announced IPAs (seen in blue hatching)

<sup>1</sup> DEECA Webpage on IPAs. < [Immediate Protection Areas \(deeca.vic.gov.au\)](https://www.deeca.vic.gov.au/Immediate-Protection-Areas) >

<sup>2</sup> DEECA Forest Information Portal. < [Forest Information Portal \(ffm.vic.gov.au\)](https://www.ffm.vic.gov.au/) >

## Methods

VFA surveyors undertook a field assessment of coupe 459-503-0003 on 21 May 2023. Surveyors walked through the areas subject to recent clearfelling in the coupe and obtained overhead photographic and video evidence using a drone.

During the on-ground assessment, many endangered Tree Geebungs were observed as damaged or destroyed from the recent logging operations. Waypoints were marked at each Tree Geebung. Some waypoints were manually named, and others used the GPS unit's default naming. Photographs were taken for nearly all examples of destroyed Tree Geebungs encountered on the ground, and videos were taken for some. Photo and video evidence is attached to this report.

The first observation of destroyed Tree Geebung was marked with a waypoint named 'SAX01PAD' and photographic and video evidence was taken for this plant. Many photos and videos were taken of a large, old-growth Tree Geebung which has been destroyed by the logging, which was marked with a waypoint name 'SAX02PAD'. Surveyors were not carrying measuring tape at the time, but the diameter at breast height over bark (DBHOB) was estimated for this ancient tree, using a Garmin GPS 66i for size comparison, which is 16.3cm long. A photograph was taken showing the trunk at breast height with the GPS for size comparison. Photos and videos were also taken of this destroyed, ancient Tree Geebung from above, using a drone.

Only a small section of the overall logged area was traversed on the ground, and it is likely that additional Tree Geebungs were destroyed in the recent logging operations at coupe 459-503-0003 in addition to those documented in this report.

## Results

### Images of destroyed Tree Geebungs



*Figure 3: Destroyed ancient Tree Geebung 'SAX02PAD' sitting atop a pile of logging slash in coupe 459-503-0003, within the government-announced IPAs.*



*Figure 4: Destroyed ancient Tree Geebung 'SAX02PAD'; trunk damage from logging machinery.*



*Figure 5: Destroyed ancient Tree Geebung 'SAX02PAD'; further trunk damage from logging machinery.*



*Figure 6: Destroyed ancient Tree Geebung 'SAX02PAD'; trunk DBHOB estimated to be between 20–30cm (GPS length is 16.3cm for comparison).*



*Figure 7: Destroyed ancient Tree Geebung 'SAX02PAD'; foliage photograph confirming the species identification of Persoonia arborea.*



*Figure 8: Destroyed ancient Tree Geebung 'SAX02PAD'; drone photograph showing the pile of logging slash in the foreground, with destroyed mature *Persoonia arborea* sitting atop the back end of the slash pile.*



*Figure 9: Destroyed ancient Tree Geebung 'SAX02PAD'; drone photograph showing the pile of logging slash in the foreground, with destroyed mature *Persoonia arborea* sitting atop the slash pile on the left end of the image.*



*Figure 10: Another example of destroyed Tree Geebung in VicForests coupe 459-503-0003, marked with waypoint 'SAX01PAD'; Persoonia arborea plant uprooted from timber harvesting operations.*



*Figure 11: Additional photograph of destroyed Tree Geebung 'SAX01PAD'; Persoonia arborea plant uprooted from timber harvesting operations.*



*Figure 12: Another example of destroyed Tree Geebung in VicForests coupe 459-503-0003, marked with a waypoint (but not named); Persoonia arborea branches sitting among a recently clearfelled area.*



*Figure 13: Another example of destroyed Tree Geebung in VicForests coupe 459-503-0003, marked with a waypoint (but not named); Persoonia arborea plant sitting in a big pile of logging slash.*



### DDBHOH for destroyed Tree Geebung at ‘SAX02PAD’

A DBHOH estimate was taken for the destroyed Tree Geebung at waypoint ‘SAX02PAD’, due to the tree exhibiting a girthy trunk characteristic of an old-growth *Persoonia arborea*. The trunk of this tree, shown in Figures 4 to 9 above, is buried in a large pile of logging slash, and so it was not possible to accurately determine where the breast height of the trunk would have been prior to the tree’s destruction. Thus, a conservative approach was taken to measure 1.3m from the lowest visible portion of the trunk among the slash, resulting in an estimated DBHOH of between 20 to 30cm.

This conservative estimation was almost certainly taken higher than 1.3m from the base of the tree, meaning it was also an underestimate of the true DBHOH for this tree prior to disturbance from logging. It is clear from Figure 6 that the trunk exceeds a diameter of 16.3cm when comparing the trunk with the size of the GPS.

### Destruction of Tree Geebungs by VicForests

Surveyors found the operation to be a complete decimation of regenerating flora, including the destruction of regenerating eucalypts, tree ferns, and endangered Tree Geebungs.

Many Tree Geebungs have been uprooted by logging machinery during the timber harvesting operations in coupe 459-503-0003. The destroyed Tree Geebung at waypoint ‘SAX01PAD’, for example, can be seen uprooted in Figure 10 and Figure 11 of this report. The ancient, destroyed Tree Geebung at waypoint ‘SAX02PAD’ has visible damage from logging machinery up the trunk, as seen in Figures 3 to 5. This Tree Geebung has either been directly felled or pushed over by logging machinery and has been placed by machinery on top of a pile of logging slash. The green foliage on destroyed Tree Geebungs at both ‘SAX01PAD’, and ‘SAX02PAD’, best seen in Figures 7 to 11, show that these operations and subsequent destruction had occurred very recently.

VicForests confirmed in an email to Friends of the Earth Melbourne on 12 April 2023 that:

*VicForests is undertaking mechanical site preparation and planting in some areas of Coupe 459-503-0003 which have not regenerated, at this stage, to standards required by the Code of Practice for Timber Production.*

This email and the THSZ notice are provided in the evidence package linked in the next section.

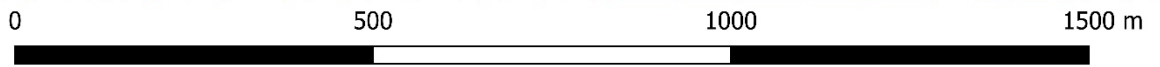
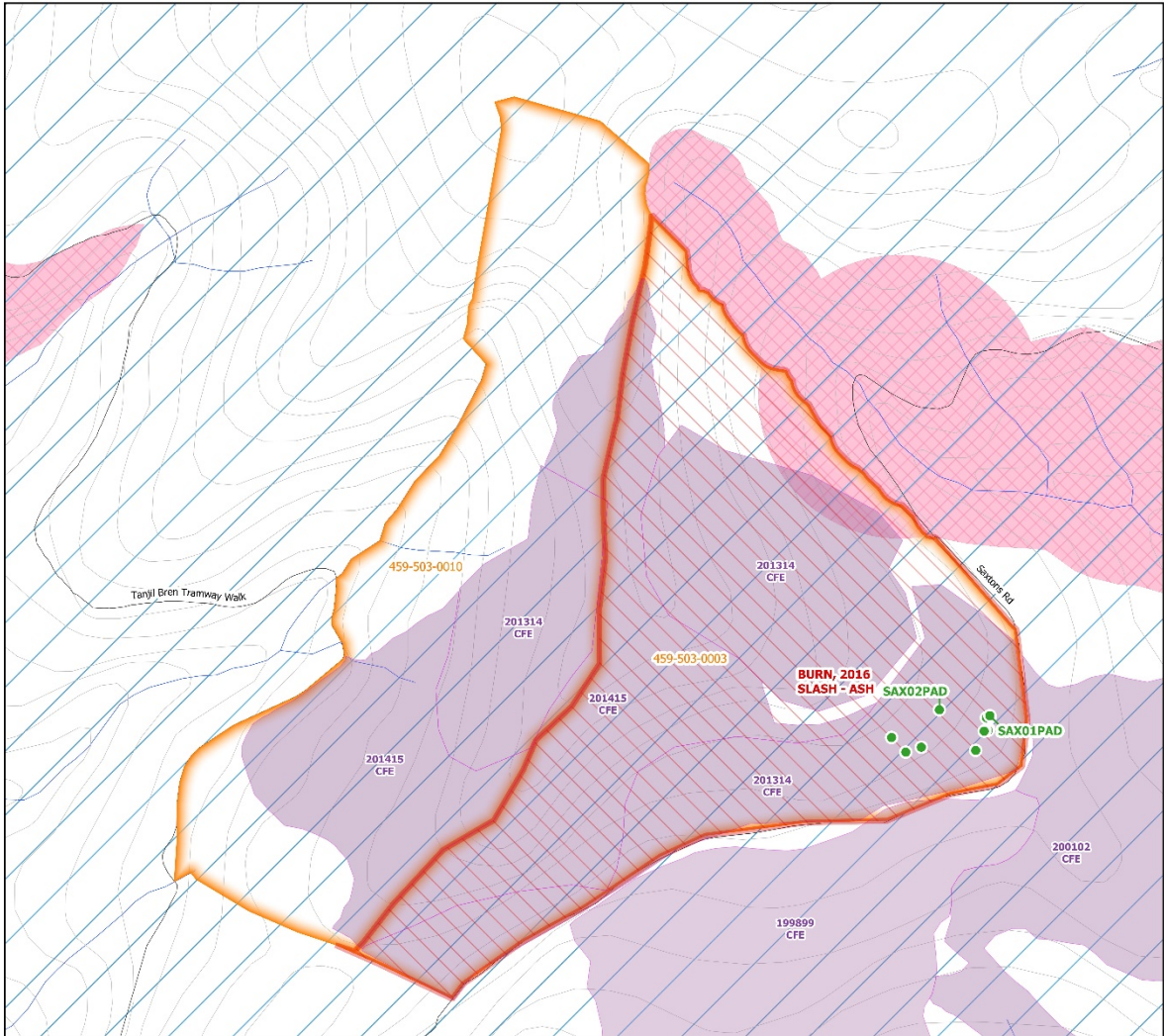
### [Link to evidence](#)

Below is a link containing all the photographic and video evidence of destroyed Tree Geebungs taken on 21 May 2023, and which show the extent of logging operations in coupe 459-503-0003. This Google drive link also provides a GPX file containing the waypoints marked in the field and the email and THSZ notice referred to in the previous section.

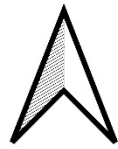
### [Attached evidence.](#)

Map of destroyed Tree Geebung evidence

**Destroyed Tree Geebungs (*Persoonia arborea*) in VicForests Coupe 459-503-0003; Logging and Fire History which shows the coupe was logged between 2013-2015 and subsequently burnt in 2016**



<p><b>Destroyed Tree Geebungs observed on 21 May 2023</b></p> <ul style="list-style-type: none"> <li>● Destroyed <i>Persoonia arborea</i></li> </ul> <p><b>VicForests Current TRP</b></p> <ul style="list-style-type: none"> <li>■ May 2023 TRP Coupes</li> </ul> <p><b>Greater Glider Action Statement IPAs</b></p> <ul style="list-style-type: none"> <li>□ Immediate Protection Areas (IPAs)</li> </ul> <p><b>Forest Management Zoning (FMZ)</b></p> <ul style="list-style-type: none"> <li>■ Special Protection Zone (SPZ)</li> </ul>	<p><b>Logging History (by decade)</b></p> <ul style="list-style-type: none"> <li>■ 1990-99</li> <li>■ 2000-09</li> <li>■ 2010-19</li> </ul> <p><b>Fire History</b></p> <ul style="list-style-type: none"> <li>■ Last Burnt (Coupe 459-503-0003)</li> </ul> <p><b>Other</b></p> <ul style="list-style-type: none"> <li>— Contours</li> <li>— Roads</li> <li>— Watercourses</li> </ul>
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Created by Blake Nisbet  
04/06/2023  
QGIS  
GDA / MGA Zone 55 H

Figure 14: Map showing the locations of destroyed Tree Geebungs in VicForests coupe 459-503-0003, overlaid with other spatial information such as logging history, fire history, and the IPAs.



## Discussion

### Scope of the Code of Practice for Timber Production

The *Code of Practice for Timber Production 2014 (as amended 2022)* ('the Code') s 1.2.4 states that for the purposes of the Code, regeneration works are by definition considered to be a 'timber harvesting operation', and that provisions in the Code apply to all timber harvesting operations unless the provision expressly excludes specified timber harvesting operations.<sup>3</sup>

The regeneration activities at VicForests coupe 459-503-0003, which led to the destruction of Tree Geebungs, are considered a timber harvesting operation under the Code, and the provisions and prescriptions from the Code and the *Management Standards and Procedures* (Schedule 1 of the Code, referred to as 'MSPs') discussed below all apply.

### Prescription for Tree Geebung under the MSPs

The detection of Tree Geebung in the Central Highlands Forest Management Areas triggers a prescription under Table 14 of the MSPs. This prescription requires the protection of Tree Geebungs from disturbance where reasonably practicable, when individual trees have a diameter at breast height over bark (DBHOB) of at least 10cm.<sup>4</sup>

The Tree Geebung identified and marked at waypoint 'SAX02PAD' had at the very minimum a DBHOB of 20cm, certainly exceeding the requirement of a 10cm DBHOB as seen in Figure 6. This Tree Geebung should have been protected from disturbance wherever reasonably practicable to do so. This ancient Tree Geebung was protected during the initial logging of coupe 459-503-0003 in 2015, and the initial post-logging regeneration burn (Figure 14). It cannot be argued that it was not reasonably practicable to protect it again during the follow-up regeneration activities in 2023. There was existing roading and infrastructure from the initial logging event, and so coupe access cannot be used as an excuse for destroying this ancient Tree Geebung.

The destruction of this ancient Tree Geebung is particularly unacceptable as this area has since been announced as part of the Government's IPAs (Figure 2), which was setup to protect forest and particularly, threatened species in these areas.

### Breaches of the Code and the MSPs in coupe 459-503-0003

#### Failure to identify and address risks to biodiversity values

Section 2.2.2.4 of the Code clearly specifies a requirement that prior to roading, harvesting, tending and regeneration, the planning process must identify biodiversity values listed in the MSPs, and address risks to these biodiversity values through management actions consistent with the MSPs.<sup>5</sup>

In the case of the Tree Geebung, s 2.2.2.4 of *the Code* requires that VicForests identify individual trees with a DBHOB greater than 10cm in coupe 459-503-0003, during the planning phase, prior to undertaking any roading, harvesting, tending and regeneration operations in the coupe.

Section 2.2.2.4 of *the Code* then requires that VicForests address the risks to such Tree Geebungs by implementing the management action for this species detailed in the MSPs, which is to protect these trees from disturbance where reasonably practicable.

The destruction of Tree Geebung at waypoint 'SAX02PAD' shows that VicForests has failed to identify and protect this ancient Tree Geebung in accordance with s 2.2.2.4 of the Code, and thus has breached this provision of the Code. Again, this ancient Tree Geebung was adequately protected

<sup>3</sup> The Code, pp25. <[Code of Practice for Timber Production 2014 \(as amended 2022\)](#)>

<sup>4</sup> The MSPs (Appendix 1 Table 14 Rare or threatened flora prescriptions), pp 124. <[Schedule 1 - MSPs](#)>

<sup>5</sup> The Code, pp38. <[Code of Practice for Timber Production 2014 \(as amended 2022\)](#)>

from the timber harvesting operations nearly a decade ago, and it cannot be argued that it was not reasonably practicable to do so again.

#### Breach of the precautionary principle

Section 2.2.2.2 of the Code outlines where the precautionary principle must be applied, see Figure 15 below.<sup>6</sup>

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.

**Note:**

It is intended by the definition of the precautionary principle and section 2.2.2.2 that the precautionary principle and its application in section 2.2.2.2 be understood as it was by Osborn J in *Environment East Gippsland Inc v VicForests* [2010] VSC 335 (in relation to the precautionary principle as it appeared in the *Code of Practice for Timber Production 2007*).

Figure 15: Excerpt from the Code, s 2.2.2.2

The precautionary principle is defined in the Code as follows:<sup>7</sup>

**'precautionary principle'** means that if there are 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.

In the application of the **precautionary principle**, decisions by **managing authorities, harvesting entities and operators** must be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (ii) an assessment of the risk-weighted consequences of various options.

**Note:**

It is intended by this definition and section 2.2.2.2 that the **precautionary principle** and its application in section 2.2.2.2 be understood as it was by Osborn J in *Environment East Gippsland Inc v VicForests* [2010] VSC 335 (in relation to the **precautionary principle** as it appeared in the *Code of Practice for Timber Production 2007*).

Figure 16: Excerpt from the definitions section of the Code

The Supreme Court, in *Warburton Environment Inc vs VicForests*, found that there is a threat of serious or irreversible damage to the Tree Geebung in relation to ongoing timber harvesting operations in the Central Highlands FMAs.<sup>8</sup> The Supreme Court also found that there is, through various areas, very substantial scientific uncertainty as to the likely future of the Tree Geebung species in the Central Highlands.<sup>9</sup> In His Honour's judgement, Justice Garde stated:

<sup>6</sup> The Code, pp17. <[Code of Practice for Timber Production 2014 \(as amended 2022\)](#)>

<sup>7</sup> The Code, pp38. <[Code of Practice for Timber Production 2014 \(as amended 2022\)](#)>

<sup>8</sup> Warburton Environment Inc vs VicForests, para 354. <[Warburton Environment Inc v VicForests \(No 5\) \[2022\] VSC 633 \(25 October 2022\) \(austlii.edu.au\)](#)>

<sup>9</sup> Warburton Environment Inc vs VicForests, para 360. <[Warburton Environment Inc v VicForests \(No 5\) \[2022\] VSC 633 \(25 October 2022\) \(austlii.edu.au\)](#)>

*As a consequence of these findings, the two conditions precedent to the operation of the precautionary principle are satisfied, and the principle is activated. It follows that the lack of scientific certainty on the matters I have discussed should not be used as a reason for postponing measures to prevent environmental degradation. The evidentiary burden of showing that the threat does not exist or is negligible reverts to VicForests. The principle operates to give the benefit of the doubt to environment protection, but nonetheless important issues remain to be decided.<sup>10</sup>*

Justice Garde also found that VicForests' adaptive management was not proportionate to the threat posed by further timber harvesting operations, and that additional measures were required for VicForests to comply with the Code:

*For the reasons I have given, the SMP is an inadequate prescription to achieve the minimum required by the Management Action. If VicForests and its contractors act in accordance with the SMP, it is inevitable that there will be ongoing contraventions of the Code and Standards and significant losses of mature Tree Geebungs. Compliance with the Code and Standards requires targeted pre-harvest surveys of coupes to identify and locate mature Tree Geebungs, the provision of proper buffers during timber harvesting, and wider firebreaks to protect mature Tree Geebungs within buffers from the destructive effects of regeneration burning.<sup>11</sup>*

Justice Garde laid out the measures required to comply with the Code and the MSPs, at paragraph 462 and 463:

*“Subject to the condition specified in the next paragraph, Warburton is entitled to injunctive relief in order that individual Tree Geebungs with a DBHOB of at least 10cm are protected from disturbance where reasonably practicable. The injunctive relief is necessary to achieve compliance with the Code and Standards. The injunctive relief will restrain VicForests, its servants, agents or contractors from carrying out timber harvesting operations in any Wet Forest Coupe in the Central Highlands, including the Pat’s Corner coupe, unless:*

*(a) prior to commencing timber harvesting operations:*

*(i) a person experienced in the identification of Tree Geebungs surveys the coupe utilising transects spaced at a maximum of 30m;*

*(ii) VicForests identifies and records the location of each individual Tree Geebung with a DBHOB of at least 10cm (‘specified Tree Geebung’);*

*(iii) VicForests ensures that the relevant coupe map identifies a protective buffer comprising at least a 50m radius circle, measured in the horizontal plane, of undisturbed vegetation around each specified Tree Geebung within the coupe, with each specified Tree Geebung located at least 15m horizontally from the perimeter of that circle; and*

*(iv) VicForests ensures that the relevant coupe plan provides adequate specifications*

<sup>10</sup> Warburton Environment Inc vs VicForests, para 361. < [Warburton Environment Inc v VicForests \(No 5\) \[2022\] VSC 633 \(25 October 2022\) \(austlii.edu.au\)](#)>

<sup>11</sup> Warburton Environment Inc vs VicForests, para 461. < [Warburton Environment Inc v VicForests \(No 5\) \[2022\] VSC 633 \(25 October 2022\) \(austlii.edu.au\)](#)>

and conditions to ensure that the vegetation within buffers remains undisturbed in the course of the timber harvesting;

(b) in the course of conducting timber harvesting operations, including regeneration burns, VicForests does all things reasonably necessary and practicable to ensure that:

(i) vegetation within the buffers as specified in the relevant coupe map in fact remains undisturbed and the specifications and conditions in the relevant coupe plan are followed; and

(ii) prior to conducting regeneration burns, a firebreak of at least 10m in width is created to separate buffers around specified Tree Geebungs from the area of the regeneration burn.

In accordance with the Management Action, the injunctions will be conditional. VicForests need not comply with these injunctions if in the case of any individual coupe, or part of a coupe, it is not reasonably practicable to do so. In order to ensure accountability in such a case, the destruction or damage of one or more mature Tree Geebung is to be recorded in the relevant coupe log, setting out the reason or reasons why it was not possible to comply with the injunctions, and signed by the Senior Forest Officer or other senior person within VicForests responsible for the harvesting or regeneration burning of the coupe. I will also require that the incident and the reason or reasons why it was not possible to comply with the injunction be promptly reported by email or by other digital means to the OCR and to Warburton as the party which has the benefit of the injunctions.<sup>12</sup>

His Honour then said that ‘in order to effectively comply with cl 2.2.2.4 of the Code and/or cll 4.2.1.1 and 4.2.1.3 and Appendix 1 Table 14 of the Standards as they apply to Tree Geebung and/or cll 2.2.2.2 and/or 2.2.2.10 of the Code’ VicForests is required to implement the remedy measures detailed in paragraphs 462–463 of his judgement, outlined above.<sup>13</sup>

Figures 17 to 19 below detail s 2.2.2.10 of the Code,<sup>14</sup> s 4.2.1.1 of the MSPs<sup>15</sup> and s 4.2.1.3<sup>16</sup> of the MSPs:

2.2.2.10 Retain and protect **habitat trees** or habitat patches and long-lived **understorey** species to provide for the continuity and replacement of **hollow** bearing trees and existing vegetation types within each **coupe**.

Where Chapter 4 of the **Management Standards and Procedures** contains prescriptions for a particular type of **habitat tree**, habitat patch or long-lived **understorey** species that are applicable to the **timber harvesting operations** in a **coupe** and the requirements of all applicable prescriptions in Chapter 4 have been complied with, compliance with the applicable prescriptions is taken to be compliance with this clause in respect of that **habitat tree**, habitat patch or long-lived **understorey** species.

Figure 17: Excerpt of the Code, s 2.2.2.10

<sup>12</sup> Warburton Environment Inc vs VicForests, para 462-463. <[Warburton Environment Inc v VicForests \(No 5\) \[2022\] VSC 633 \(25 October 2022\) \(austlii.edu.au\)](#)>

<sup>13</sup> Warburton Environment Inc vs VicForests, para 465. <[Warburton Environment Inc v VicForests \(No 5\) \[2022\] VSC 633 \(25 October 2022\) \(austlii.edu.au\)](#)>

<sup>14</sup> The Code, pp39. <[Code of Practice for Timber Production 2014 \(as amended 2022\)](#)>

<sup>15</sup> The MSPs, pp 18. <[Schedule 1 - MSPs](#)>

<sup>16</sup> The MSPs, pp 18. <[Schedule 1 - MSPs](#)>

4.2.1.1 Detection based management obligations apply in any area that may be affected by current or planned **timber harvesting operations**, and in any area in which an obligation may affect the conduct of such **timber harvesting operations** (for example, if a **protection area** would include an area within which **timber harvesting operations** are proposed).

Figure 18: Excerpt of the MSPs, s 4.2.1.1

4.2.1.3 If evidence of the presence of a value listed in **Table 13 Rare or threatened fauna and invertebrate prescriptions** or **Table 14 Rare or threatened flora prescriptions** is **verified**, apply and undertake any associated management action specified in the Table.

Figure 19: Excerpt of the MSPs, s 4.2.1.3

#### Previous OCR finding of non-compliance

We note that WOTCH recently received a case closure letter from the Office of the Conservation Regulator regarding the alleged non-compliance relating to destroyed Tree Geebungs in coupe 461-503-0006 ‘Glanworth’. In that letter, the Department stated, among other things:

*The Conservation Regulator has issued a written finding of non-compliance to VicForests in relation to the failure to comply with the above requirements of the Code and the incorporated MSPs. This finding also outlines manners in which VicForests and its contractors must conduct themselves in the future. This outcome is consistent with the Conservation Regulator’s Compliance and Enforcement Policy.<sup>17</sup>*

In relation to that investigation over destroyed Tree Geebung in ‘Glanworth’ coupe, the Department found those timber harvesting operations to be in breach of various clauses of the Code and the MSPs, including s 4.2.1.3 of the MSPs.<sup>18</sup> The findings from your Department in ‘Glanworth’ coupe, in relation to s 4.2.1.3 of the MSPs are consistent with the findings of the Supreme Court in *Warburton Environment Inc vs VicForests* in relation to s 4.3.1.1.

The allegations of destroyed Tree Geebungs in coupe 459-503-0003 are very similar to the allegations of destroyed Tree Geebungs in ‘Glanworth’ coupe, save that the operations in coupe 459-503-0003 were ‘regeneration operations’. In light of the precedent set from the Department’s findings in ‘Glanworth’ coupe, and from the Supreme Court, it is clear that the timber harvesting operations in coupe 459-503-0003 are a breach of s 4.2.1.3 of the MSPs.

We also note that in relation to the ‘Glanworth’ investigation, the Department did not find breaches of s 2.2.2.2, 2.2.2.4 & 2.2.2.10 of the Code, and s 4.2.1.3 of the MSPs. The Supreme Court has since determined and detailed what measures are required to comply with these clauses of the Code and the MSPs in relation to the Tree Geebung,<sup>19</sup> and it is clear that these measures have not been adhered to during the timber harvesting operations in coupe 459-503-0003. The operations are thus in breach of these clauses too.

For reasons discussed in this report, the Department should accept that it was reasonably practicable for VicForests to have protected the ancient Tree Geebung at waypoint ‘SAX02PAD’ in coupe 459-503-0003, as VicForests had previously done so during intensive logging and burning operations in that same coupe. In the absence of any relevant coupe log from VicForests, setting out

<sup>17</sup> DEECA case closure letter for Case No. 2020-0091, pp2.

<sup>18</sup> DEECA case closure letter for Case No. 2020-0091, Appendix 1, pp3; The letter erroneously cites s 4.3.1.1 but from the description of the relevant clause provided, it is clear that 4.2.1.3 was the section referred to: ‘Apply management actions for rare and threatened flora identified within areas affected by timber harvesting operations as outlined in Appendix 3 Table 14 (Rare or threatened flora prescriptions).

<sup>19</sup> *Warburton Environment Inc vs VicForests*, para 462-463. <[Warburton Environment Inc v VicForests \(No 5\) \[2022\] VSC 633 \(25 October 2022\) \(austlii.edu.au\)](https://www.austlii.edu.au/au/other/dfat/special/warburton.html)>

the reasons why it was not possible to comply with the remedies set out at paragraph 462-463 of His Honour’s judgement, the Department should accept the Supreme Court’s judgement and find that the destruction of an ancient Tree Geebung in coupe 459-503-0003 is a breach of the Code and *Sustainable Forests (Timber) Act 2004*<sup>20</sup> under the following provisions:

- s 2.2.2.2 of the Code
- s 2.2.2.4 of the Code
- s 2.2.2.10 of the Code
- s 4.2.1.1 of the MSPs
- s 4.2.1.3 of the MSPs.

## Conclusion

In summary, VicForests has returned to undertake remediation regeneration activities in coupe 459-503-0003, which they previously logged and burnt nearly a decade ago. The Victorian Government had announced this area as part of the IPAs, which are areas designated to protect threatened species across the forest estate.

VFA surveyors assessed the coupe on the ground on 21 May 2023, and observed a total decimation and clearing of all vegetation. Regenerating eucalypts, tree ferns, wattles and endangered Tree Geebungs were pushed over, uprooted and piled into slash, presumably to be burnt. Surveyors were shocked to find an ancient Tree Geebung, which was likely hundreds of years old prior to its destruction, to have been destroyed by VicForests during these regenerating activities. This large Tree Geebung had a DBHOB exceeding 20cm and had clearly been visually damaged and moved by logging machinery, on top of a pile of logging slash. The foliage was still green, showing that this endangered Tree Geebungs destruction was very recent. Photographic and video evidence of destroyed Tree Geebungs was documented on 21 May and has been attached to this report.

VicForests confirmed on 12 April 2023 that they were indeed undertaking regeneration works in the coupe.

The Code and the MSPs require that Tree Geebungs with a DBHOB greater than 10cm be protected from disturbance where reasonably practicable to do so. VicForests was able to protect this ancient Tree Geebung in coupe 459-503-0003 during previous intensive logging and regeneration burning activities, and it cannot be argued that it was not reasonably practicable for them to do so again. This is a clear breach of the Code and the MSPs, under multiple provisions. This is consistent with the findings of the Supreme Court, which found that in order to comply with sections 2.2.2.2, 2.2.2.4, 2.2.2.10 of the Code, and s 4.2.1.1 and 4.2.1.3 of the MSPs, that VicForests is required to undertake comprehensive surveys and implement protective buffers for Tree Geebung prior to undertaking timber harvesting operations.

It’s clear from the destruction of this ancient Tree Geebung that these requirements have not been complied with, and that the timber harvesting operations in coupe 459-503-0003 are a breach of the following provisions of the Code and thus the *Sustainable Forests (Timber) Act 2004*:

- Breach of s 2.2.2.2 of the Code
- Breach of s 2.2.2.4 of the Code
- Breach of s 2.2.2.10 of the Code
- Breach of s 4.2.1.1 of the MSPs
- Breach of s 4.2.1.3 of the MSPs.

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<sup>20</sup> Section 46 of the *Sustainable Forests (Timber) Act 2004* requires that VicForests and its contractors must comply with any relevant Code of Practice relating to timber harvesting.



## Recommendations

1. DEECA should launch an urgent investigation into the non-compliance of timber harvesting operations in coupe 459-503-0003, including an on-site investigation to detect if any other Tree Geebungs with a DBHOB greater than 10cm have been destroyed during these operations.
2. DEECA should follow the findings of the Supreme Court in relation to the Tree Geebung (*Persoonia arborea*) in *Warburton Environment Inc vs VicForests* and find, and act on, a non-compliance from VicForests and any relevant contractors that operated in coupe 459-503-0003, under clauses 2.2.2.2, 2.2.2.4 and 2.2.2.10 of the Code, and clauses 4.2.1.1 and 4.2.1.3 of the MSPs, for the inexcusable destruction of an ancient Tree Geebung during regeneration activities, as demonstrated by the evidence in this report.
3. DEECA should commence proceedings against VicForests in relation to these breaches of the Code and the MSPs, using the amendments at sections 45, 45A and 96A of the *Sustainable Forests (Timber) Act 2004* which were introduced on 1 March 2022.