

# Destruction of Mature Tree Geebungs (*persoonia arborea*) Breach Report

Icy Creek, Tanjil State Forest

VicForests active logging coupe

461-503-0006 'Glanworth'



Report on the destruction of mature Tree Geebungs (*Persoonia arborea*) within active VicForests coupe 461-503-0006 'Glanworth' in Icy Creek in breach of the 'Management Standards and Procedures for timber harvesting operations in Victoria's State forests' and 'Code of Practice for Timber Production'.

## Abstract:

WOTCH surveyors assessed VicForests active coupe 461-503-0006 'Glanworth' for threatened flora on the afternoon of June 22<sup>nd</sup>, 2020. Surveyors found that a large portion of the gross area had already been harvested, and that the coupe was active with machinery present within the coupe. Many small branches and foliage of the threatened Tree Geebung (*Persoonia arborea*) were found along a fresh logging track in the north-western corner of the coupe that had recently been pushed toward the creek. Along this track WOTCH surveyors identified and recorded at least two mature Tree Geebungs which had recently been pushed over and destroyed by VicForests machinery, the destruction appeared to have occurred within a week. This report documents the destruction of Tree Geebungs in VicForests 'Glanworth' coupe in breach of the 'Management Standards and Procedures for timber harvesting operations in Victoria's State forests' under clause 4.3.1.1 'apply management actions for rare and threatened flora' and the 'Code of Practice for Timber Production' under clause 2.2.2.2 'The Precautionary Principle'.

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**Date of Investigation:** 21/06/2020

**Date of Report:** 23/06/2020

**Author:** Blake Nisbet

**Introduction:**

This investigation took place within VicForests active logging coupe 461-503-0006 'Glanworth' located adjacent Icy Creek, approximately 10km north east of Noojee (Figure 1).

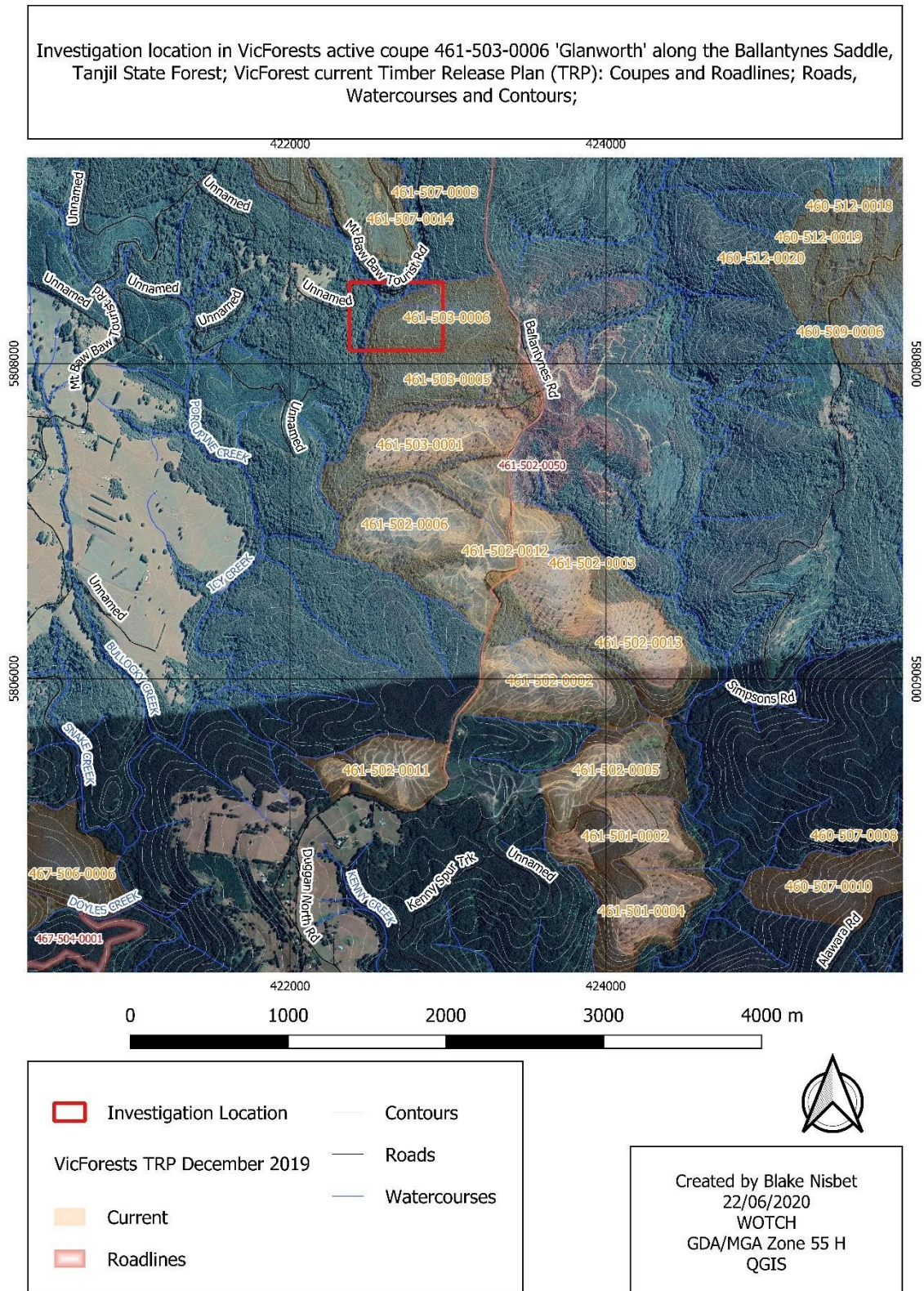


Figure 1. Tree Geebung Investigation Location along Ballantynes Saddle, Icy Creek.

As seen in Figure 1, the area has been subject to intensive clearfell logging from VicForests within the last few years, and this satellite imagery is outdated and does not show current clearfell extents from VicForests coupes 461-503-0006 (as subject to this investigation) and 461-503-0005 which have more recently been subject to clearfelling operations.

Coupe 461-503-0006 is the most recent patch of forest on the Ballantynes Saddle subject to logging, as both VicForests machinery and recent clearfelling was observed within the coupe by WOTCH surveyors during this investigation. These current clearfelling operations are increasing the immense scale of disturbance and fragmentation already set upon the forests along Ballantynes Saddle.



Figure 2. Past Clearfelling and post-harvest burning along the Ballantynes Saddle.

### Methods:

WOTCH surveyors undertook a flora survey on June 21<sup>st</sup>, 2020 within active logging coupe 461-503-0006 'Glanworth'. WOTCH surveyors walked through the clearfelling extents within the coupe, which appeared to have sections to the east which were logged and burnt and sections to the west which were currently being clearfelled. Upon reaching the western border of the current clearfell extent, surveyors noticed a recently cleared logging track heading down towards Icy Creek. Tree Geebung foliage and branches were seen on the logging track, which had clearly been removed from a nearby Tree Geebung during the clearing of the track. As surveyors continued to walk the short track, two mature Tree Geebungs were found on the side of the track, they had very recently been pushed over and removed from the ground by VicForests machinery.

WOTCH surveyors took photographic and video evidence for one of the destroyed mature Tree Geebungs, and video evidence for the other, showing the prolific (and still a vibrant green) foliage of the trees and the trunks. This video footage includes GPS coordinates as for proof of location. A waypoint was also marked at the location of the first destroyed mature Tree Geebung and was named 'FELLED PA' at approximately 4:57 pm. No waypoint was marked for the second destroyed mature Tree Geebung as it is located only a few metres further off the track (approximately south) from the other Geebung at waypoint 'FELLED PA'. As a result of this, the waypoint at 'FELLED PA' represents two destroyed mature Tree Geebungs which can both be seen from the cleared track within VicForests active coupe 461-503-0006, referred to as below:

Destroyed Mature Tree Geebung #1 – located alongside the cleared track

Destroyed Mature Tree Geebung #2 – located a few metres off the cleared track behind #1

### Results:



Figure 3a. Destroyed mature Tree Geebung #1, with obvious physical destruction from VicForests current timber harvesting operations within coupe 461-503-0006.



**Figure 3b. Destroyed mature Tree Geebung #1, with obvious physical destruction from VicForests current timber harvesting operations within coupe 461-503-0006 and prolific foliage/girthy trunk indicative of a mature Tree Geebung.**



Figure 3c. Destroyed mature Tree Geebung (*Persoonia arborea*) #1 foliage, with a vibrant green colour indicating that the destruction of the individual occurred within a week.



Figure 3d. Destroyed mature Tree Geebung #1 prolific foliage in blue, and #2 in red. Destroyed mature Tree Geebung #2 is located behind this stag and has clearly been destroyed during harvesting operations as it has been squashed by a felled tree. Photo taken from the cleared track.



**Figure 3e. Destroyed mature Tree Geebung foliage on the cleared track.**



**Figure 3f. Destroyed mature Tree Geebung foliage on the cleared track.**



**Figure 3g. Destroyed mature Tree Geebung #1, adjacent to the cleared track with the clearfelled extent in the background. Photo taken facing approximately east.**

### **Maturity of Tree Geebungs**

The Tree Geebungs are clearly mature, with girthy trunks and prolific foliage as seen in Figures 3a-g and video attachments 00238, 00239, 00240, 00242 (attached). The remainder of these Tree Geebungs would be approximately 8-10m in height and would have been taller before destruction.

### **Destruction of Tree Geebungs by VicForests**

The destruction of the mature Tree Geebungs as seen in Figures 3a-g and video attachments 00238, 00239, 00240, 00242 (attached) is clearly from VicForests timber harvesting operations within coupe 461-503-0006. The Trees have obvious physical damage including:

Destroyed Mature Tree Geebung #1 (00239, attached) has been pushed and snapped off from physical force asserted from VicForests machinery

Destroyed Mature Tree Geebung #2 (00242, attached) has either been uprooted, felled, pushed and snapped or squashed by another felled tree. The tree is lying horizontally on the ground with the base of the trunk squashed by a felled tree.

There is an abundance of Tree Geebung foliage on the cleared track, suggesting that the Tree Geebungs were located on the track before VicForests cleared them and pushed them aside. No VicForests tape was detected on or near the Tree Geebungs to suggest that they were identified before or during timber harvesting operations within coupe 461-503-0006.



The Destroyed Mature Tree Geebungs are located at approximately 55 H 422677 5808352 (GDA / MGA Zone 55H), adjacent Icy Creek within active VicForests coupe 461-503-0006 as seen below in Figure 4.

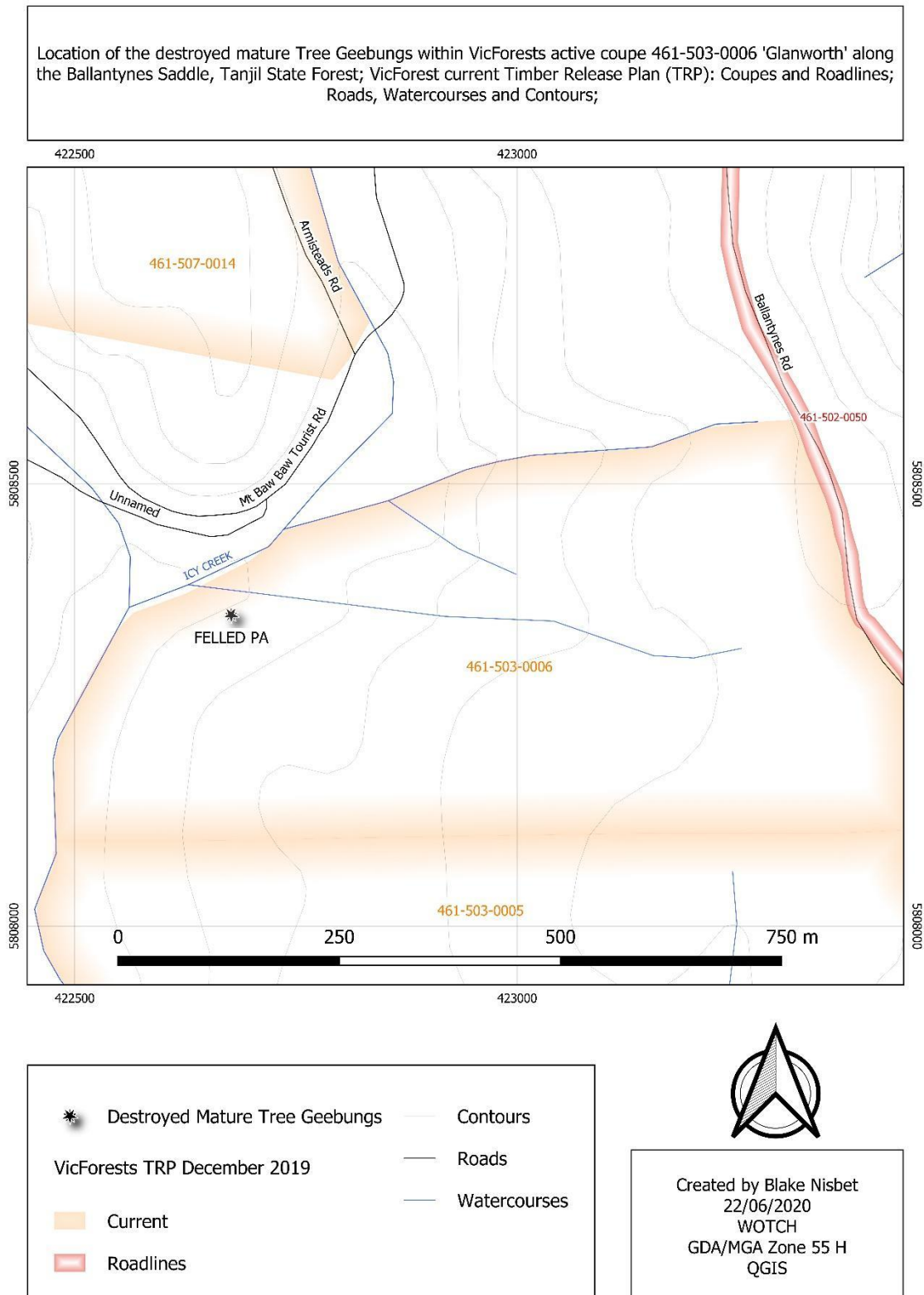


Figure 4. Location of the destroyed Mature Tree Geebungs within active VicForest coupe 461-503-0006.

## Discussion

### Unlawful destruction of Tree Geebungs in the Federal Court

A recent ruling in the Federal Court Of Australia on 27<sup>th</sup> May, 2020, by her Honour Justice Mortimer, found that the inadequacy of VicForests to both identify and protect mature Tree Geebungs in Victoria's Central Highlands breached the '*Management Standards and Procedures for timber harvesting operations in Victoria's State forests*' clause 4.3.1.1 '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)'. For the Tree Geebung (*Persoonia arborea*), Table 14 provides that in the Central Highland region, VicForests is required to "protect mature individuals from disturbance where possible". VicForests inadequate surveys failed to detect these Tree Geebung, which is a further breach of '*Victorian Code of Practice for Timber Production 2014*' (The Code) under Clause 2.2.2.2 'The Precautionary Principle'. These breaches mean that VicForests forestry operations in Glanworth coupe 461-503-0006 are contrary to Victorian law.

The unlawful destruction of Tree Geebungs in her Honour Justice Mortimer's ruling occurred within another VicForests coupe, Skerry's Reach (462-504-0004). In the case of Skerry's Reach, VicForests gave no reason as to why the clearing of snig tracks, operationally, needed to destroy two Tree Geebungs. Her Honour Justice Mortimer accepted expert evidence from Mr Mueck confirming that the Tree Geebungs photographed were mature and could be confirmed as mature from photographs of the specimens, as Mr Mueck stated that the Tree Geebungs depicted were in excess of 100 years, and for some trees 400 years old. This finding overrules the Department of Environment, Land, Water and Planning (DELWP) previous suggestions to WOTCH that maturity can only be confirmed by successful propagation from Tree Geebung fruit, which is absolutely incorrect.

Here are some relevant paragraphs taken directly from her Honour Justice Mortimer's ruling in the Federal Court of Australia on 27<sup>th</sup> May, 2020:

1188. Clause 4.3.1.1 of the Management Standards and Procedures requires VicForests to:

[a]pply 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).

1189. For the Tree Geebung (*Persoonia arborea*), Table 14 provides that in the Central Highland region, VicForests is required to:

protect mature individuals from disturbance where possible.

1196. It is clear, and I find, that VicForests failed to detect any Tree Geebungs, including Tree Geebung which could be described as "mature", in its preparations for the harvesting of Skerry's Reach. Instead, what happened was that a member of the public found them and reported them to DELWP and VicForests. That occurred once forestry operations in the coupe were already underway. This is an illustration of the inadequacy of VicForests' surveys of coupes for all sorts of

biodiversity values. This kind of evidence supports the conclusions I have reached on VicForests' non-compliance with cl 2.2.2.2.

1197. I accept, as VicForests submits at [385] of its closing submissions, that the obligation in Table 14 is conditioned so that it applies "where possible". I accept, as VicForests submits, that this "affords a degree of latitude, no doubt recognising there will be operational constraints on retention in some circumstances". The problem for the application of that latitude here is that VicForests gave no evidence of any "operational constraints". It gave no evidence of why the snig tracks, operationally, needed to destroy two Tree Geebung. It gave no evidence of what "operational constraints" led to the significant damage demonstrated in the videos and photographs. It gave no evidence about how those constraints were so unavoidable that damage to trees of this threatened flora species that take 100 years to reach maturity, and live for more than 400 years, was reasonably or practically unavoidable. Instead, the evidence shows VicForests did no surveys, was only alerted to the presence of the Tree Geebung because of Mr McKenzie's work, and then, in my opinion, made half-hearted efforts to "protect" the detected trees, and failed in those efforts.

1198. I find VicForests did not comply with its obligations under cl 4.3 and Table 14 in respect of the Tree Geebung in Skerry's Reach coupe. I reject VicForests' brief argument about substantial compliance, on the basis that even if that is what is meant by the submissions I have referred to above, what occurred in Skerry's Reach was not substantial compliance.

The Federal Court ruling from her Honour Justice Mortimer can be read in full below, and this link will take you to relevant paragraphs for the unlawful destruction of Tree Geebungs:

[http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2020/704.html#\\_Ref27666326](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2020/704.html#_Ref27666326)

### **Unlawful destruction of Tree Geebungs in VicForests active coupe 461-503-0006**

Our findings within Glanworth coupe 461-503-0006 subject to this report, are consistent with the findings in Skerry's Reach coupe (462-504-0004) which was subject to the Federal Court ruling as described above. In the case of active coupe 461-503-0006, VicForests has failed to identify at least two mature Tree Geebungs and destroyed them whilst clearing a track down towards Icy Creek. The Tree Geebungs are completely destroyed, removed from the ground, and will now die in the ensuing weeks. No tape was found on the Tree Geebungs, indicating a failure from VicForests to identify the Geebungs in pre-harvest surveys, and again a failure to identify and protect the Tree Geebungs during timber harvesting operations within the coupe.

The destruction of two mature Tree Geebungs within active VicForests coupe 461-503-0006 is therefore a **breach of The Management Standards under clause 4.3.1.1 'apply management actions to apply management actions for rare and threatened flora identified within areas affected by timber harvesting operations' for Tree Geebung, and a further breach of The Code under clause 2.2.2.2 'The Precautionary Principle'**, and forestry operations within the coupe are contrary to Victorian law.

## Conclusion/Recommendations

In summary, on June 21<sup>st</sup>, 2020, a WOTCH Flora survey detected two mature Tree Geebungs (*Persoonia arborea*) which had recently been completely destroyed by VicForests during forestry operations in active coupe 461-503-0006, Icy Creek. Photographic and video evidence including location coordinates were recorded and are attached in this report. The Tree Geebungs were not identified or marked by VicForests prior to undertaking forestry operations within the coupe, and VicForests failed to identify or protect the Tree Geebungs whilst undertaking timber harvesting operations within the coupe.

Our findings, in accordance with Her Honour Justice Mortimer's ruling in the Federal Court of Australia, have detected a breach of the *Management Standards and Procedures for timber harvesting operations in Victoria's State forests* and the *Victorian Code of Practice for Timber Production 2014* within coupe 461-503-0006. VicForests has conducted forestry operations within coupe 461-503-0006 contrary to Victorian law.

DELWP and the Office of the Conservation Regulator (OCR) must investigate this breach of the law which has occurred within VicForests active coupe 461-503-0006. The location coordinates for the destroyed Mature Tree Geebungs at 'FELLED PA' (Figure 4) are: 55 H 422677 5808352 (GDA / MGA Zone 55 H).

We also request that a full investigation occurs within the coupe to identify any other mature Tree Geebungs which have been destroyed, or are at risk of being destroyed, during timber harvesting operations or the post harvest burns within VicForests active coupe 461-503-0006. Surveys from the Forest Protection Survey Program (FPSP) identified Tree Geebungs (*Persoonia arborea*) at 19 locations within the coupe back in April 2019. The closest record from FPSP to the destroyed mature Tree Geebungs subject to this report is approximately 100m away. Below is the data extracted from the FPSP Survey Results Table on their website (<https://www.forestsandreserves.vic.gov.au/forest-management/forest-protection-survey-program>), as well as a detection map attained from the government Forest Information Portal.

**Table 1. FPSP Tree Geebung (*Persoonia arborea*) detections within coupe 461-503-0006, coordinates in GDA / MGA Zone 55 H.**

Date of Observation	Species	Count	Easting	Northing
17/04/2019	<i>Persoonia arborea</i>	9	422953	5808459
17/04/2019	<i>Persoonia arborea</i>	N/A	422958	5808366
17/04/2019	<i>Persoonia arborea</i>	1	422529	5808100
17/04/2019	<i>Persoonia arborea</i>	N/A	422947	5808166
17/04/2019	<i>Persoonia arborea</i>	12	422861	5808462
17/04/2019	<i>Persoonia arborea</i>	1	422909	5808330

17/04/2019	<i>Persoonia arborea</i>	1	422933	5808235
17/04/2019	<i>Persoonia arborea</i>	N/A	422933	5808235
17/04/2019	<i>Persoonia arborea</i>	1	422690	5808221
17/04/2019	<i>Persoonia arborea</i>	1	422800	5808476
17/04/2019	<i>Persoonia arborea</i>	6	422872	5808384
17/04/2019	<i>Persoonia arborea</i>	1	422970	5808187
17/04/2019	<i>Persoonia arborea</i>	50+	422517	5808138
17/04/2019	<i>Persoonia arborea</i>	N/A	422861	5808462
17/04/2019	<i>Persoonia arborea</i>	1	422947	5808166
17/04/2019	<i>Persoonia arborea</i>	6	422771	5808355
17/04/2019	<i>Persoonia arborea</i>	3	422542	5808074
17/04/2019	<i>Persoonia arborea</i>	1	422618	5808113
17/04/2019	<i>Persoonia arborea</i>	18	422958	5808366



Figure 5. Forest Protection Survey Program data within VicForests active coupe 461-503-0006, attained on June 22<sup>nd</sup>, 2020 at:

[https://maps.ffm.vic.gov.au/fip/index.html?viewer=fip&fbclid=IwAR0QSMKXdJWUYuarNEYTiCJZUhwWEYmPB\\_533ei9Yn8rt0jRNL\\_5WX2SGXc4](https://maps.ffm.vic.gov.au/fip/index.html?viewer=fip&fbclid=IwAR0QSMKXdJWUYuarNEYTiCJZUhwWEYmPB_533ei9Yn8rt0jRNL_5WX2SGXc4)

We expect this investigation to be thorough and addressed with urgency. Due to VicForests' inadequate surveys, there could be more mature Tree Geebungs which have not been identified and are threatened by further destruction from VicForests within active coupe 461-

503-0006. We request DELWP and OCR to thoroughly investigate the destroyed mature Tree Geebungs at 'FELLED PA' (Figure 4) and visit each of the Tree Geebung sites in Table 1 and Figure 5 above to assess if any additional Tree Geebungs have been destroyed. We expect that justice will be delivered for the Tree Geebungs that were destroyed within the coupe and that VicForests will be prosecuted for this breach of the law.

This document reports our findings in respect **of tree geebung only** in this coupe and we do not suggest that VicForests operations in this coupe are otherwise compliant.



We respectfully acknowledge the Taungurung, Wurundjeri and Gunaikurnai Elders past, present and emerging, the Traditional Custodians who have never ceded ownership of the land on which we live, travel, work and play.