

# Transcript of Proceedings

MAGISTRATES COURT

CORNACK, Magistrate

MAG-183067/05(2)

DALB-MAG-796/06

DEPARTMENT OF NATURAL RESOURCES

Complainant

and

RICHARD TUDOR KNIGHTS

Defendant

DALBY

..DATE 31/10/2006

..DAY 1

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

MR P J WILSON (instructed by Town Planning) for the  
prosecution

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5 MR P D SHERIDAN (instructed by Clewett, Corser and Drummond)  
for the defendant

10 MICHELE ILLONA PETERSEN APPOINTED AS RECORDER

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15 BENCH: In accordance with the Recording of Evidence Act, I  
direct that the evidence and proceedings in this trial will be  
recorded by mechanical device, and that Michele Petersen will  
be the recorder. This is the hearing of a complaint against  
Richard Tudor Knights and it is the complaint of Victor Craig  
Elliott. Yes, Mr Wilson?

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MR WILSON: Thank you, your Honour. Your Honour, just a  
preliminary point. I will just hand up copies of the  
certificate of title.

25 MR SHERIDAN: That's by consent, your Honour.

MR WILSON: And also a registered plan.

30 MR SHERIDAN: Yes, that's by consent, your Honour.

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BENCH: The title search will be admitted into evidence and  
marked Exhibit 1.

35 ADMITTED AND MARKED "EXHIBIT 1"

40 BENCH: And the plan will be admitted into evidence and marked  
Exhibit 2.

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45 ADMITTED AND MARKED "EXHIBIT 2"

50 MR WILSON: Thank you, your Honour. You don't require an  
opening, your Honour?

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BENCH: No. Do you, Mr Sheridan?

55 MR SHERIDAN: Yes, if it please, your Honour.

BENCH: Well, Mr Sheridan requires one so we had better have  
one.

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MR WILSON: Thank you, your Honour. These charges relate to Mr Richard Tudor Knights clearing parts of his property in 2001 and 2003. The evidence for the prosecution will be that he made an application for a permit to clear that property and that application was refused. And even after the refusal of that application, he had already cleared some before he lodged the application, he proceeded to clear it after his application was refused. And even after he cleared it, he then lodged an appeal against the fact that he never was granted that permit.

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BENCH: What happened to his appeal?

MR WILSON: The appeal was just - was never pursued, your Honour, in the P and E Court.

BENCH: Well, would it have made a difference if his appeal was successful?

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MR WILSON: Well, it's not known whether it would have been successful or not, your Honour. If it was successful, I assume that it would have made a difference. Your Honour, as a consequence of a satellite image report, investigators proceeded to the property, namely, Mr John Forcier, Craig Elliott. They spoke to Mr Knights, who declined to be interviewed, and they inspected the property, took photographs at certain GPS points and they then departed the property. At a later point Mr Elliott returned to the property with a vegetation expert, Mr Olsen, who conducted further field inspections in respect of the property.

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BENCH: How much land do you say is cleared in 2001 and how much is cleared in 2003? And have you got - so will someone be producing a plan with some highlighted areas?

MR WILSON: Yes, your Honour, we will have-----

BENCH: So, how much in 2001?

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MR WILSON: I just need to find that document.

BENCH: So that, I take it, is charge 1, is it?

MR WILSON: Yes, your Honour. Those-----

BENCH: That's between October 2000 and September 2001.

MR WILSON: Yes, your Honour. But those areas may change. There has been-----

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BENCH: What do you mean it may change?

MR WILSON: Well, there will be evidence about what the actual areas were, because it has been examined in greater detail and it would be-----

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BENCH: So your complaint currently says 166 hectares of remnant endangered vegetation and 11 hectares of remnant not-of-concern vegetation.

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5 MR WILSON: That's correct, your Honour.

BENCH: And the charge 2 is over 744 hectares; 683 remnant endangered vegetation and 61 being remnant of concern.

10 MR WILSON: Yes, your Honour.

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BENCH: Thank you.

15 MR WILSON: Well, during the course of the trial, the first one, the dates may change from the 5th of October 2000 to the 6th of September 2001.

BENCH: Well, I tell you what, they won't be just changing.

20 MR WILSON: No, well, subject-----

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BENCH: You just - it will be you may have to make an application, but it may not be granted.

25 MR WILSON: That's true, your Honour. But it may be that the evidence will - that you might consider changing them under the Justices Act.

BENCH: Yes, well, this is the complaint-----

30 MR WILSON: Yes.

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BENCH: -----that Mr Knights is here to answer.

35 MR SHERIDAN: Thank you, your Honour. The complaint as sworn is the case which the defendant has to meet. Is that-----

BENCH: Mmm-hmm.

40 MR SHERIDAN: Thank you, your Honour.

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MR WILSON: Thank you.

45 BENCH: And if you're wanting to change it, and you don't think you're going to be able to prove this, you're going to be in a big lot of difficulty, aren't you? If you start a three-day trial without disclosing to the defence and to the court any problems you have; because if I disallow your application for an amendment, what's going to happen? Anyway, 50 that's a matter for you. You've decided to proceed today.

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MR WILSON: Yes. Yes, your Honour.

BENCH: Thank you.

55 MR WILSON: Well, there has been a certificate provided to the defence, that outlines those issues. Now, in relation to

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those issues that I've outlined, there will be other evidence in relation to the files, the keeping of the files, at the Roma office, and documents on that file. There will be evidence from the person that examined the property in relation to the permit application. There will be evidence from the contractor who cleared the property.

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BENCH: The one contractor did both, did he?

MR WILSON: Yes, your Honour. That's the opening, your Honour.

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BENCH: Is there any chance we can shorten things by you formally agreeing to the application going in that your client lodged? Or does he dispute that he lodged it?

MR SHERIDAN: Well, that is a question that I had for your Honour. But the application and - the application for the permit, however that ended up, in my view, is completely irrelevant. We're changed here with starting assessable development without permit. So the fact that an application and all the details and all the paperwork that went with that went in, was ultimately refused, and now my instructions are it's still pending. It's still pending. The appeal's still pending in the Planning and Environment Court; it has never been finally determined. The fact that we apparently made an application is irrelevant. I mean-----

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BENCH: Well, you say it's - how you say it. I would have thought you would say it was highly relevant.

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MR WILSON: Well, the permit is highly relevant, your Honour, because we say that the area that he applied to clear is the area that he did clear without a permit. And it shows his motive behind it. It also shows that he's the person that had the authority to run the property, because there's a number of names on the title.

BENCH: Well, is your evidence that he commenced clearing before he lodged the application?

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MR WILSON: He commenced some before he lodged the application, and he commenced some before he had been refused, and continued after he had been refused. But the issue with the permit, your Honour, is how it ties in with the area cleared. It's relevant and that's why we say it should go in the application.

MR SHERIDAN: Your Honour, I would have thought if the charge reads, as it does, without a development permit, all the Department has got to prove is that he doesn't have a permit and that can be done from a search of their records. If no permit exists on their records, well, he doesn't have a permit.

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BENCH: Well, it would prove the offence and then if they want to make a claim that it's a circumstance of aggravation on penalty, that would be a different matter.

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5 MR SHERIDAN: Yes, your Honour, and that - as with a lot of the statements from the witnesses that appear to have been called in the next three days, their evidence may well be relevant to a submission on penalty, but as far as having any relevance at all to the matter before the court, they are not relevant at all, in my view.

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BENCH: So, you're not consenting to a copy of the application going - for a development permit going in?

15 MR SHERIDAN: No, your Honour. It's - as I've submitted, the application and the refusal and the subsequent appeal is now before the Planning and Environment Court, so if - I mean, as I said, the charge is without a relevant permit. If he doesn't have one, all I've got to do is prove he doesn't have one, rather than go through the whole process of calling evidence from the matter that he has applied for a permit. And there's no - this idea of the motivation and the malice and some other behaviour that this might imply is completely irrelevant to the issue. The issue is, did he have a permit or not and that-----

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BENCH: That seems to be strictly, logically correct, but I don't know - so, I suppose, what you're going to have to do is be on your feet quite a lot and if Mr Wilson asks a question that you think is irrelevant, you can say it's irrelevant. Now, you've been put on notice, Mr Wilson, that Mr Sheridan believes that anything to do with an unsuccessful application is irrelevant. If it is unsuccessful, I fail to see how it can be of any assistance in proving beyond reasonable doubt the elements of the offence; and it may be that you just want to prove the offence and then on sentence that - this is a matter for you. You might want to argue the point, but I'm not going to decide it now, because if you can come to an agreement about that, then it may be relevant on sentence, but if you want to push the point, I will make a ruling every time Mr Sheridan objects.

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45 MR WILSON: Some of these things are particulars, your Honour. It is not necessarily the wording of the charge. It is the particulars that-----

BENCH: Well, no. Elements of the offence is what we're concerned about.

50 MR WILSON: Yes. Well, the elements will remain the same but some of the particulars will change. I understand that's-----

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MR SHERIDAN: Your Honour, that's a-----

55 BENCH: I only - I only go the one - I think you're on a different train track to me and Mr Sheridan, so I will leave it, thanks.

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MR SHERIDAN: I feel the sand shifting under my feet, your Honour, at this very early stage. I just want to be quite clear of the case that the defendant has to meet. If that's his - as particularised here, I don't want to-----

BENCH: You've got the complaints. It is in writing. It's that area. It's between those dates. It's without a permit.

10 MR SHERIDAN: Thank you, your Honour.

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BENCH: Anything else?

MR WILSON: No, thank you.

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BENCH: Thank you. Call your first witness then, thanks.

MR WILSON: Your Honour, I will call Glynn Alexander Knights.

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GLEN ALEXANDER KNIGHTS, SWORN AND EXAMINED:

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MR WILSON: Mr Knights, could you tell the court your full name?-- Glynn Alexander Knights.

30 And you live at? Whereabouts do you live?-- 449 Greenmount Nobby Road, Nobby.

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Now, you're the brother of the defendant here today?-- Yes.

35 Now, I will just ask - the reason that you're here today is that you appear on the certificate of title as 1/12th ownership. Is that correct?-- Yes.

40 And what - what interest do you have in the property other than that? Do you have any-----

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BENCH: I think I had better give this witness a warning, then. If he's an owner, isn't he caught by the same legislation?

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MR SHERIDAN: Yes, your Honour, there is deeming provision in section 67A, I think. Sorry. I have it right here.

50 BENCH: Have you been given - have he got an indemnity from the attorney?

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MR WILSON: No, your Honour.

55 BENCH: Have you had any legal advice about this?-- No.

Well, you see, the prosecution here is trying to prove that one of the people who has an interest in this land has carried

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out some development without a proper permit and that's a pretty serious sort of charge, and if you own 1/12th of that land, there's a provision in the same Act which says that you're liable as well. So if you give evidence, today your own evidence can be used to prosecute you later. Ordinarily a person in your case would have legal advice and would have a letter from the prosecution saying they're agreeing not to prosecute you for any offence on the basis of you giving evidence, but you don't have that?-- They told me I wouldn't be prosecuted but I don't have any indemnity.

Well, if they told you, there's an old legal maxim which goes, "An oral undertaking is not worth the paper it's written on."

MR SHERIDAN: 67A is the deeming provision, your Honour, and I will - do you have a copy of these legislation?

BENCH: Probably don't need it-----

MR SHERIDAN: I've got one.

BENCH: -----at this stage. I will look it up later.

MR SHERIDAN: "Responsibility for authorised clearing of vegetation. Subsection (1), the clearing of vegetation on land in contravention of the vegetation and clearing provision is taken to have been done by an occupier of the land in the absence of evidence to the contrary. Subsection (2), in this section 'occupier of land' includes, for freehold land, the registered owner."

BENCH: Okay. Well, it's up to you what you go ahead and do now, Mr Knights, but if you want to - you've got a couple of choices. You can ask me if you can stand down till tomorrow, and get some legal advice about the matter or talk to the prosecuting authorities. They may be able to quickly do you up some sort of undertaking or indemnity saying you are not going to be prosecuted, and that might be of comfort to you. That's a first choice. The second choice is you can go ahead now without that and trust in the government that they won't do the wrong thing and prosecute you later. That involves a high level of trust. You would have to do that with me giving you a warning that anything you say under oath can be used in proceedings against you as well. So, you may or may not want to do that. You may want to claim privilege and you may want to seek some legal advice about the matter. So, I don't know what sort of penalty we're - the prosecution is talking about here but there's quite a large amount of land that's alleged to have been cleared, and it is listed for three days; so it is something that's going to be very technical and involve a lot of legal expense one way or the other. So I think that's your three choices: ask if you can stand down and give your evidence tomorrow, and you can talk to Mr Wilson or his colleagues about getting something in writing; ask for an adjournment to get some legal advice; or proceed, trusting fully what they told you. I don't know if the person who told you that has authority. I don't know if they can bind the



DPP, for example, who might choose to commence proceedings  
against you, or some other department might choose to commence  
proceedings against you based on the same facts. I don't know  
any of that. Or you can go ahead and simply decline to answer  
5 any questions on the grounds that you're claiming privilege.

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So, they are your four options. So you can just claim  
privilege if you want, because if you are asked something that  
10 might prove a case against one co-owner, it might also prove  
it against you, so you can just simply decline to answer any  
questions and claim privilege. And if you would like to have  
a cup of tea and think about what you want to do, I will give  
you that option, as well?-- Can I do that?

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Yes, sure. Please don't discuss what's happening here with  
anyone other than a lawyer, or someone who's not involved in  
the case, so someone who's not an owner, not - hasn't got an  
interest, and who's not on the witness list. I don't think  
20 there's any other - yes - so, for example, could you please  
not discuss it with Geoffrey Knights, because he's a relative  
of yours?-- Okay.

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Okay? And, well, we will see you back here in, say, an  
25 hour?-- Okay.

WITNESS EXCUSED

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BENCH: Thank you. Does the same apply to Geoffrey Knights?

35 MR WILSON: It does, your Honour. But there is one thing.  
The section that Mr Sheridan read out to you didn't come into  
force until March 2003.

40 BENCH: I'm not going to give someone legal advice. I'm not  
here saying yea or nay either way. I'm just saying if there's  
- if they haven't got an undertaking or an indemnity, they  
should have. And if you want to call in the other Mr Knights  
now, I don't know what you're going to use him to prove, or -  
is he an owner, as well?

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45 MR WILSON: One-twelfth, your Honour.

BENCH: Okay. Well, do you want to get him in, and I will  
tell him the same information?

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MR WILSON: Okay. I just call Geoffrey Ian Knights.

BENCH: Anyone else on this list who is an owner?

55 MR WILSON: No, no, that's all, your Honour.

BENCH: And has the contractor who did the clearing - has he got an undertaking? 1

MR WILSON: He's out of time, your Honour.

BENCH: Has he got an undertaking?

MR WILSON: No.

BENCH: Are you Geoffrey Knights? 10

MR G KNIGHTS: Yes.

BENCH: We're not going to get you to give evidence at this stage. I just wanted to tell you what has just happened with another witness, so that you can have an opportunity to think about what you want to do. As I understand it, you are a co-owner in a piece of land, and it's that piece of land one of the other co-owners is being prosecuted today. They're being prosecuted for some serious offences and I understand that the Department of Natural Resources would like you to give evidence. I've just asked the last witness whether they had anything in writing that guaranteed they would not be prosecuted by the Department of Natural Resources or any other Crown instrumentality, including every other department, and including the DPP if they have an interest. 20

I was told the other witness didn't have anything in writing, that they had just been verbally told they wouldn't be prosecuted. I indicated to the witness they might want to get some legal advice about that, because that may not guarantee that they won't be prosecuted. So, I told the last witness they had four choices. I would be giving them a warning not to give - that they don't have to give evidence if they don't want to, because it might incriminate them in an offence, so they could take an oath and just say, "I claim privilege" to every question that's asked them about the clearing. 30

They could contact someone from the Department of Natural Resources and see if they could get a written indemnity or undertaking that they wouldn't be prosecuted. They could give evidence today and trust wholeheartedly the prosecution, because they had no reason to doubt that anything bad was going to happen, but bearing in mind that I don't know whether the person in the department had the required authority to bind everybody else in the Department and to bind every other authority; or they could ask for an adjournment to get some legal advice about the matter and come back. 40

MR G. KNIGHTS: That's a fair bit to digest, your Honour. 50

BENCH: So I just said to the other witness, do you want to go and have a cup of tea and think about what you want to do, because I know it's something that I've sprung on you.

MR G. KNIGHTS: I think I would take that option.

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BENCH: Have a cup of tea and think about it. Okay, then.  
Well, I asked the other witness not to discuss the case with  
other witnesses, but I suppose, if you want to discuss what  
you both want to do, I've got no problem with that, because  
5 you haven't taken an oath yet, and it's not - so long as you  
don't discuss the evidence in the case. Okay? We'll see you  
in about an hour - I told the other witness - and I've  
indicated that someone from Mr Wilson's department might be  
out to talk to you later on. Thank you. 10

MR G. KNIGHTS: Very good. 10

BENCH: Mr Wilson, I'm expecting an immediate apology for: (a)  
your phone going off, and (b) you leaving the - not only the  
15 bar table, but the courtroom without seeking leave to do that  
in the middle of a trial.

MR WILSON: I've been in - I'm sorry, your Honour. It's just  
that I had my pager, and it just for some reason----- 20

BENCH: Look, there's a sign out there saying "Turn your  
phones off". I'm trying to talk to one of these men about  
something serious, and your pager's going off. And you didn't  
just turn it off, you let it continue to ring. 25

MR WILSON: Yes. Well, your Honour, I couldn't turn it off.  
That's why I took it outside. I just had to get rid of it.  
It has never happened to me before. I apologise unreservedly.

BENCH: Thank you. Well, next time if you are leaving, you  
30 should ask for leave, because I could look up, there's no  
prosecution there, and I can simply write "Struck out for want  
of prosecution."

MR WILSON: I'm sorry, your Honour. I was just on the horns  
of a dilemma. I thought the best thing to do was to get rid  
of it. 35

BENCH: Thank you. Now, is there any other witness in here  
40 who's going to have a problem? 40

MR WILSON: Not that I'm aware of - maybe, yes.

MR SHERIDAN: Your Honour, Mr Gray will have a problem,  
45 because-----

BENCH: Is he out there? Is he outside now?

MR SHERIDAN: Yes. 50

BENCH: Go and call him in, because it's not up to you to give  
him advice that he has got a problem. 50

MR SHERIDAN: No, it isn't, your Honour. I'm just pointing it  
55 out to your Honour.

BENCH: I'm just going to point it out that he may have a problem, and it's up to him.

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5 MR SHERIDAN: The response of my learned friend, that a prosecution of Mr Gray may be out of time, is not entirely correct, because section 68 subsection (4) says that, "Despite the effluxion of time, the court may, if it considers it just and equitable, in the circumstances, at any time extend the time set under the section, so it's - there's no bar; well, there is still a discretion.

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BENCH: Yes. You want to bring Mr Gray in?

15 MR WILSON: I apologise about that phone, your Honour.

BENCH: No, you've apologised. That's all I needed, thank you. Have you got it turned off now, or outside with somebody else?

20 MR WILSON: Outside. I've had my pager before, and it has never ever done that. It just started beeping and getting louder.

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25 BENCH: Thank you. Mr Gray, we're not going to get you to give your evidence yet. I just wanted to talk to you about something-----

MR GRAY: Yes.

30 BENCH: -----before we start, and that is, I understand that you're Nathan Gray.

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MR GRAY: That's right.

35 BENCH: And the prosecution, the Department of Natural Resources, is going to call you to give evidence against Mr Knights over here, because they're going to say you're the contractor who cleared the land and there wasn't a development permit. Now, I understand you may have been told that you won't be prosecuted yourself and it's safe to give evidence. But, I don't know whether you've got anything in writing about that, and ordinarily witnesses get something in writing before they give evidence, to guarantee that they won't be prosecuted by the Department of Natural Resources or by some other department of the government.

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45 And I don't know whether the person who told you orally you won't be prosecuted has the authority to bind everybody in that department, and there's a special provision in the Act which says even though it's technically out of time you could still be prosecuted. Now, I've just raised a similar sort of issue with two other witnesses and I've asked them if they would like to seek some legal advice themselves about it, or if they would like to have a talk to someone in the Department about getting something in writing before they give their evidence, or whether they would like to give evidence and just trust whoever told them they wouldn't be prosecuted, but

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bearing in mind I will have to give you a warning that whatever you say under oath can be just used against you in another case and can be used to prove you're guilty, or you can claim privilege.

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So, you can take an oath and then just refuse to give any evidence and claim privilege. So, I suggested to the other two witnesses they might want to go and have a cup of tea and think about that, because it's a lot to, you know, take on board all of a sudden. So, the problem is, I understand you have been told something but you don't have anything in writing, so it's about you satisfying yourself, that when you give evidence, what you say won't be used against you later.

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15 MR GRAY: Yes.

BENCH: Do you want to have a cup of tea and think about it, and talk to your wife, as well? I presume that's your wife there.

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MR GRAY: I would like to, thanks, yes.

BENCH: You would like to?

25 MR GRAY: Mmm.

BENCH: Okay. Thank you. Well, I will give you an hour to have a cup of tea and a chat about it.

30 MR GRAY: Thank you.

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BENCH: Sorry I can't provide the tea, as well.

MR GRAY: Yes. No worries.

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BENCH: Now, do you want to go and have a chat to your superiors for 10 minutes, or do you want to call another witness?

40 MR WILSON: I wouldn't mind a short adjournment if I could, your Honour.

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BENCH: Well, so long as we don't blow this trial out into more than three days, because it is going to be costing Mr Knights an arm and a leg to be here for three days. So, I am not saying anything rude about his lawyers but that is just what litigation costs. It costs a lot of money. So I don't want to give you a long adjournment because we didn't start until 10 to 10 and we should have been starting at 9.30 and I don't want to sit until 8 o'clock every night to get it finished. So, I'm happy to give you a 10 minute adjournment if you think you can resolve something in 10 minutes. Thank you.

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55 MR WILSON: Okay. Thank you, your Honour.

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THE COURT ADJOURNED

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THE COURT RESUMED

10 BENCH: Yes, Mr Wilson.

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MR WILSON: The prosecution's tender will proceed?

BENCH: Sorry.

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MR WILSON: We're going to proceed. I will call my next witness.

BENCH: Yes.

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MR WILSON: I call Patricia Ann Campbell.

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MR SHERIDAN: Your Honour, this is - the statement that I have from this witness, Patricia Ann Campbell leads me to the submission that her evidence is-----

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BENCH: Just let her take the oath first.

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PATRICIA ANN CAMPBELL, SWORN AND EXAMINED:

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35 BENCH: So you are going to argue about the relevance?

MR SHERIDAN: Yes, your Honour. There is nothing in the statement that I have been provided with that shows any relevance to the issues before the court. We do note that the witness has witnessed her own signature, but, anyway, that's by the bye.

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BENCH: Okay. Well, you are on notice, Mr Wilson.

45 MR WILSON: Your Honour, this - the witness here will produce the departmental file which will show-----

BENCH: I'm not having the whole file, thanks.

50 MR WILSON: I beg your pardon?

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BENCH: Why would I want a whole file?

MR WILSON: Well, it will - it is part of the evidence that we want to put forward to show-----

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BENCH: The whole file?

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MR WILSON: Yes, your Honour. If it's a departmental file, it's much better to put the whole file than to pull it apart and put pieces in.

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BENCH: I don't think a whole file would be admissible.

MR WILSON: Well, they are the business records, your Honour.

10 BENCH: What, the whole file? You want me to read a whole file?

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MR WILSON: No-----

15 BENCH: Well, it can't be tendered into evidence unless you want me to read it.

MR WILSON: Well, there will only be relevant parts of it, your Honour.

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BENCH: Well, pull the parts out, then, otherwise Mr Sheridan is going to have an objection to bits of it that are irrelevant being in. Anyway, you ask your questions. Mr Sheridan will object; I will make a ruling.

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MR WILSON: Okay, thank you, your Honour.

BENCH: Thank you.

30 MR WILSON: Thank you.

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Could you tell the court your full name?-- Patricia Ann Campbell.

35 And whereabouts do you work?-- Natural Resources and Water in Roma.

Okay. And what are your duties in that office?-- My duties are administration officer compiling government files, things like that, administrating of correspondence.

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Okay. And in relation to tree clearing, what files do you handle in relation to that?-- Vegetation management files.

45 I will just show you this file.

MR SHERIDAN: I object, your Honour. Further to my previous point, I don't know what is in that. I may have had parts of this disclosed to me; I may not have.

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BENCH: Has it been disclosed, each and every page of that file?

55 MR WILSON: Each and every page has been disclosed to Mr Sheridan.

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MR SHERIDAN: If I could just have a look at it, please, your Honour?.

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5 BENCH: Hasn't the Act got some sort of provision where you can just give me a certificate?

MR WILSON: No, it hasn't, your Honour.

10 BENCH: Well, why - is something happening to affix that, because all you need to do is give the court a certificate saying there is no permit, or are you going to make a concession that there is no permit, Mr Sheridan?

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15 MR WILSON: It is not about the permit, your Honour.

BENCH: Well, what is it about?

MR WILSON: It is about showing his motive and also his-----

20 BENCH: His motive?

20

MR WILSON: And also to stop - to stop some defences that he can raise.

25 BENCH: No, you don't do it that way, sorry.

MR SHERIDAN: Your Honour, this-----

30 BENCH: This is not a charge that requires you to prove motive.

30

MR WILSON: No, no, but-----

35 BENCH: So motive has got nothing to do with this charge.

MR WILSON: I am sorry, motive might be the wrong word.

40 BENCH: And as I explained to you, Mr Sheridan is going to argue - you know what he is going to argue: that it is irrelevant to proving the guilt or otherwise of Mr Knights. So motive is irrelevant.

40

45 MR WILSON: Well, we say it is relevant, your Honour, because this application-----

BENCH: What - where - on what authority do you say motive to a charge of carrying on a development without a permit - what - the motive is to carry on the development without a permit?

50 MR WILSON: I will withdraw that, your Honour. What I am saying, this application reflects the area that was cleared illegally and the-----

50

55 BENCH: You want to lead evidence of an application that was refused?



MR WILSON: And also to show that the person who made that application - there was a number of landholders in this - the person that had the running of the property and who the dealings were with. And this file shows that. It shows who the correspondence was with; who made the application.  
So-----

1

BENCH: Okay. I am just waiting for Mr Sheridan. Did you get the whole of that file?

10

10

MR SHERIDAN: Sorry, your Honour, there's only about 100 pages. Yes, we did.

BENCH: Isn't there something in the Acts Interpretation Act that says that you don't even have to prove there was or wasn't a development permit? That the defendant has to prove that?

15

MR WILSON: There's something in the Justices Act about the proof of a negative.

20

20

BENCH: Yes.

MR SHERIDAN: Section 76, your Honour, that is for defences. That's reversal of the onus of proof. If we-----

25

BENCH: So you are the one who has to prove there is a development permit if there isn't one?

30

30

MR SHERIDAN: Yes, your Honour, or, alternatively, if we expect - if we wish to raise a defence, the onus is reversed onto us and the balance of probabilities, and then my friend has to prove the absence of that defence beyond reasonable doubt.

35

BENCH: Well, do you say he should be doing that now in his primary case or as a rebuttal?

MR SHERIDAN: With respect, your Honour, it is - I don't want to make any submissions as to how the prosecution should-----

40

40

BENCH: Well, you are objecting and Mr Wilson is saying he needs to lead this evidence to cut you off at the pass for any defence you may have.

45

MR SHERIDAN: All right, then, on that basis, he has to prove - the charge is without a development permit, all he has got to prove is that we didn't have a development permit. And I am not sure how - what department searches or how the existence of development permits is recorded.

50

50

MR WILSON: Your Honour, it is not about whether he had a development permit or not. There is such things as routine management and essential management-----

55

BENCH: Where is that in the charge? Where is the words, "routine management"?

1

MR WILSON: Well, your Honour, it is quite complicated, this. You have to go to the Integrated Planning Act.

5 BENCH: Well, no, where are you required to prove those things in this charge? The charges says, "Richard Tudor Knights did start assessable development, namely, clearing of native vegetation on freehold land without a development permit."

10 MR WILSON: Because it says - there is a development that is not assessable under those-----

10

BENCH: Sorry?

15 MR WILSON: There is a development that it is non-assessable if it's for routine management or essential management, that is, fodder feeding, fence-line clearing, roads, things like that, building yards. And we just want to negate that, your Honour, because there is also non-assessable development. So, we anticipate that their defence will be that they use this for fodder feeding, and we want to negate that defence at this point, to show that he had an intention to clear this property for commercial gain not for fodder feeding.

20

25 And to do that we need to put this file in to show - and in addition to that, also to show that he is the person with the management of Acme Downs - the person responsible, not his brothers.

30 BENCH: All right. I don't see how the file is going to prove that.

30

MR WILSON: Well, there is an application on there - the correspondence on there which-----

35 BENCH: Well, that doesn't prove that any one person is necessarily any more responsible than the others.

40 MR WILSON: We will be asking your Honour to draw an inference of that together with this and other evidence that will be lead.

40

45 BENCH: Okay. So do you say that - do you concede Mr Wilson can produce this now to negative a possible defence that is reasonably made out on the evidence?

MR SHERIDAN: He can produce this file as evidence of a permit application but as to its application in negating a statutory exemption, I don't believe it will help at all.

50

50 BENCH: You don't - so you are not - you are not maintaining your objection about this file?

55 MR SHERIDAN: I have gone through the file in those few minutes and it seems that everything on the file has been disclosed, your Honour.

60

BENCH: Okay. Thank you, so you withdraw your objection?

1

MR SHERIDAN: Yes, your Honour.

5 BENCH: Thank you. You can show the file to the witness.

MR WILSON: Thank you, your Honour. I might just give the witness some tags.

10 BENCH: No, sorry, that is not going to work.

10

MR WILSON: It is only for convenience that-----

15 BENCH: No, it is not going to work. If you are going to get the witness to do something, it can't be with a tag, because they can be easily taken off and the evidence is lost. So you have to get sticky tape or staple something to them, or I presume - or if every page is paginated, or if it is in date order - I presume it is at least in date order - she can just  
20 tell me the date on the top of the page. But if this witness puts that green sticky thing in and then I pull it off, I will be interfering with evidence. I don't want to get myself into any trouble, thanks.

20

25 MR WILSON: It was only to assist the court, not to-----

BENCH: Well, I would rather you didn't, thanks.

MR WILSON: Okay.

30 Now, can you tell the court what that file represents?-- This file would represent a landholder applying for a - well, it is an application for a clearing permit.

30

35 And who made that application, from the documents?-- On the top. I will just find the application on the file. The applicant's details are R, R T and M Knight and the contact person is Richard Knights.

40 And who - is it signed by anyone?-- It is signed by R T Knights or R J Knights - I think

40

it's a T - as the applicant.

45 Okay. And is there any correspondence on the file?-- There is correspondence. The correspondence - first of all, it would probably relate to a receipt letter that we actually sent to the landholder just to say we are in receipt of their application; that our office has received it, and that the  
50 application is properly made. So everything we require for assessment is there.

50

55 All I'm asking is, who was all the correspondence to and from in respect of that permit?-- Looking - a lot of this addressed to Richard Knight and others.

Okay. And what was the outcome of that application?-- The decision that was made has been a refusal.

1

5 Okay. The - are there maps in there of the area that was applied for? And also----- ?-- As part of the application, the landholder is to supply a PVNP, which is a property vegetation management plan-----

10 BENCH: A what?-- A PVNP.

10

PVNP?-- That's a part of the application requirement. To me, it looks like there's an RE map and a satellite image provided with the application.

15 MR WILSON: And if you can just leave them open out. Now, can you tell the court why the application was refused?

20 MR SHERIDAN: I object to it. As I said before, this deemed refused permit - I just can't see how it's relevant to the issue and the reason why that was refused-----

20

25 BENCH: It will be on the file, won't it? So there's no need to ask that question if you're going to tender the file and Mr Sheridan doesn't have any objections. Don't go through the file, I will just read it.

MR WILSON: Okay. Well, I will tender that file, your Honour.

30 BENCH: Thank you. That will be admitted in evidence and marked Exhibit 3.

30

35 ADMITTED AND MARKED "EXHIBIT 3"

40 BENCH: Do you need the witness to keep it there?

40

MR WILSON: No, your Honour. I have no further questions.

45 BENCH: Okay. Have you got any questions, Mr Sheridan, that would require her to keep that there?

MR SHERIDAN: Yes, please.

BENCH: Okay.

50

50

CROSS-EXAMINATION:

1

5 MR SHERIDAN: Now, which - you called the document there, an  
application for a file. Could you hold that up, please, so I  
can identify it? What was the date of that? Now, the date of  
that application was the 13th of October 2001; that's right,  
isn't it?-- Correct.

10 10

Now, I think it was Exhibit 1, your Honour.

BENCH: Yes.

15 MR SHERIDAN: The title search. Could the witness be shown  
Exhibit 1, please?

BENCH: Okay. I notice it's only for what happened in 2005,  
so it's irrelevant.

20 20

MR SHERIDAN: Yes, your Honour, that's what I'm getting to.

Now that title search, what's the date on that  
document?-- Well, the date this was created this - on here,  
this marking?

25

Yes?-- 31st of-----

BENCH: No, on the title deed, not on my marking?-- Okay. So  
the date this was created was the 15th of April 2005.

30 30

MR SHERIDAN: And the date of that application, again?-- 13th  
of October 2001.

35 Now, does that file contain any document as to the title -  
what name the title was held in at the time of the  
application, or just at that time?-- Just on that application,  
it really doesn't have a lot in plan description in the  
original application. It just has the - like, the lease  
40 number. It's a free-holding lease, but I will just look  
through other correspondence and - there is other  
correspondence on here that relates to Lot 8, MGL33.

40

45 I'm just looking for a document on that file that might  
indicate what name the property was held in at the time of the  
application, because that Exhibit 1 obviously doesn't?-- No, I  
can't see a title search on here for the date of the  
application.

50 Sorry, my friend has provided me with an historical title of  
the property.

50

BENCH: And why wasn't that tendered?

55 MR SHERIDAN: Could the witness be shown this document,  
please, your Honour?

BENCH: Surely you're going to get your instructor to take it up to her.

1

MR SHERIDAN: Could you just have a look at the last page of that document that I provided to you? On the right-hand side, the last entry there on the stamp. Could you tell me what the date inside that stamp is?-- The 16th of June 1986.

Could you read the names that are listed?-- Ronald Knights, Richard Tudor Knights and Maureen Knight.

10

Yes, thank you. I tender that document, your Honour.

BENCH: That will be admitted in evidence and marked Exhibit 4.

15

ADMITTED AND MARKED "EXHIBIT 4"

20

20

MR SHERIDAN: So there's nothing on that file that indicates that at the time of this application - what the ownership of this property was?-- No, there's not a title search on the file.

25

If I could just take you down to the front page of that form 1 development application - can you find that for me?-- Yes, it's on form A, yes.

30

30

The IDAS, form A. Down to part 4, Applicant Details, "Clearly identify who is making the application. The application need not be the owner of the land." Is that - can you confirm that's what it says in your copy there?-- That's correct.

35

Thank you, your Honour, nothing further.

MR WILSON: I have no further questions, your Honour.

40

40

BENCH: Thank you. Just leave your file there, thanks. Thank you.

45

WITNESS EXCUSED

BENCH: Yes, thanks, Mr Wilson.

50

50

MR WILSON: Thank you, your Honour. The next - the next witness I will call will be Daryl Baumgartner, spelled B-A-U-M-G-A-R-T-N-E-R.

55

DARYL JOHN BAUMGARTNER, SWORN AND EXAMINED:

1

5 MR WILSON: Could you just tell the court your full name,  
please?-- Daryl John Baumgartner.

And whereabouts do you work?-- I currently work at Natural  
Resources and Water at Ipswich.

10 10

Okay, and how long have you been in the  
Department?-- Approximately six years.

15 Do you hold any formal qualifications?-- I hold a degree in  
Applied Science in Protected Area Management and a diploma in  
Applied Science in Horticulture.

20 Now, could you tell - tell the court how you come to be  
involved in this matter of Mr Knights?-- Mr Knights lodged an  
application for operational works, which was the clearing of  
native vegetation.

20

I will just ask you to slow down?-- Pardon?

25 I'm sorry. Yes?-- And I was the assessing officer for that  
particular application.

30 What's your duty as an assessing officer?-- To make sure that  
the application is compliant with the code assessment.

30

35 And the code assessment is what? Just explain it?-- The code  
assessment just requires the applicant comply with state  
planning laws which detail, amongst other things, bio-  
diversity, sustainable production of lands.

40 Okay. So can you tell the court how you - what involvement  
you had in Acme Downs?-- I had contacted Mr Knights to  
organise an inspection of the property and that, I believe,  
was organised for March the 4th. There was-----

40

45 In what year?-- 2003. There was a delay in actually  
inspecting on - on that particular time because a soil auger  
was missing from the vehicle.

Okay?-- So it was actually inspected on March the 5th.

50 All right?-- And I had contacted Mr Knights the day prior to  
both of those events, just to make sure that we were still  
okay.

50

55 Yes. So, what happened then?-- I contacted Mr Knights. An  
agreement was reached that we would do an inspection for  
salinity on, I think it was a Wednesday, March the 5th. I met  
Mr Knights at the property. I arrived, I got my bike ready  
from a bike trailer that we did the inspection on. Mr Knights  
was away for a couple of minutes getting his motorcycle to

join me in that, and after that we went around the property and conducted the assessment.

1

5 What did you find during the assessment? Could you tell us what happened?-- We set off from the actual house and headed southbound through a gate. Mr Knights proceeded a couple of minutes before me and I was able to follow him from a path of dust in the - in the distance, and I actually specified a particular site that I would like to have a look at, which he met me at, and from there, we conducted soil tests, looking at salinity measurements. From that point we discussed some of the findings and then had general conversations about the assessment process and went on our way with that assessment.

10

15 Now, you also had further discussions with Richard Knights in connection with other matters?-- Yes. We discussed - there was an anomaly between the regional ecosystem mapping at that particular point and-----

20 Okay, can you just tell the court what the region ecosystem mapping is?-- Regional ecosystem mapping is a - a map that's produced by the Queensland Herbarium, which designates what's considered to be remnant vegetation in the State of Queensland and non-remnant vegetation. That - that map is used as the basis for determining what is assessable vegetation.

20

25 So what was the anomaly?-- The anomaly was that the Landsat imagery had picked up areas that seemed to be devoid of vegetation when the remnant mapping had clearly indicated that it should have been remnant vegetation.

30

35 So how did the discussion go?-- I don't remember the verbatim discussion, but I - it was one of the issues that I had intended to raise on the property during the inspection. It was just a matter of it didn't quite make sense. I canvassed Mr Knights to see whether he had any idea what happened to it and-----

40 What happened to what? When you say-----?-- The bushland, sorry. The actual remnant vegetation that appeared on the regional ecosystem map, that did not appear on the Landsat image. I asked Mr Knights if he had any idea what happened to that area, which he said had been cleared. I asked him whether he had a permit and he said something along the lines of that he didn't require one. I then said that I accepted that just said that I would need to notify Toowoomba compliance just to clear that up and we - kept on with the assessment.

40

45 And what was the result of your assessment?-- The findings of that assessment was that the application was not fully compliant with the performance requirements of the code, and a recommendation was given to the decision-maker to refuse the application.

50

55 Okay. I've no further questions, your Honour.



CROSS-EXAMINATION:

5

MR SHERIDAN: Thank you, your Honour. Mr Baumgartner, are you an authorised officer for the purpose of the Integrated Planning Act?-- Yes, I am.

10

The Vegetation Management Act?-- Yes.

10

The Land Act?-- Yes.

15

Well, what was the date of your - that you received that delegation?-- I'm not aware. I would - I would imagine it would have been on an appointment of position.

20

On appointment of the position?-- Yes.

20

So you have been an authorised officer under those three Acts since - how long, sorry? I-----

25

BENCH: Did you ask him, was he a delegate under the Integrated Planning Act?

MR SHERIDAN: Authorised officer under the Integrated Planning Act.

30

BENCH: Authorised officer, Integrated Planning Act.

30

MR SHERIDAN: And the Vegetation Management Act and the Land Act.

35

BENCH: You should just need a gazette to be produced, don't you?

40

MR SHERIDAN: No, your Honour. I think the Vegetation Management Act has a deeming provision-----

40

BENCH: I see.

45

MR SHERIDAN: -----in that, as well, that they don't have to prove the delegation - the authority - unless there's evidence - in the absence of evidence to the contrary.

50

So at the time you - so you've been an authorised officer since, you say here, you were employed by the Department since 2000?-- That's correct.

50

Now, you said that part of your position at the time you visited Acme Downs on - which day did - did you attend there on the 5th or the 6th of March 2003, initially?-- I believe it was the 5th.

55

Had you been on the property prior to that?-- From my recollection, I can't recall, sorry.

1

Now, you said that your task at that time was to assess - to make an assessment of whether development was code assessable, is that right?-- Yes.

5

Would you not make an assessment before that, on whether the development was actually assessable development at all?--Whether it was assessable development?

10 Yes?--Once it is-----

10

-----at the outset?--Once it is accepted by the assessment manager, I believe it is accepted as being for development.

15 Assessable development?--Yes.

And at that time, was the areas that Mr - the areas subject to the application, were they - they were obviously - had been deemed by someone superior to you as been assessable development?--Could you repeat that, sorry?

20

20

You said you went out there to have a look at a permit application for assessable development?--Yes.

25 And you said that the decision on whether that development was assessable development or not-----?--Yes.

-----was made by someone superior to you. An assessment manager, did you say?--Yes.

30

30

Who is that person?--That would be Mr Jim Herbert, I would imagine.

Jim Herbert, is he an employee of the Department?--He is.

35

Is he based at Roma?--He is.

Yes. Now you went out there on the 6th of March to perform a salinity inspection, you said?--That is correct.

40

40

Is that correct?--Yes.

During that inspection you noticed that there was an anomaly between a satellite image and a regional ecosystem map?--Well, it was actually picked up prior to that, so that was one of the issues I needed to clarify on the day.

45

It was picked up prior to your inspection?--Yes.

50 So your inspection had two roles: one was to make an assessment of salinity for the clearing application?--Yes.

50

And the other one was to inspect a possible offence against the Integrated Planning Act?--At that particular point, an offence didn't really even enter my mind. It was just, "What has happened here?"

55

60

But you said that there was - had been an anomaly picked up between the satellite image and the regional ecosystem map?--Yes.

1

5 And you saw that when you got there?--Yes. Yes.

And then you asked Mr Knights about it?--Yes.

10 And he told you that he didn't have to have a permit?--Along those lines, yes.

10

And then when you got back to Roma, was it, you reported it to the compliance unit?-- believe that was so, yes.

15 What was the date you reported it to the compliance unit?--I wouldn't be aware, off the top of my head.

But was it shortly after or was it some time after?--I wouldn't be aware, sorry.

20

20

Now-----

BENCH: Why wouldn't you be aware, if you reported it?--It wasn't a matter that was of high importance to me. It was-----

25

MR SHERIDAN: A possible offence under the Integrated Planning Act is not of high importance?--At that particular time, no. My priority and importance was on the assessment application. At that particular time I had no inkling that it wasn't legally cleared.

30

30

But you said there was an anomaly between the satellite image?--Yes.

35

And the regional ecosystem map?--Which could have been explained.

How?--Well, I am not here to promote options. I am just saying, it could have been.

40

40

No, you are here to answer questions. How could it be explained? How could an obvious prima facie case of unlawful clearing - the regional ecosystem map said there should be vegetation?--Yes.

45

And the satellite image said there wasn't?--Yes.

And your observation on the ground has confirmed there wasn't - there weren't?--Yes.

50

50

But when you asked Mr Knights, you said he said he didn't need a permit?--Yes.

55 Now at the time you made-----

BENCH: Well, are you asking another question?

1

MR SHERIDAN: No, your Honour, I'm happy with that. He finished it with, "Yes."

5 BENCH: Okay. Thank you.

MR SHERIDAN: At the time you conducted that inspection, you said you had a regional ecosystem map with you. Can you remember which version it was?--No, I can't, off the top of my head, no.

10

Can the witness be shown this document, please, your Honour?

15 BENCH: Sure.

MR SHERIDAN: Can you identify that document, Mr Baumgartner?--It is a regional ecosystem map, version - this would appear to be a map modification - a certified map modification.

20

20 It was plotted on the 20th of September 2002?--Yes.

25 It's an updated 1999 regional ecosystem map?--That's what it's titled.

25 Was that the map you used on that day?--To?

30 For the purposes of your inspection?--It may have been something that was within the file. It wouldn't have been the primary tool, no.

30

35 Now there's a - it appears to be in the bottom left-hand corner - is that your initial there, "DB"?--It is.

35 And the date, 11th June 2003?--Yes.

40 And there's the word "old", is there, appearing above it?--Yes.

40 I tender that document, your Honour.

40

BENCH: What is it? What will I call it?

45 MR SHERIDAN: We will call it copy of updated remnant 1999 regional ecosystems.

BENCH: Updated remnant-----

50 MR SHERIDAN: Updated, yes.

50

BENCH: Okay. Do you need the witness to keep that down there with him?

55 MR SHERIDAN: Just for two seconds, your Honour.

BENCH: Now, when it comes up that will be admitted into evidence and marked Exhibit 5.

60

1

MR SHERIDAN: Thank you, your Honour. May the witness be shown this document, please, your Honour?

5 Can you identify the covering letter on this? There's three pages in that document, isn't there, Mr Baumgartner?--Yes.

One departmental letter and two coloured maps?--Yes.

10 Could you identify that letter on the front, dated 9th of October 2002, please?--It's a letter from - it's a letter from the Department to Mr and Mrs Knights indicating that there was an update to a regional ecosystem map. 10

15 It covers two colour copies of regional ecosystem maps?--One is the signed certified copy and the other one is probably the original.

I tender those documents, your Honour.

20 BENCH: And what's that for? 20

MR SHERIDAN: This is a-----

25 BENCH: A letter?

MR SHERIDAN: A letter covering two more maps.

BENCH: Okay. I will get-----

30 MR SHERIDAN: Would you Honour like to----- 30

BENCH: Yes. I would like to get them and have a look at them, thanks. So I will get Exhibit 5 and Exhibit 6.

35 MR SHERIDAN: Do you want to have those Exhibit 6, because there are a number of these maps?

40 BENCH: Well, I think I should mark them as we go, or I'm going to get myself into a confusing state. 40

MR SHERIDAN: Yes, your Honour, otherwise it will be-----

45 BENCH: So Exhibit 5 is marked and so is Exhibit 6.

ADMITTED AND MARKED "EXHIBIT 5"

50 ADMITTED AND MARKED "EXHIBIT 6" 50

ADMITTED AND MARKED "EXHIBIT 6"

55 BENCH: Do you need the witness to get them back?

MR SHERIDAN: No, thank you.

1

MR WILSON: Your Honour, can I just point out, Exhibit 5 and Exhibit 6 are the same map.

5

BENCH: So? Thank you.

MR WILSON: The Exhibit 5 map and the Exhibit 6 - the first one there is the same map.

10

BENCH: Well, we don't know where Mr Sheridan's going. Thank you.

10

MR WILSON: Sorry.

15

MR SHERIDAN: I just want to confirm that the black and white copied one of Mr Baumgartner's is - your Honour has got as exhibit 5.

20

BENCH: Yes.

20

MR SHERIDAN: And Exhibit 6 will be the one that I have just tendered, with two colour copies, covered with the letter of 9 October.

25

BENCH: Yes. Also, we've got the remnant and the updated remnant attached there?

MR SHERIDAN: Yes, your Honour. Could the witness be shown - be given back Exhibit 6, please, your Honour?

30

30

BENCH: Do you want him to have both or just 6?

MR SHERIDAN: No, just the 6, thank you.

35

BENCH: Thanks.

MR SHERIDAN: Now, the first map, which is page 2, now, that is a colour copy of the - the former black and white copy of - with your initial on it?-- Mmm-hmm.

40

40

And the second - the second - what is the plot date of that one, the 20th September 2002, wasn't it?-- Yes.

45

The second map is plotted on the same day - is plotted on the 2nd of August 2002?-- Mmm-hmm.

And that is rendered the 1999 ecosystem; is that correct?-- That's what it's titled, yes.

50

50

Now, this map, the second one, "Rendered 1999, regional ecosystems," is that the regional ecosystem map that you had regard to at the time of your inspection?-- That, I couldn't be certain because we have a separate cartography officer that actually uses this data to highlight the areas that are going to be assessable.

55

BENCH: Sorry? You have a what?-- We have a - a cartographer,  
a GIS officer.

1

5 What is their name?-- At that particular point it would have  
been Linda Hardwick.

10 And what does she do?-- She generates the - well, at that  
particular time, Linda would have generated the satellite  
image with the assessable vegetation.

10

Have you got that with you today?-- That will be on the file.

15 We don't need to worry about them. Mr Sheridan will ask you  
more questions.

MR SHERIDAN: Thank you, your Honour.

20 So these maps, which were sent to the defendant, could you  
just read-----

20

BENCH: I can read, thanks, Mr Sheridan.

25 MR SHERIDAN: Thank you, your Honour. So these maps that were  
sent on the 9th of October 2002, to Maureen, Richard and  
Ronald Knights, these aren't the maps that you undertook the  
assessment of the permit in March 2003? Is that correct?-- I  
would need to check the file.

30 Could the witness be shown this document, please, your Honour?

30

Following the inspection of - following the inspection of  
March 2003, you produced this report on the application for  
the permit? That's a copy of your report?-- Yes.

35 I just want to take you over to page 3 to 7, to the paragraph  
headed, Physical Description?-- Mmm-hmm.

40 Table 1, Regional Ecosystems Summary. Regional Ecosystems  
11.3.28, and then you go down 6.3.14, 6.3.17, 6.4.4 and 6.5.4.  
Now, that table is a summary of the regional ecosystems that  
were existing on Acme Downs at that time you made the  
inspection, wasn't it? Is that what that table  
represents?-- That's - that's what would have been described,  
yes.

40

45 Right. So, even though you can't remember, or locate, which  
map you had at that time, that is the status of the regional  
ecosystems at the time of your inspection in March  
2003?-- That - that data is interpreted from whatever spatial  
50 data covers that particular lot. So that is - that hasn't  
been confirmed on the ground, that is just what is mapped.

50

55 So that - yes. So that - those ecosystems there were what  
were mapped at the time of your inspection in 2003, in March  
2003?-- Yes.

Now, the first one, 11.3.28, you say there, it was currently of concern. So does that mean that was the status of that regional ecosystem at that time?-- Yes.

1

5 And 6.3.14 was not of concern at that time?-- That's what is written.

6.3.17 was not of concern at that time?-- That's what it is described as.

10

6.4.4 was not of concern at that time?-- Mmm-hmm.

10

6.5.4 was not of concern at that time. Is that correct?-- Yes.

15

That was the result of your assessment in March 2003-----?-- Yes.

-----using the available regional ecosystem mapping current at that time?-- That would - that would have been the data that was supplied to me from GIS.

20

20

Is that the status of the regional ecosystems at that time?-- Are you asking me to check now, or are you saying-----

25

No, I am asking you to recall from your inspection and the report. This document you have just been given?-- I - I couldn't remember, honestly. I have probably done dozens, if not possibly a hundred, of these since, so-----

30

30

But at this time, this is a - this is a true copy of the report you provided to the-----?-- That's right. That's right.

35

The department?-- Yes.

So there is no reason to think that that would be anything other than accurate, is there?-- That is correct.

40

40

I tender that document, your Honour.

BENCH: That will be admitted into evidence and marked Exhibit 7.

45

ADMITTED AND MARKED "EXHIBIT 7"

50

50

MR SHERIDAN: You say in your statement that at the time you visited Acme Downs in March 2003 the property was extremely dry?-- Mmm.

55



And you saw stock during that inspection. And this  
vegetation, that you saw cleared, was it being eaten by  
stock?-- Not to my----- **1**

5 You didn't see any stock eating it?-- No.

Was there anything else there for them to eat?-- I'm not an  
agronomist but I would have said very, very little.

10 Yes. Now, you visited the property later on, on the 11th of  
June 2003, didn't you? What was the purpose of that  
inspection?-- I can't recall. **10**

15 Excuse me, your Honour, I will just get some instructions.  
Nothing further, thank you, your Honour.

BENCH: Thank you. Any re-examination?

20 MR WILSON: Yes, your Honour. **20**

RE-EXAMINATION:

25

MR WILSON: Could the witness have Exhibit number 3, please?  
That's the file.

30 I just want to clarify the report. What sort of - Mr Sheridan  
said about what vegetation was there and the status of that  
vegetation. Could you just tell me from that report, your  
report, what that status of the vegetation was? **30**

35 BENCH: At what time?

MR WILSON: At the time he inspected it.

40 BENCH: Well, which inspection? **40**

MR WILSON: In March 2003.

45 Did you do a report on - on the type of vegetation on the  
property?-- Technically, I wouldn't have done a report on the  
vegetation. I - I would have detailed what was actually  
described for the property.

50 Okay. And when you say "detailed," was the property - were  
you referring to the RE map?-- That's correct. **50**

Okay. And the RE map in respect of where the clearing was  
applied for?-- That's correct.

55 Is there an RE map on that particular file?-- There's a few.

Have you got a copy of the permit that was applied for? I'm just trying to find out what the regional ecosystem was in respect of where the permit was applied for?-- Yes.

1

5 MR SHERIDAN: I object, your Honour. This matter did not arise in cross-examination.

BENCH: What - why are you asking this question?

10 MR WILSON: I did, your Honour, because he said there the physical description on his report, and he goes on about the property, "Of concern"-----

10

BENCH: Sorry?

15 MR WILSON: In - I think it was Exhibit 7 - Exhibit 7, Physical Description.

BENCH: What page?

20 MR WILSON: Page 3 of 7.

20

BENCH: Mmm-hmm.

25 MR WILSON: We've got "Physical Description" there.

BENCH: What are you asking?

30 MR WILSON: I'm just asking - asking him what was the ecosystems in respect of what the permit was applied for, because this one here, Physical Description, infers-----

30

BENCH: Well, that will be obvious on the permit application.

35 MR SHERIDAN: Your Honour, that question does not arise out of cross-examination. I did not question him at all about the area that was applied under the permit.

BENCH: You didn't question him at all about?

40 MR WILSON: About the status of the regional ecosystem that was applied and the area that was applied under that permit. I questioned him on the status of the ecosystem of the property and as about - and in respect of his report, physical description, on page 3 of 7.

40

BENCH: Okay, well, you are applying to ask a further question in evidence-in-chief, then, are you, Mr Wilson?

50 MR WILSON: No, I don't think so, your Honour.

50

BENCH: Okay, well, I will hear your response to Mr Sheridan's objection.

55 MR WILSON: Well, your Honour, I had the impression that that question - said that the area under the permit didn't have-----

BENCH: What permit?

MR WILSON: The application for the permit, sorry.

5

BENCH: Well, there's no permit.

MR WILSON: No, I beg your pardon. I meant the-----

10 BENCH: Will you please be careful about the terminology  
you're using here. It's confusing enough for me without you  
using the wrong terms.

10

MR WILSON: I'm sorry, your Honour.

15

BENCH: Well, what question do you say Mr Sheridan asked which  
allows you to ask this question in re-examination, seeing as  
you are not applying to ask it in evidence-in-chief?

20 MR WILSON: Mr Sheridan said, "Can you - can you say what the  
general description of the property was from your running  
through this physical description of the property?" And Mr  
Baumgartner was a bit hesitant there. He wanted to say  
something else. I'm just giving him the opportunity to say  
25 there what the physical description-----

20

BENCH: Sorry, not allowed, thanks. If he is asked the  
question fair and square in cross-examination, and he doesn't  
want to answer it, that doesn't then give you a chance to  
30 clarify anything. And you haven't answered how it arose out  
of cross-examination yet.

30

MR WILSON: That was the question.

35 BENCH: Thank you. Move on to something else, thanks.

MR WILSON: In relation to map 3.2 which is Exhibit 6 - could  
the witness see Exhibit 6, please?

40 BENCH: I think he has got it down there. I am hoping he has,  
because I don't have it here.

40

MR WILSON: From that regional ecosystem map, can you tell the  
court the regional ecosystem summary of the property?

45

BENCH: Well, is that just reading it, because I can read it?

MR WILSON: No, it's coloured.

50 MR SHERIDAN: Sorry, which map is my learned friend referring  
to?

50

BENCH: The one with the letter.

55 MR SHERIDAN: Yes, your Honour, there's two maps attached to  
that.

MR WILSON: The first one.

1

MR SHERIDAN: Thank you.

5 BENCH: The updated or the non-updated?

MR WILSON: The updated one?--So you would like me to go through the REs that are located on the property?

10 Yes, please?--Well, starting from the northern-----

10

BENCH: I can't understand this without a coloured map myself.

15 MR SHERIDAN: Well, this didn't arise in cross-examination either.

BENCH: How did this arise in cross-examination?

20 MR WILSON: The physical description of the regional ecosystem.

20

25 MR SHERIDAN: Your Honour, that was based on Exhibit 7. It was written - the document that was written by this witness. Now what my learned friend is attempting to do is, as your Honour pointed out before, ask further questions in evidence-in-chief about this document, rather than the answer that he gave to the question I posed to him on this document.

30 BENCH: Yes. Well, how does it arise out of cross-examination, Mr Wilson?

30

MR WILSON: Well, I am just giving him the opportunity to describe-----

35 BENCH: No, how does it arise out of cross-examination?

MR WILSON: Because of Mr Sheridan's question of the physical description of the property.

40 BENCH: He was asking about Exhibit 7.

40

MR WILSON: That's right.

45 BENCH: Well, if you want to ask something to clarify the witness's answer in reference to Exhibit 7 you can.

MR WILSON: Okay.

50 BENCH: But that does not allow you to ask additional questions about Exhibit 6, unless you are applying to ask further questions in evidence-in-chief, in which case I will give Mr Sheridan a further opportunity to cross-examine. That is the only fair way.

50

55 MR WILSON: Thank you, your Honour.

Could you just have a look at the Exhibit number 7, which is the report.

1

BENCH: Yes, I will give it to you.

5

MR WILSON: On page 3 there's the physical description?--Yes.

Regional ecosystem summary. Can you just explain to the court exactly what that is?--That's a summary of all the regional ecosystems that would have fallen under the foot print of the application.

10

10

BENCH: Well, when you say, "fallen under the footprint," you just mean that's the ecosystems that were in the land that they applied for the permit for?--That's correct.

15

MR WILSON: Now when was that report written?--The 17th of the 12th 2003.

20

No further questions, your Honour.

20

BENCH: Thank you. Thank you very much, Mr Baumgartner. That's the end of your evidence now. If you just leave all of that stuff there, we will sort it out. Thank you.

25

WITNESS EXCUSED

30

30

BENCH: And your next witness?

MR WILSON: Is John Forcier, your Honour.

35

40

50

JOHN FORCIER, SWORN AND EXAMINED

1

5 MR WILSON: Can you tell the court your full name please?--John Anthony Forcier.

How did you come to be involved in this matter?

10 BENCH: Well, you had better get him to give us what his job is first or some identifying details, like his address, date of birth, place of birth or some other material. 10

MR WILSON: I thought he was going to tell me that, your Honour, but I will ask him. 15

Could I have where you work currently?-- Yeah, I'm currently employed as an investigator with Maritime Safety Queensland. At the time of this, though, I was employed as a regional investigator with the Department of Natural Resources and Mines out of Toowoomba. 20 20

Thank you. And can you tell me how you became involved with it? What happened?--I received information - approximately two years ago I received information as part of several cases we were looking at and the property known as Acme Downs came across my desk and that is how I first became aware of the property. And I - after some homework on the property, I swore out a warrant to visit the place and went out there, and it was the 26th of October 30 30

2004 when I attended the property. I met with a person who identified himself as Mr Knights. I executed the warrant and explained that I was out there to examine the property for possible clearing. The clearing, at that stage, I was only aware of through satellite imagery. Mr Knights declined to talk to me at that stage. 35

When you say "Mr Knights" do you know - do you know Mr Knights?-- Richard Tudor Knights, I knew the name as. I hadn't met him until that point. 40 40

Now, was anyone with you?-- I - I beg your pardon.

45 Was there anyone with you?-- Yes. My manager at the time, Craig Elliott.

Okay?-- Who is also - also an authorised officer. Mr Knights pointed us - pointed out a couple of little areas on the map that I had with me as to where we needed to go. We then travelled out in our car to those areas, to have a look, where I took photographs. I formed an opinion that offences may have occurred, and when we returned back to the homestead I had a short conversation with Mr Knights, which he reiterated that he didn't wish to talk to me, and that any questions be put to him in writing, which is what I subsequently did, and we - we left the property after that. 50 50 55

1

5 Okay. You said you took photographs?-- That's right. I entered everything into a - a notebook. Your Honour, if you like, I can refer to it - the actual photograph numbers and so forth.

10 BENCH: Well, you won't be referring to any notebook unless you get leave, so just stand steady there, thanks?-- Yes, your Honour.

10

Just wait and see what Mr Wilson asks. You might not need it.

MR WILSON: Did you make notes-----

15 BENCH: Don't you make the application, thanks, Mr Wilson. It's for the witness to do that, and you haven't asked him any questions yet that would require reference to a notebook. If Mr Sheridan has a copy of the notebook and he's going to agree to the witness looking at it, then just let me know.

20

20 MR SHERIDAN: I have not seen the notebook, your Honour.

BENCH: Hasn't been disclosed?

25 MR WILSON: Yes, it has been disclosed.

MR SHERIDAN: I don't believe so.

30 MR WILSON: It's in that file; the brief was on there.

30

BENCH: Have you seen all these photos, then?

35 MR WILSON: We have photos, your Honour, and we are just frantically trying to find out whether they're correct ones.

BENCH: Has anyone from your office checked with those other three witnesses - how they're going, Mr Wilson?

40 MR WILSON: Not that I'm aware of, your Honour. Yes, your Honour. The two - the two Knights are going to claim privilege, and the contractor is still getting legal advice.

40

BENCH: He's still getting legal advice?

45 MR WILSON: Yes, your Honour.

BENCH: So are you going to bother calling the Knights?

50 MR WILSON: No, your Honour.

50

BENCH: You're not?

MR WILSON: I don't - I don't think so, at this point.

55 BENCH: Are you going to send them away, then?

MR WILSON: I would like to confer with my friend at some point. At lunchtime, perhaps, when I have some time.

1

5 BENCH: Well, are you going to tell them not to come back till - that - to go away and you will give them a ring at lunchtime if you want them?

MR WILSON: Well, I-----

10 BENCH: It's a bit rude - having them sitting outside.

10

MR WILSON: Well, I don't propose to. As soon as I have a chance to have a talk to my friend, then -----

15 BENCH: Well, you're not going to have a chance until 1 o'clock. It's quarter to 12 now.

MR WILSON: Well, if I could have a short adjournment, I could resolve the matter, your Honour.

20 BENCH: I will stand Mr Forcier down, and call them in; they can claim privilege and they can get on their way.

20

MR WILSON: We will let them go, your Honour.

25 BENCH: Thank you.

MR WILSON: What did you do while you were on the property?-- At the property we - we used a GPS device to get ourselves approximate locations of where the satellite indicated that vegetation had - had disappeared, and travelled to those locations and took photographs.

30 30

35 Okay. And can you tell me where those locations were?-- They were - they're GPS points which are a series of numbers, which I - I don't retain in my head; they were written into the notebook.

40 Okay. Have you've got a record of those - of those GPS points?-- Yes, in my notebook.

40

Do you seek leave to-----

45 BENCH: You don't get to make the application, Mr Wilson. I'm not going to allow you to give evidence of GPS unless you've got another witness who's going to come along, who is a GPS expert, and who's going to be able to plot these on some of these other maps, because the GPS reference means absolutely nothing to me, unless it has got minutes and seconds, north and south, that I can then cross-reference it onto the title deed or the map.

50 50

MR WILSON: Yes.

55 BENCH: So are you calling a GPS expert who is going to be able to give that evidence about these GPS positions?

MR WILSON: Did you use the GPS?-- Yes, I did.



1

So you-----

BENCH: You didn't answer my question, Mr Wilson.

5

MR WILSON: Yes, I know that, your Honour.

BENCH: I asked you a question. You rudely ignored me and asked your witness another question. I am not used to that, so I withdraw my - I am not going to ask you any more questions. You run your case the way you please but you do not ask for leave. The witness will ask for leave in the usual way. This witness is an investigator. He doesn't have to be lead along by the hand. If he needs to seek leave he will do that.

10

15

MR WILSON: I apologise for offending your, your Honour.  
I-----

BENCH: Don't respond now; you've apologised. But I asked you a question and you did not respond to me.

20

MR WILSON: Well-----

BENCH: Thank you.

25

MR WILSON: I was just trying to explain my reasons?-- If I can, perhaps, keep going. The GPS unit that we use spits out a reading in eastings and northings which we can then reference to a map which, at the time, we carried. But merely - once I got to the locations that I presumed were on the imagery that we were looking at, I noticed that there were trees down and vegetation on the ground and took photographs from that point on and then referenced those locations.

30

30

Would you have a look at these photographs?

35

BENCH: A copy for me, thanks.

MR WILSON: I have only got the one copy.

40

40

BENCH: How come?

MR WILSON: That was all I was supplied with.

45

BENCH: Well, you are prosecuting.

MR SHERIDAN: Your Honour, we have a spare copy.

MR WILSON: I have got copies on here.

50

50

BENCH: Well, that is not the same as what they are. So, what is all this whiz-bang equipment you have got here. Does it produce these photographs on a screen so we can all see at the one time?

55

MR WILSON: I will just take those photographs back.

60

1

BENCH: No, leave them there, that is okay. I just won't have the benefit of looking on. I usually get a copy myself to look on, so I can understand the evidence.

5

MR WILSON: I will just have a look at them in case there is more than one copy.

BENCH: Go on and ask you questions, thanks.

10

MR WILSON: May I look at the photographs?

10

BENCH: Certainly. Go and have a look at them.

15

MR WILSON: Now, did you also prepare a report in respect of photographs that you took?-- Yes, I haven't seen a copy of that report, though, since I wrote it, but it would have been a photo - a short photo essay of - depicting the photographs and then the location with the GPS location underneath.

20

MR SHERIDAN: It has been disclosed, your Honour.

20

BENCH: Are you objecting to the comments on it or objecting to it being produced? Are you requiring them to prove the GPS notations?

25

MR SHERIDAN: I was going to save that for cross-examination, but if - I will object to the document being - well, your Honour, I will object to the document being tendered because, as far as I can see, it's functionally useless and utterly irrelevant, because it doesn't describe the subject land nor is there any way, as your Honour pointed out, that we can - I can actually cross-examine this witness on the location of these photographs.

30

30

35

BENCH: Yes, Mr Wilson, what do you say about that?

MR WILSON: Well, your Honour, the witness has said he had a GPS and he took reference points and placed them on a map. Now, what I understand - the GPS is quite common in use these days.

40

40

BENCH: Well, refer me to a case, thanks, on GPS and its notorious reliability and how I just take judicial notice of the print-out on your client's device, whatever it was. Is it in the Acts Interpretation Act now - GPS, as well as compasses and clocks?

45

50

MR WILSON: No, I don't think so, your Honour.

50

BENCH: Okay, well, can you refer me to a case where someone, who is much more learned than me, will point me in the right direction.

55

MR WILSON: Could I have a short adjournment, your Honour?

60

BENCH: No. I would like you to work out what you are doing, thanks, Mr Wilson. 1

MR WILSON: Well, your Honour-----

5 BENCH: If the witness - you have given in these bundle of photos and now you are talking about a report that doesn't have all the photos in. Which one are you dealing with first?

10 MR WILSON: Well, your Honour, with respect, you're making it very difficult. 10

BENCH: I will ignore that comment, Mr Wilson, because I am just sitting up here waiting for you to get yourself organised and present your evidence. So, I think we had better have a short adjournment because I don't want to be grouchy or grumpy; but I do tell you, I am quite shocked that this case is being conducted in this way, because this has been set down for hearing for months. And I would have thought you would come along with a bundle of photos for me so I can just look on and see the witness. But we have got all this equipment that has been set up here that has not been used. Why aren't they displayed on that screen so everyone can see them? You come along to court today and it has been disorganised from the beginning, so, I will give you a 10 minute adjournment to get yourself organised. Thank you. 20

30 THE COURT ADJOURNED 30

35 THE COURT RESUMED

BENCH: Thank you, you may be seated. Yes, Mr Wilson?

40 MR WILSON: Thank you, your Honour. Mr Forcier, when you were there, what else did you do?-- At the location, I took photographs. There would be a total of 26 photographs. Two would be geo-referencing photographs which allow us to ensure that I'm at the correct location, using satellite imagery. 45 It's something that can be seen on the satellite image as well as what I've photographed on the ground. And then I took four sets of eight photographs which are around the compass rose which are basic from north, north-east, east, right the way around the compass. At four separate locations I did that. 50

And have you got those photographs? 50

MR SHERIDAN: Your Honour, we have been disclosed with three sets of eight and one set of two photographs. 55

BENCH: Well, what is your application - that they not be allowed to lead evidence with the others or what is it? Are

you applying for an adjournment so you can prepare your case  
or - telling me something that you are upset about is not  
going to-----

1

5 MR SHERIDAN: Yes, sorry, your Honour. The - on the basis of  
the evidence just coming from the witness, the photos that he  
is referring to - 32 photographs - we have only been - we have  
only had 26 disclosed, and we would seek disclosure of the  
other six photographs.

10

10

THE WITNESS: There was - your Honour, there was four sets of  
eight plus two geo-referencing, so a total of 26.

15 BENCH: Well, four eights are 32, the last time I went to  
school?-- I beg your pardon, yes.

That is what Mr Sheridan is saying-----?-- Yeah, sure.

20 -----he has only got three eights are 24 plus two equals 26.  
That there is one location that has not been disclosed to him.  
Is that because it is not relevant, Mr Wilson, and you are not  
going to lead evidence of it?

20

25 MR WILSON: I am not aware, your Honour. I have only had 26  
photographs myself.

30 THE WITNESS: Your Honour, if I may refer to the notebook, it  
will definitively tell me what I photographed at the time - as  
I wrote it at the time.

30

MR SHERIDAN: Your Honour, the witness got the original  
photographs still in front of him.

35 BENCH: Do you want to count if you've got 26 or you have got  
34 there? Don't mix them up?-- No, I just-----

Are they numbered?-- They are.

40 Is it 34 or 26?-- They are not numbered in that way. There is  
26 photographs here.

40

45 So you only must have taken three sets of eight. Three eights  
are 24 plus two is 26?-- Your Honour, it was some time ago. I  
may be referring to the geo-referencing photographs as the  
two-----

50 Okay, well, read - what is the number of your notebook, when  
were the notes taken,  
what are the pages on which this is recalling?-- Open the  
notebook now, or-----

50

55 No, tell me what's the number of your notebook or how do you  
identify the notebook, what - when did you make the notes, and  
on what pages did you write?-- Your Honour, I - I don't have  
the number of the notebook. It's two years since I last  
looked at it and it was only handed-----

Well, you've got it here. Read the number off the front to me?-- It doesn't have a number on the front.

1

5 An unidentified notebook. And when did you take the notes about this day?-- The notes were taken at the time, as I physically took the photographs, on the 26th of October 2004.

10 And you haven't got a copy of this yet, Mr Sheridan? The notes?

10

MR SHERIDAN: We have copies of one and a half pages. Pages 13 and 14, your Honour.

15 BENCH: Okay. So if it's on pages 13 and 14, go right ahead and refer to that and tell us what has happened. Is it on pages 13 and 14?-- On page 13, approximately second third of the page, I've written down two photographs at the site 1. So that would explain it. I've taken two geo-referencing photographs and then I've taken three sets of four.

20 20

Three sets of eight?-- Three sets of eight. I beg your pardon.

Thank you. Yes, Mr Wilson?

25

MR WILSON: Thank you.

Do you have a copy of those photographs with you?-- There's a copy of them here, yes.

30 30

And do you have a copy that you can show the court through the screen?-- Yes, the - it's - it's on the screen. If-----

35 BENCH: Okay. Don't worry?-- Those two photographs there are at the corner posts of the property. The corner posts is something that can generally be identified from a satellite image as being the same location.

40 MR WILSON: Have you got the photographs on - on the desk there, in front of you?-- The photographs here on the desk? I was going to just refer to them from here if it was easier. Then the next location here are site numbers which I numbered one to three or site 1, site 2, 3 and 4 and, your Honour, you will see eight photographs. I mean, the first photograph was taken north-north east. So I turn clockwise and take the photographs from the same position. And that position - I put the GPS unit at my feet so that I know I'm in the right location, then I take those eight photographs, and that there is site 1 - site 2, I beg your pardon.

50 50

55 I will just ask you a question. Where is that site in relation to the boundary?-- That site would be along the fence line. The fence is in the background of a couple of the photographs. So there's those eight photographs there. I travelled to another location where I take another series of eight photographs using the same method.

I will just stop you there for a moment. Where is the boundary in relation to those shots?-- The boundary, once again, is the fence line. We're driving along the fence line of the property, so-----

1

5 So which is Mr Knights' property?-- Where I am, I'm on Mr Knights' property. I couldn't tell you if the property on the other side is his also; I don't think so, though. And then there was the fourth site, where it's the same set of photographs taken, your Honour.

10

15 Okay. Whereabouts are you there?-- If I may refer to that first page, the sites are located - site 1, where I took the geo-referencing photographs, are at the very corner of the property and the photo is of the corner post. So that gives us a reasonably good idea of where we are - that we're in the right location, and then site 2, 3 and 4 are where we've travelled to, to take photographs. At the conclusion of the photographs, I returned to Mr Knights and offered him once again whether he would like to talk to me about them - about the - what I had seen and he declined again. So I left the property.

20

25 No further questions, your Honour.

BENCH: You're not tendering these?

MR WILSON: I beg your pardon. I seek to tender those photos, your Honour.

30

BENCH: What about this map here that you need? What's your objection, Mr Sheridan.

MR SHERIDAN: Relevance, your Honour. There's nothing at all in this document that links it to the defendant's property.

35

BENCH: Say again? Well, that's - that's supposed to be a map of his property.

MR SHERIDAN: It's supposed to be a map of his property?

40

40

BENCH: And that's supposed to be a chart.

45 That's the boundary of the property marked in black, isn't it?-- Yes, your Honour, it's - the boundaries of the property - its real property address is being Lot 8 on MGL33.

50 So you're saying it depends on this document here being proved?

50

MR SHERIDAN: Yes, your Honour.

55 BENCH: Well, I might admit it - I will just mark it "A" for identification because this witness used it, and - but your objection at this stage is, it hasn't been formerly or properly proved. So we need to get some - an expert to tell us how it was plotted. So you're going to produce that and I

will mark it A for identification, and I will admit the photos  
into evidence, the 26 of them, and mark them Exhibit 8. So if  
you can hand me up the A and if the witness can hand me his 26  
photos, I will be right. I think Mr Wilson's going to give  
5 you that and that, which is going to be A. Thank you. 1

10 ADMITTED AND MARKED "EXHIBIT 8" 10

15 MARKED "A" FOR IDENTIFICATION

MR WILSON: Was that the end of your involvement?-- Unless you  
would like me to actually rattle off-----

20 MR SHERIDAN: I thought my learned friend finished his 20  
evidence-in-chief.

MR WILSON: Sorry.

25 BENCH: You did - he did. Okay. Over to you, Mr Sheridan.

30 CROSS-EXAMINATION: 30

MR SHERIDAN: Right. Thank you, your Honour. Now, Mr  
Forcier, at the time of your inspection, which was the 26th of  
35 October 2004, you were an authorised officer under the  
Integrated Planning Act?-- I was - yes, an authorised officer  
under the Vegetation Management Act.

40 Were you an authorised officer under the Integrated Planning 40  
Act?-- The legislation is in the VMA, but the offences occur  
in IPA.

45 Right, so this authorisation that you had here - this  
authorisation is automatic upon beginning work with the  
Department of Natural Resources? Is that how it works, or is  
there a special conference of this delegation or  
authorisation?-- Yes, an authorised officer is appointed after  
satisfying the Director General of the Department that they  
have the skills or otherwise education to use it. 50

50 And as an authorised officer, you are authorised to swear a  
complaint in these matters if needs be?-- I'm not-----

55 To swear a complaint and summons to instigate a  
prosecution?-- Yes.

And you can swear a warrant?-- Yes.

1

Yes. Now, you said that - in your statement, you say that you went to Acme Downs on the 26th of October 2004, as a result of information received. Now what information did you  
5 receive?-- I received a file which the Department creates. I don't know the person that would have originally identified everything. I presume it was probably a department officer that originally attended the property for any number of reasons, and that a report would have been made and then I  
10 would have received a complaint file.

10

That authorised officer would be Mr Baumgartner, wouldn't it?-- I believe that's correct, yes.

15 The complaint of the illegal clearing came from him, didn't it?-- He alleged there was some vegetation missing from the property that he presumed should have been there.

20 And he visited the property on the 5th of March 2003?-- I don't know when he attended.

20

25 When you first met with Mr Knights at the homestead, you drove in off the road, called at the homestead, saw Mr Knights. Did you record that conversation?-- Did I recall-----

Did you record the conversation?-- I don't - do you mean, via - in the notebook or-----

30 Yes. No?-- In a tape recorder?

30

A tape recorder in your pocket?-- I can't recall, whether that-----

35 Isn't that the departmental policy and practice, to covertly record conversations with landholders upon entry to the property?-- It later became policy to record all conversations.

40 Later became?-- Yes, I-----

40

After this date?-- After that date, but I-----

45 Which date? What - when did it become policy?-- There was a departmental policy that came out after people have started to object to the whole recording of conversations out there, but I don't recall when that date was. On the date I visited, I don't recall whether I recorded the conversation or not, given that it was very short.

50 Now, you were with Mr Elliot on that day?-- I was.

50

Did he record the conversation?-- I'm not sure.

55 Did Mr Elliot take part in the conversation?-- Yes, he would have. Yes.

60



Now, prior to going onto Acme Downs, you didn't check the accuracy of the GPS against the known survey form at any time, did you?-- It was checked afterwards, but not on that day. It was checked as part of the - that particular project we were out on went over several days. 1

Yes, but prior to going to Acme Downs on that day, you didn't check the accuracy or reliability of the GPS?-- I can't recall. But it's not in my notebook, so I presume I didn't. 10

But some time after you went there, you did?-- Yes. There may not have been a survey marker available at the location or nearby.

You left the property at about half past 12?-- That sounds about right, yes. 15

The entire inspection, in which you took all these photos in these points, lasted about 2½ hours?-- That would be correct, yes. 20

The photos themselves were taken over a period of about an hour; is that correct?-- I believe the times are on the photographs, superimposed. 25

Now, did you have a regional ecosystem map-----

BENCH: Sorry, where is this time?-- On the front of the photograph. 30

11.57?-- Yes. 30

24-hour clock?-- It is.

MR SHERIDAN: Had a regional ecosystem map with you at that time?-- Yes. 35

Which version of the regional ecosystem map did you have?-- I can't recall, sitting here. It would have been whatever the current one - or applicable one at that time would have been. 40

Is there a distinction between "current" and "applicable" in this case?-- They're my words. There would be versions, and it would have been the version that was appropriate to the - when the alleged clearing would have occurred. 45

Right. Let me get this straight. So, whichever is the regional ecosystem map which is current at the time of the clearing, that is the map that's used for the purposes of the investigation?-- I'm - once again, I'm not sure on that, because the maps is produced for me by experts. 50

But you wouldn't go and do an investigation using a map that had been produced - a regional ecosystem map that had been produced after the offence period, would you?-- No. No. 55

Now, when you spoke to Mr Knights about the clearing, he told you that it had been done for fodder harvesting, didn't he?-- I can't recall his exact words, but, yes, it was along those lines, yeah.

1

Now, if I can just - the witness can be shown - I think it was document "A" for identification, your Honour. The big one with the - and the photos that were attached to it. I will just draw your attention to this overview map, as you call it. That is, you say, the locations of where these photos were taken?-- Yes.

5

10

The other photographs were - the photographs were taken at various points, and you have GPS coordinates there, site 1 through to site 4?-- Yes.

15

Now, what was on the GPS that day? What's the datum that you used?-- I can't recall what those datums were that - the GPS unit is set for one that's appropriate to the region we're in. It has been some years since I worked for the Department in that - doing this kind of work, so I don't recall what the exact - what the datum was at the time.

20

Now, these GPS coordinates, site 1 - your Honour, does the witness have the-----

25

BENCH: Yes, he has got all the photos.

You don't want us looking at your private photos there, do you?-- It's actually not my computer, your Honour, and I'm not sure whose photographs they are.

30

It looks like a nice snow holiday. Do you want to turn it off?-- I will try to, your Honour. I'm not familiar with the computer. Let's just unplug it.

35

I don't know whether you should do that. You might wreck something. There you go. Thank you?-- Thank you.

MR SHERIDAN: If we can just go to the photo at site 1, the first photo, there's two photos there?-- Yes.

40

There's no suggestion that there's any unlawful clearing being undertaken there, at that site?-- At that site it was mainly to get to the corner of the property, so to identify a location that can be geo-referenced with satellite imagery.

45

If we just look at those two, you had the GPS coordinate that is 55J?-- I can-----

50

If you have a look at the first photo?-- The first photograph-----

Is the coordinates on the back?-- Yeah, 55J.

55

515767-----?-- That's right.

-----/6865976?-- 6865976, yes.

1

If we just go to this overview map-----?-- Yes.

5 -----there's no grid at all on this map or this picture-----?-- No, this isn't an overview map. It's simply an aid to the photographs.

10 There's no grid on this at all, that enables any scaling off, so we can try and prove, if you like, where those photos were taken, is there?-- Not on this - no, not on this particular one.

10

15 So this, as a map - as an overview map, as to proof of the location of these photos, is functionally useless?-- That one is, but you could use that location to a map that has been set up.

20 But this is the document that has been produced, and this is what you say-----?-- Yes, this one was produced as an aid.

20

25 -----proves the location of these photos?-- No, I'm not saying it proves it. I'm just saying that's where - that's the sites, as a visual reference, to where those photographs were taken.

30 Is this actually the defendant's property - this subject lot? There's no indication there at all, is there?-- At the top: real property-----

30

I mean on this?-- Well, that's a picture.

35 It's a picture with some - site 1, site 2, 3, 4?-- Yeah, and at the top it references what the picture is.

BENCH: Sorry, have I missed something. Did you ask him where he got it?

40 MR SHERIDAN: Not yet, your Honour.

40

BENCH: I thought I might have been so focusing on it, I missed that.

45 MR SHERIDAN: I'm indebted.

50 Where did you get this map - this picture?-- This picture is - this one was produced for me. The imagery, though, is held by the Department, and it is a picture, I presume, of the imagery. But I'm not the expert that creates these.

50

BENCH: I don't think you answered the question, somehow. Where did you get it?-- I didn't create this map, and it was given to me by another officer within the Department.

55 MR SHERIDAN: So when this came back from another officer of the Department, did you check that these - site 1, 2, 3, 4 - were faithful to the GPS coordinates that you recorded in your

notebook and on the photos?-- Well, not on this, because that was never what this was designed to do. I'm satisfied that the photographs were taken in the correct location, according to the GPS, and to my notebook.

1

5

But other than this visual representation on this picture, we have no way of knowing, really, have we?-- Not on this particular one, no.

10 Are there any other particular ones that we are likely to see?-- Well, I - I suspect someone who actually produces these - and it's their profession - will identify the locations against a map.

10

15 Are we going to get disclosure of any of that? Whenever you're ready?-- I'm sorry, I couldn't hear-----

20 Sorry, I was talking to my learned friend. What you're saying now is, because this picture is of no use at all, there is going to be someone else come, who has produced a map that will show where these photos are?-- What I'm saying is, these photographs were taken at a specific location. If someone is - I'm prepared to say - well, I'm saying that this is the location they were taken. An expert can plot that location onto a map.

20

25

And that expert would never have attended this - it won't be Mr Elliott, will it?-- It won't be Mr Elliott.

30 So that expert will produce a map that will attempt to show where these photos were taken when that person was never there?-- Well, the person - a person can - can develop - a cartographer or - or someone appropriately qualified, can produce a map with - with locations on it. And I am saying the locations that these photographs were taken is where I stood to take them.

30

35

40 You said in your evidence-in-chief, when Mr Wilson asked you where the location of the boundary was in one or two of those photos - and you said the boundary was the fence. Is that correct?-- Yes, that is what I said. There was a boundary there.

40

40

45 Did you - sorry? The survey boundary?-- There's a - there's a - there's a boundary there. A fence line, a boundary to the property.

Is the fence on the boundary?-- I presume so.

50 Well, why would you presume that? Did you have a survey plan with you?-- Well, I wouldn't - I don't know why you would put a fence if it wasn't on the boundary, but I didn't ask the owner.

50

55 Fences aren't always on the boundary, though, are they?-- I - probably not. Not always, but most of the time they are.

"Probably not"?-- Well, in my experience, most fences are on boundaries.

1

5 Was this one on the boundary?-- That one is on a boundary, as I understand it, yes.

Where do you gain that understanding?-- Using the mapping that I had at the time, it indicated that that was where I was.

10 You didn't have a survey plan with you at the time, did you?-- I would have had a - what I believe they refer to as a smart map, which is the Department's information plotted onto a map which is - has the cadastral boundaries and so forth.

10

15 The digital cadastral database?-- I believe that is what it is called, yeah.

Nothing further, thanks, your Honour.

20 BENCH: Any re-examination?

20

MR WILSON: Just a couple of things, your Honour.

25 RE-EXAMINATION:

30 MR WILSON: Mr Baumgartner-----?-- Mr Forcier.

30

-----is he involved in prosecutions at all?

35 BENCH: This isn't Mr Baumgartner, sorry.

MR WILSON: No, I am sorry, but he-----

BENCH: That is what you called him.

40 MR WILSON: No, I didn't. I said, "Mr Baumgartner - is he involved in prosecutions?"

40

BENCH: Oh.

45 MR SHERIDAN: Your Honour, that question didn't arise out of cross-examination.

50 MR WILSON: Well, it was implied, your Honour, because it says that Mr Baumgartner was an authorised officer. I just want to clarify who does prosecutions and who doesn't?

50

55 MR SHERIDAN: I think my learned friend is drawing a very long bow, trying to infer an implication I made in a question, which was faithfully repeated by learned friend, that I asked him - this witness - was he an authorised officer. I asked Mr Baumgartner, was he the authorised officer, but not this witness.

1

BENCH: Well, I thought you asked them both.

MR SHERIDAN: I don't think I asked this one a question about  
5 Mr Baumgartner.

BENCH: No, you didn't ask him about Mr Baumgartner, but you  
asked this officer was he authorised.

10 MR SHERIDAN: Yes, I did, your Honour.

10

BENCH: And that is-----

MR SHERIDAN: And I asked Mr Baumgartner was he authorised. I  
15 didn't ask this witness, "Was Mr Baumgartner authorised,"  
because that question would be improper because he can't  
answer it.

BENCH: Whoever is involved in prosecutions, that is  
20 irrelevant to the court's decision, Mr Wilson, unless you show  
me some reason why it is relevant and then I will consider the  
question further.

20

MR WILSON: Well, from my recollection, he did say that Mr  
25 Baumgartner was an authorised officer, to Mr Forcier at one  
stage then, and he had been to the property and seen the trees  
cleared. I just wanted to clarify that Mr Baumgartner is not  
able to prosecute, he's not an investigator.

BENCH: Well, I don't think this witness, with all due respect  
30 to his infinite experience and knowledge - but he won't know  
what Mr Baumgartner's relevant delegations at any one time  
were unless he checked.

30

35 MR WILSON: True-----

BENCH: Did you check?-- No, I didn't, your Honour.

40 So he can't answer the question.

40

MR WILSON: What I'm trying put it to him is that-----

BENCH: Sorry, this witness doesn't know what Mr Baumgartner  
45 can do. He doesn't - probably doesn't even know what position  
number he held. He didn't - he had scant recollection of Mr  
Baumgartner, anyway.

MR WILSON: That is exactly right, your Honour, but there is a  
50 compliance coordination unit that does all the prosecution  
matters.

50

MR SHERIDAN: Your Honour - well, my learned friend is now  
giving evidence from the bar table.

55 BENCH: Yes. Please, don't give any evidence from the bar  
table.

60

MR WILSON: Well, can I ask my friend the question and then you can rule on it?

1

BENCH: Sorry?

5

MR WILSON: May I ask my - may I ask the witness the question?

BENCH: No, because there is an objection to your question. That is where we are at. And I said, as a preliminary decision, that who is in prosecutions is irrelevant. And I have asked you, why is it relevant, and you have refused to respond to that request.

10 10

MR WILSON: I thought that I explained to you that it is relevant about - he can prosecute.

15

BENCH: For what reason? Why is it relevant?

MR WILSON: Because my friend here has implied Mr Baumgartner has got the authority to prosecute.

20

20

BENCH: I didn't hear him ask that question.

MR WILSON: Well, maybe I have misunderstood, but that is what I thought he - was heading down that line. But - well, I will withdraw that question.

25

BENCH: I don't think that Mr Sheridan asked this witness if Mr Baumgartner was an authorised prosecutions officer at all. He only asked this officer about his own ability to prosecute; as he did with Mr Baumgartner. It would be hearsay for this witness to tell us anything about Mr Baumgartner, and you had ample opportunity to ask Mr Baumgartner when he was here, which I think you did.

30

30

MR WILSON: Okay.

35

BENCH: So, thanks. I disallow your question.

MR WILSON: Okay, thank you, your Honour. I have no further questions, your Honour.

40

40

BENCH: Can you tell me what the CENRFP mean on a plan?-- No.

Did you look at this plan - I am showing the witness Exhibit 2 - when you went out to take the photos?-- I couldn't tell you if - if it was that plan I - I used or not.

45

Thank you.

50

50

Any questions arising out of my questions?

MR SHERIDAN: No, thank you, your Honour.

BENCH: Mr Wilson?

55

MR WILSON: No, thank you, your Honour.

1

BENCH: Thanks very much for giving evidence today. We do appreciate that. If you can just leave those exhibits there, we will pick them up. Thank you.

5

WITNESS EXCUSED

10

10

BENCH: And your next witness?

MR WILSON: Victor Craig Elliott.

15

VICTOR CRAIG ELLIOTT, SWORN AND EXAMINED:

20

20

MR WILSON: Mr Elliott, can you tell the court your full name, please?-- My full name is Victor Craig Elliott.

25

And what position did you hold at the time of this matter?-- I was the Regional Compliance Manager for the South East Region of the Department of Natural Resources and Mines.

30

30

And how did you come to be involved in the matter?-- My initial involvement was assisting Mr John Forcier with the initial site inspection.

35

So can you tell us what occurred on that day?-- That was on the 26th of October 2004. Mr Forcier and I attended the property, which is south-west of Bollon, and, on entry to the property, approached the homestead and spoke with the defendant.

40

40

Okay. So what happened after you - were you present for the conversation?-- I was. During the conversation I was aware Mr Forcier had a digital recorder recording the conversation and my recollection of the conversation, essentially, was that the defendant declined to give us consent to enter the property. A warrant to enter the property was executed. And he also declined to speak with us further or to accompany us on the inspection.

50

50

Okay. What did you do then?-- We then did an inspection of the southern portion of the property which is down a - along a fence line - a boundary fence on the eastern side of the property, and took a series of photos at four different sites.

55

Could the witness see the photographs of Exhibit number 8, and also the document marked for identification, A? There's a document there - this map or photograph. Can you describe to the court what that is?-- It is titled Site Inspection. It

60



has "A" for identification written on it. It is, essentially, a satellite image of the southern portion of the property and showing four sites that Mr Forcier and I attended.

1

5 Do you know who prepared that document?-- I prepared that document.

How did you prepare that?-- I used a computer software called ArcMap. It is, essentially, a GIO system where specific GPS points or coordinates can be shown on a map. I used software to develop the map and then print it out.

10

15 Talking about GPS, what sort of GPS did you use on that particular day?-- On that particular day it was a Garmin - Garmin Map 76 GPS.

BENCH: Sorry?-- The make of it, your Honour, is Garmin Manufacturer.

20 How do you spell that?-- G-A-R-M-I-N, and the model is a Map 76.

20

25 MR WILSON: Can you tell me anything about the accuracy of that GPS?-- The GPS displays the accuracy on the screen. It can be down to three metres' accuracy. To verify the accuracy with the device, we actually check it against the permanent survey mark. In this case, I understand we - from recollection, we went to a permanent survey mark in Saint George, at the end of the day.

30 30

Do you remember the results of that test?-- I remember I did make notes in my notebook but my independent recollection is that it is - it was reasonably accurate.

35 When you say reasonably accurate, what do you mean by that?-- As in metres - within a few metres.

40 I will take you back to - you finished talking to Mr Knights, and you have gone off on the inspection of the property. How did you locate your way around the property?-- From recollection, we would have had aerial photos or satellite images which would have - gave us a basic outline of what the property looked like. We would have identified, essentially, where we wished to look at suspected cleared areas and then found our way via tracks that we found on the property. So, to identify it exactly, we used the GPS as we moved.

40

Your Honour, perhaps I could set up this machine again.

50 BENCH: Well, what for?

50

MR WILSON: I was just going to go through the photographs again.

55 BENCH: Well, I've seen them twice. It is not going to make them any more interesting.

MR WILSON: Okay.

1

BENCH: They are perfectly interesting the way they are, but  
if you can just have a look at the ones that you have got  
5 there. You don't need to see anything, do you, Mr Sheridan?  
You haven't forgotten them yet, have you?

MR SHERIDAN: No, your Honour, they're etched.

10 BENCH: Or did you want to ask the witness some questions  
about each individual photo? You didn't of the last witness,  
did you - much?

10

MR SHERIDAN: No, your Honour. I will ask him some questions,  
15 but that is-----

BENCH: Later.

MR SHERIDAN: He can answer them from those photos.

20 BENCH: Yes?-- I believe I can, your Honour. 20

Sorry?-- I believe I could - would be able to answer the  
questions from the photos.

25

So they are the photos?-- Yes, I believe they are, yes.

Thank you. The witness is referring to Exhibit 8.

30 MR WILSON: What are your recollections of the inspection of 30  
the property?-- The property itself - we found areas that had  
been cleared in the southern portion of the lot. It appeared  
that it had been mechanically cleared; by that I mean, dozers  
- two dozers and a chain or a single dozer had pushed the  
35 timber over.

What position was the timber left in?-- Essentially, left on  
the ground. There was no effort to stick rake it. By that, I  
mean push it into heaps; it was left on the ground.

40 40

Were there any rows at all?-- Not any real, distinguishable  
rows that you could see on the ground. It was, as I said,  
mostly left where it fell.

45 Your Honour, I seek to tender this document here, that is  
marked as "A".

BENCH: Any objection, Mr Sheridan?

50 MR SHERIDAN: Well, this witness has identified that he 50  
produced this, your Honour.

BENCH: Well, I am just - I need to ask a few questions if you  
are not objecting because I don't understand it.

55

Where did you get the satellite image?-- We have a library of  
images. It is, essentially, a key map, if you like, your

Honour, for the whole of state. We can identify exactly what satellite image matches up to what piece of land. And then using a database, essentially, you can identify the lot on plan that we are looking at to make sure that we have the correct satellite image overlaid on it.

Did you plot the boundary?-- No, there is a digital database which provides those - those boundary lines for the property.

What is the digital database?-- It is called the digital cadastral database, DCDB, for short. Essentially, again, it is a set of information that the Department holds.

So, you got the satellite image out of your library - and did you arrange for it to have this DCDB boundary plotted on it-----?-- Yes.

-----or was it already there?-- Essentially, I can do that using the software. It rides-----

That is your ArcMap, is it?-- Yeah, that is ArcMap, the GIS software. It, essentially, shows-----

Well, where did you get the coordinates for the boundary?-- It is already formed. When a - my understanding of it, your Honour, is when a surveyor surveys a new plan, they will then provide that to the Department who verifies it through our surveyors. They then create it as a digital database which is available for anyone in the Department to use.

Okay. Just let me look at "A" again then?-- If you like, your Honour-----

Well, that is not the whole lot?-- No, that only shows the southern portion of the lot. The second inspection in August-----

It is not the same - it is not the whole lot on the plan that has been tendered?-- No, again, the software allows you to cut out a particular section. On the inspection in August that I completed it shows the entire lot.

So, you have got no objection, Mr Sheridan?

MR SHERIDAN: No, your Honour.

BENCH: Okay. That will be admitted into evidence and marked Exhibit 9.

ADMITTED AND MARKED "EXHIBIT 9"

MR WILSON: You took the photographs. What has happened next?-- On that particular day, we subsequently left the

property. We called down at the homestead again and then left  
the property.

1

5 Did you have any further involvement in this matter?-- I did.  
Mr Forcier left the Department for other employment. I  
subsequently took over the file just to complete the  
investigations. In August 2005, I was aware that Mr Forcier  
had been in contact with Dr Mike Olsen to look at the property  
as well. In August 2005, I re-attended the property with Mr  
10 Olsen - Dr Olsen and performed another site inspection.

10

BENCH: You had better give me back Exhibit 8 so these photos  
don't get mixed up.

15 MR WILSON: Just a minute.

BENCH: Thank you.

20 MR SHERIDAN: Sorry, your Honour. We just - we hadn't seen  
these yet.

20

BENCH: You haven't?

25 MR SHERIDAN: No.

BENCH: So it's prosecution by stealth. Well, it might take  
you a little while to go through them with your client and get  
some instructions, might it not?

30 MR SHERIDAN: Yes, your Honour, it might. Maybe it is an  
appropriate time now, your Honour.

30

35 BENCH: Well, how many more adjournments are we going to have  
to have? Can you please check - over lunch, Mr Wilson, can  
you please check that Mr Sheridan has every document you are  
intending to produce, because this is extending the trial  
unnecessarily, because if these photographs had been supplied  
to the defence, the defence would have known about them and we  
wouldn't need to have an adjournment now.

40

40 MR WILSON: Well, the defence have been supplied with them,  
but they're supplied in a different format.

45 BENCH: What, 96 photos is what you're holding up - 96 photos.

MR WILSON: I only - I only estimated 96, your Honour. I just  
counted the number of pages-----

50 BENCH: Mr Wilson says you've got them all, Mr Sheridan, and  
you don't need an adjournment.

50

55 MR SHERIDAN: Well, just a second, your Honour. These photos  
- well, not the photos - the copies of them were disclosed to  
us in a compact disk which contains a lot more photos than the  
ones we've been disclosed here. The material that has  
disclosed to us possibly includes irrelevant material, and  
over lunch-----

1

BENCH: We'll keep going. I won't lay an adjournment now, because we're going to stop at one, and then we'll be starting again at two, and that will give you an hour to have your lunch and sort out what you're going to do.

MR SHERIDAN: Thank you, your Honour.

BENCH: Thank you. And seeing as the matter is listed for three days, if you need to get instructions overnight I can stand this witness down and go on with another witness, or Mr Wilson can. Yes, Mr Wilson.

10

MR WILSON: So tell us about your inspection with Dr Olsen?-- On that particular day, we attended the homestead again. The defendant's wife was present. I had a conversation with her and executed a warrant to enter the - the property.

Yes?-- And we subsequently attended another northern part of the property on that afternoon and, again, attended a number of sites, took GPS readings of those locations, and took photos of those locations.

20

Yes?-- We then left the property that afternoon, returned to Saint George for the night, and then re-attended the property the following day, on the 16th.

And on the 16th?-- We continued the work we wanted to do on the northern section of the property, again taking GPS readings and photos, and Dr Olsen was taking in the measurements of vegetation. We then moved across Fernlea Road to the southern portion of the property and attended another - a number of sites along the - the southern portion.

30

And how did you navigate around the property?-- Again, using GPS device and maps.

Did you keep any record of where you took the photographs?-- I did. I've made notes at the time in my official notebook.

40

Did you have any further contact with the defendant after this?-- Subsequently, after we've left the property on that day I returned to the office and have made contact with the defendant by a letter - by registered post, rather, indicating the area of interest to the Department in terms of the - the alleged offence, and offered him a - an opportunity to explain the - that clearing.

Did you get a response to that?-- Subsequently got a response via his legal representative declining to make any further comment.

50

I don't think I can ask any more without the exchange of photographs.

55

60

BENCH: You can go to the photographs. You told me Mr - you gave them to Mr Sheridan. He agrees he got them plus others. So he's going to have lunchtime to sort it out.

1

5 MR SHERIDAN: All right.

MR WILSON: Also, this document, too. What can you tell the court, first of all, about the A4 documents?-- The A4 documents, time of the site inspection-----

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10

BENCH: That's not A4.

MR WILSON: A3. Sorry?-- A - sorry. A3. The document that's titled Site Inspection has an internal reference number relating to this case, and it shows the sites that I attended with Dr Olsen on the 15th and the 16th of August, and again, it's an overlay of a satellite image for the - the full property, with the DCDB property boundaries also shown.

15

20 And what sort of map is this one? What sort of map is it?-- In terms of?

20

The images?-- The image is a satellite image.

25 So if you can just go through the photograph and tell us what you saw and where the location was?-- Okay.

Is this on the computer?-- It is.

30 Would it assist if we run it from the computer, your Honour.

30

BENCH: Well, I repeat, it would have been of much better assistance if you had four copies of the photos; one for you, one for Mr Sheridan, one for me and one for the witness. I don't want to be difficult about it, but that is the way that it is best handled, with them all marked the same, so we can all sit at out spots and see them. Otherwise, if it's on a CD that we can have projected up on the board, then you can admit the CD into evidence. But I don't know how you want to do it. If it is on the computer-----

35

40

MR WILSON: Yes.

BENCH: -----you might be able to burn it onto a disk over lunch and we can all look at it, so everyone can see it, because you've got all that equipment set up, and then you can just tender the CD. Otherwise you can just go on the photos, I don't mind. But, seeing as it is 1 o'clock, if we are just about to start a lengthy process, we may as well have lunch and come back after lunch and start with the photos. Do you both agree?

45

50 and come back after lunch and start with the photos. Do you both agree?

50

MR WILSON: Yes, your Honour.

55 MR SHERIDAN: Yes, your Honour.

BENCH: Thank you. Well, however you work out how you want to do it between the two of you or three of you or seven or eight of you, then I am happy. So long as it is - everyone can see what's going on and we can just have the one thing tendered.  
5 Thank you.

1

THE COURT ADJOURNED

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THE COURT RESUMED

15

VICTOR CRAIG ELLIOTT, CONTINUING EXAMINATION:

20

BENCH: Yes, please.

20

MR WILSON: Thank you, your Honour. I seek to - I will just give you this disk?-- Thank you.

25

Could you tell the court what that is, please?-- It is a CD. It is a copy of photos and voice recordings in relation to the inspection in August of 2005.

30

And can you tell us a bit about those photos on there?

30

BENCH: Are you going to show them?

MR WILSON: Yes, okay.

35

BENCH: It would be better if we looked at them.

MR WILSON: I beg your pardon?

40

BENCH: It would be better if we looked at them rather than heard a description of them, wouldn't it?

40

MR WILSON: Okay.

45

BENCH: How many photos are on there?-- There's approximately 90 photos, your Honour.

Okay. Let's have a look at the photos.

50

MR WILSON: Your Honour, did I hand up, before the break, an overview map?

50

BENCH: No. You didn't hand anything up.

55

Have you got your map there with the sites marked on it?-- No, your Honour. I do have a another copy here but perhaps it's best if I looked at the one being admitted.

Do you want to hand one up to me?

1

MR WILSON: I just thought that I - did I-----

5 BENCH: Have you got one for the witness and one for me, so we can look on where the sites are?

MR SHERIDAN: Your Honour, we have got two copies if you want-----

10 10

BENCH: Okay. Thank you.

MR WILSON: I've got one.

15 BENCH: One for the witness? Thanks.

MR WILSON: Thank you, your Honour.

20 If I can just ask you to - in relation to this overview of the map - what can you tell the court about this overview map?-- The overview of the map shows the entire lot; the northern and southern sections and the sites that Dr Olsen and I attended.

20

25 And who created this map?-- I created this map.

And how did you create the map?-- That was created by the ArcMap map software using a digital cadastral database to show the property boundaries and a satellite image.

30 30

And how did you locate those sites?-- Those sites are entered onto the map using the GPS coordinates that I recorded when I was on the property with Dr Olsen.

35 If you could continue with the photos?-- The photos show, unfortunately, another investigation, as well. I will screen through to the-----

MR SHERIDAN: Your Honour, I object.

40 40

BENCH: Are these photos numbered?-- They are. They show a previous investigation I did, approximately a week or so beforehand, as well as this-----

45 Well, why didn't you delete of the disk?-- I wasn't aware that they were on there, the disk, your Honour. It's the - the camera used is - records directly to a disk. So in the course of the investigation, they-----

50 Okay, what numbers? What's the first photo that's relevant to this investigation?-- The first photo is DSC00443,

50

55 How come they aren't - they're not sequential, those numbers?-- I'm not too sure there, your Honour. I would have to refer back to the index I used, which Mr Wilson has.

Okay. You had better highlight that one then or - that photo.



1

MR WILSON: Do you need this for assistance, do you?-- That's, essentially, the index that shows each photo with each site. Thank you. If you look at the photo that is shown on the screen at the moment, it shows a site - site 1, which is on the northern section of the property. So these first eight photos, your Honour, show those from site 1. That's the final photo for site 1. Each - at each site we take eight photos in a clockwise direction, showing each compass point.

10 10

Are you able to say from that, which ones are Mr Knights' property and which aren't Mr Knights' property?-- The first photo that I showed was directly north and moving through this final would - in a clockwise direction, would be the neighbouring property. This next photo is site 2, which is down on the boundary, the southern boundary of the southern - of the northern lot. So, again, it's taken in a clockwise direction. It is the final photo at that site.

20 20

Are you able to tell the court which ones are Mr Knights' property and which aren't Mr Knights' property?-- Again, the first photo starts at the north and it goes in a clockwise direction. So the first three photos are of the property, the next three would be of the stock route, I believe, and then it's back - in a clockwise direction, back onto Mr Knights' property. Site 3, same situation; we're on the northern property - northern part of the property again. Eight photos taken in a clockwise direction. This first one's north.

30 30

Is that Mr Knights' property, the first one?-- It is. And that's the final shot, which will be taken to the north-west.

And whose property is that one?-- Again, near the boundary of Mr Knights' property, so there's - there was a chance in this one - I'm not a hundred per cent certain - there's a chance it is a neighbouring property. But it's right on the boundary. Site 4. Again, starting in a northerly direction, moving in a clockwise direction, site 4 is in the middle of the property near a drainage line, or possibly a creek, I'm not too sure, on the northern part of the property. And that's the last photo for site 4. Site 5 is again on the northern part of the property. Again, a series of eight photos taken in a clockwise direction starting on the north, facing north. And the final property there, as you can see there is retained vegetation in that one. Site 6, it's in a sandy area, sort of in the middle of the northern part of the property. There's only two photos there. I believe - there is no remnant vegetation there.

50 50

BENCH: So you didn't take eight there?-- No, only two photos there, your Honour.

MR WILSON: Was there any evidence of clearing at that point?-- That spot there, I remember was a sandy, almost a dune, with sort of a wild fire cover on it - wild flower cover on it, sorry. Site 7. Again, it is - we have moved along a fence line on that property. It's towards the middle of the

55 60

northern block again. There's a series of eight photos here, starting north, moving across to the east, and around the compass points. That is the final photo for site 7. Site 8 is in close proximity to it. And again, it's a series of eight photos. Starting to the north, moving clockwise; that's the final photo for that site, site 8. Site 9, you will see, is on the southern portion of the property. Again, a series of eight photos there.

1

10 And who's property is that on?-- Again, with - that's on the northern boundary of the southern portion of the property. So the northern shot goes out onto an adjoining property. They're on a fence line for the property boundary. That's a photo of the east, which is Mr Knights' property. And as you scroll through to the - through the points of the compass, again, it moves across Mr Knights' property. That's the final shot for site 9. Site 10 is the next one. We've moved further south on the southern block - of going down the eastern boundary. The first shot is to the north. It swings across to the east, which is here, which is an adjoining property, and comes back to Mr Knights' property again. That's the final shot for site 10. Site 11, we have moved further south down along the boundary. The first shot for site 11. Facing north again. Rotates in a clockwise direction.

10

20

Whose property is that one there?-- Again, it's Mr Knights' property. You are on a property boundary, so the shots to the east show the neighbouring property. The remainder are Mr Knights' property. And the final site is site 12. With this site we are in the south-eastern corner of the property, near the boundaries. This first shot is to the north, which shows Mr Knights' property. You can see the wheel tracks where we had come down the track along the boundary. As we move to the east, we're showing the adjoining property here. We are now coming back into Mr Knights' property. That's the final shot for site 12.

30

BENCH: What else is on the disk? Anything?-- That's not it - here we are. It's separated into its operating folders, your Honour, that shows the-----

40

No other photos there, though?-- The disk-----

45 Other than beginning ones?-- Disk 1 photos show the photos taken with - by Mr Forcier.

MR WILSON: Your Honour, with the consent of my friend I would seek to tender this document, which is an overview map, together with the photographs that we've just seen, which might make it a bit more difficult.

50

BENCH: Aren't you tendering the CD?

55 MR WILSON: I am going to tender the CD, as well.

BENCH: Okay. Plus these other documents? You said it was with the consent of your friend, so you shouldn't need to show the witness. Thank you. Could you bring them up, Michele? A bundle of photographs with a map on the front, labelled Site Inspection, is admitted into evidence and marked Exhibit 10.

1

10 ADMITTED AND MARKED "EXHIBIT 10"

10

BENCH: Are you handing up the CD, too?

15 MR WILSON: Yes, your Honour.

BENCH: The CD will be admitted into evidence and marked Exhibit 11.

20

20

ADMITTED AND MARKED "EXHIBIT 11"

25

BENCH: Yes, Mr Wilson.

MR WILSON: Thank you.

30 Did you make any inquiries as in relation permits for this property?-- I had seen on the file that had been prepared for Mr Forcier, that there was an application for a permit, but no actual permit had been issued.

30

35 Now, you're an authorised officer?-- I am, under the Vegetation Management Act.

40 Now, Do you know how many authorised officers there are in the Department, or who they are?-- In the Department, no, I wouldn't know exactly. For the team in the south-west, yes, I do-----

40

45 In the south-west, perhaps?-- Yes, in the south-west region of the Department, yes.

And who are they?-- Essentially, all the investigators in the compliance team, and then one vegetation management officer is authorised.

50 And in relation to prosecution matters, who deals with those?-- The investigations - the investigators in the compliance unit, compliance team.

50

55 Okay. And Mr Baumgartner, is he in - where does he work?

MR SHERIDAN: I object, your Honour.

BENCH: Yes, on what basis?

1

MR SHERIDAN: It's hearsay. Mr Forcier can't give any  
evidence of the authorisation of Mr Baumgartner. Mr  
5 Baumgartner already has given evidence.

BENCH: All right. Yes, your response?

MR WILSON: I didn't ask about his authorisation, I asked he  
10 worked, your Honour.

10

BENCH: Why? You had him here in person.

MR WILSON: Yes, I know. I just wanted to clarify about the  
15 investigations, that's all - who conducts investigations.

BENCH: You wanted to clarify what?

MR WILSON: Who conducts investigations.

20

BENCH: Why? Why does that matter? I only need to know who  
conducted this investigation. I've heard all about it.

MR WILSON: Well, I just thought it was-----

25

BENCH: I don't need to do a map of the Department.

MR WILSON: No, I'm not trying to suggest you do, your Honour.

30 BENCH: Why on earth would I need to know that?

30

MR WILSON: I just want to - once again, it comes back to who  
is an authorised officer and what their powers are.

35 BENCH: Why? You called evidence from Mr Baumgartner about  
what he did. He wasn't cross-examined he didn't have power to  
do that. You've called this officer. He has told us what  
he's authorised to do. I disallow the question.

40 MR WILSON: Now, I will just take you back to after you've  
taken those photographs with Dr Olsen. What happened  
then?-- After we completed the site inspection?

40

45 Yes?-- Yes. We left the property, subsequently returned to  
the office, and, at a later time, I sent a final letter to the  
defendant asking if he had any further comments or response.

50 Okay. And what resulted from that?-- The defendant's legal  
representative contacted me in writing and advised that there  
was no further response coming.

50

I have no further questions, your Honour.

55 BENCH: Thanks. Yes, please.

CROSS-EXAMINATION:

1

5 MR SHERIDAN: Thank you, your Honour. Mr Elliott, on the 26th of October 2004, you and Officer Forcier went to Acme Downs; that's correct?-- That's correct, as the property is commonly known as.

10 And that was some three years after the first offence period, wasn't it?-- I believe so.

10

And one year after the second offence period?-- I believe so.

15 Now, at that first - at that first meeting at the homestead at Acme Downs, you spoke to Mr Knights?-- That's correct.

And you say in your statement you do not recall the exact details of the conversation?-- That's correct.

20 20

Then you descend into some detail in respect of the conversation?-- I had some recollection of the conversation, but the exact detail, no, I don't.

25 And Mr Forcier taped the conversation?-- I believe he did.

Now, you have been responsible for this investigation and prosecution since that time?-- Up until - until the issue of the complaint summons, yes.

30 30

Until the issuing of it?-- Yes.

35 So, between the time you went to the - the time you went on the first visit, you've been responsible to it, until the 18th of February 2005?-- Well, once Mr Forcier left the Department, then I assumed responsibility for it. Prior to that, I was aware of the investigation, obviously.

40 Now, you've been responsible for gathering the evidence-----?-- Yes.

40

-----in respect of the complaint?-- Yes.

45 You say in your statement that you - when you went back to the - on the second visit with Dr Olsen - that you tape recorded a conversation with Mrs Knights?-- That's correct.

And that tape - a copy of that recording has been provided?-- To yourself?

50 50

Yes?-- Yes.

55 Now, where is the copy of the tape recorded conversation with Mr Forcier?-- I'm not aware of where the location of that recording is, and, as I said, I was of the understanding that he had tape recorded that conversation, but I'm not sure where - if a copy was made, where it is now.

1

But wasn't that your responsibility to gather all the relevant material, as the investigator?-- Yes, to maintain all the evidence I have - I've been provided.

5

Did you make any inquiries with Mr Forcier as to where the copy of that recorded conversation was?-- Yes.

10 What did he say?-- He couldn't recall whether we had recorded the conversation or not.

10

15 But you wrote in your diary that it was on J Forcier's tape, didn't you?-- I can't remember what I noted in my diary, but, as I said, I was of the understanding that the conversation was being recorded as we entered the property.

20 Because isn't the idea of this covert tape recording to protect defendants as well as investigators?-- I wouldn't call it a covert recording, because it might not have been covert in that sense. But the idea is, one, to prevent false complaints, and two, to - if there is evidence to be gathered, that the best record is gathered.

20

25 The second conversation, when you went back with Dr Olsen, was covertly recorded, wasn't it?-- It was. It would have been in my hand or in my pocket - the recording device.

30 If it was in your pocket, she wouldn't have been to see it, would she?-- Well, the microphone would be seen. But, again, I wouldn't expect someone to actually appreciate what that recording device is.

30

35 But you didn't let her know that you were recording her?-- No, I wasn't speaking with the person who I suspected of an offence.

So it's all right to covertly record people in those circumstances?-- Well, it's certainly not against the law.

40 So long as you're partaking in a conversation?-- That's correct.

40

45 Now, the first time you were there, did Mr Forcier tell Mr Knights he was recording him?-- I don't recall.

Did you take part in that conversation?-- Yes, I did.

50 In the first time?-- The first time, I believe I did, yes, in a sense that it would have been more standing back and introducing myself, but Mr Forcier was responsible for the first part.

50

55 But, unfortunately, either that conversation was never recorded, or the recording of the conversation is not available?-- It could be it has been lost or it wasn't recorded.

60

Now, on the first visit, when you went to Acme Downs, you say  
in your statement that, "I recall during the inspection that -  
observed a large area of clearing on the property. I also  
recall seeing regrowth in vegetation in the cleared areas. I  
5 observed copper box and Galvanised Burrs as predominant  
vegetation returning in the area. I also recall that the  
cleared timber was left in position after the clearing, that  
is, it has not been stick raked or piled up." Is that an  
indication to you that it was used for stock fodder?-- No,  
10 it's not a direction indication or definite proof that it is. 10

But if it had been raked up, that would be an indication that  
the trees had been raked up for pasture?-- Potentially, yes.

15 How long after was this? Four - three years after?-- I  
believe it's two to three years, from my memory.

It had never been burnt?-- I do remember one spot when I was  
there with Mr Olsen that I saw there was a small fire, but  
20 not, like, a large fire across the area. 20

Which spot was that?-- It was down the southern portion of the  
property. About two-thirds of the way down the eastern fence.

25 Did you record a photograph of that?-- No, I don't believe I  
did.

Now, you will recall in your statement - you swear in your  
statement - that some of the smaller cleared vegetation had  
30 foliage on the branches where the root ball retained contact  
with the soil. Is that an indication that that vegetation was  
still alive?-- It could have been. I couldn't provide  
definite proof on it, but as I said, there were some areas  
where the vegetation, even though it had been pushed or bent,  
35 if you like, over, it was still in contact with the soil.

So, some of the vegetation had been bent over but it wasn't  
dead?-- Yes.

40 So in areas that you inspected, there was still standing and  
living vegetation?-- There certainly, because we had been  
there a couple of years after the clearing. So there  
certainly - vegetation has regrown in that time. 40

45 You went back to Saint George after the inspection, drover to  
a permanent survey mark and checked the accuracy of  
GPS?-- That's correct.

But you didn't check it before you went there?-- No. 50

Now, you say in your statement that Mr - that Dr Michael Olsen  
was engaged to confirm the regional ecosystem mapping on the  
property?-- That's correct, yes.

55 They were his instructions?-- They were some of the  
instructions. We were looking at that and any potential  
environmental impacts from any clearing on the property.

1

And Dr Olsen provided a report?-- He did.

Have you seen that report?-- I have seen it, yes.

5

In that report - in the aim of that report, Dr Olsen says that he was to assess the flora of the site, and the impact on alleged illegal clearing on the rendered vegetation, doesn't it? The actual report that he provided on - in August 2005 doesn't mention at all, in any of his instructions, anything about confirming the regional ecosystem mapping on the property, does it?-- Well, what does his report say at that first part you just read, again?

10 10

Well, we will talk about that later. I'm putting that to you. You were with him at the time that you did the inspection. You saw the report that he provided, and now you swear that, part of, at least - of his task was to confirm the regional ecosystem mapping?-- Yes.

15 20

Well, I will put it to you that in his report, that wasn't part of his instructions or the aims of his report at all?-- Well, it is an outcome of his report.

It is a - which?-- An outcome of his report.

We're not talking about outcomes of his report. Was this prepared in the nature of the expert's report?-- Yes, I believe so.

25 30

Why would you engage Dr Michael Olsen to confirm the regional ecosystem mapping instead of the Environmental Protection Agency, who are responsible for the maps?-- I don't recall why we went to Dr Olsen, as opposed to herbarium botanists, but that's the person we used, and he has got the similar credentials and qualifications to the herbarium staff.

30 35

And he assessed the vegetation in the same manner, and using the same procedures as the herbarium would?-- I can't answer that. I don't know what procedures are used-----

35 40

Well you commissioned the report?-- Yes, but I'm not an expert in what the herbarium does.

Well, did you give him the instructions on how he was to assess it or what he was to prepare?-- As I said, he was asked to confirm the regional ecosystem, and to look at the-----

Was that by you?-- No, originally he spoke to - with Mr Forcier.

40 50

Did you review those instructions at all before he conducted his inspection?-- I had spoken with Mr Forcier about those instructions.

45 55

Because if he hadn't been given those instructions prior to his inspection in the report, then this report couldn't



possibly give any indication of the regional ecosystems present at the time of his inspection, could he, because he wasn't asked to do that?-- I can't see why, if he is capable of making an assessment of the regional ecosystem mapping - why he couldn't make that assessment.

1

Well, if he wasn't asked to, he would have no reason to. If it wasn't part of his instructions-----?-- Mmm.

-----he had no reason to?-- I'm not sure I can give you this evidence, because I wasn't privy to those original instructions to Dr Olsen.

10

Yes, but you took over from Mr Forcier?-- Yes.

Did you check those instructions again?-- Directly not with Dr Olsen.

Not with Dr Olsen. You just went and did this report with Dr Olsen and you hadn't confirmed the instructions. You hadn't looked at anything that Mr Forcier had given him, you just went out there and whatever happened, happened, and he produced his report, and now you say that he was engaged to confirm the regional ecosystem mapping?-- I wouldn't agree that whatever happened, happened. As I said, my understanding, and the work that was done on the property, to me, showed that the regional ecosystem mapping was being confirmed - was being checked on the ground.

20

From what you saw Dr Olsen doing, you came to the view that what he was doing was checking the regional ecosystem mapping?-- That's - from my understanding of what the work involves, that's what we were looking at. So it involved looking at land zones and species of the vegetation communities. And, again, it's outside my area, but that's the work that was happening on the ground.

30

So you can't be sure, as you have sworn here, that that was what Dr Olsen was instructed to do or - nor was that what he did?-- That is my understanding of what he was doing.

40

So is this statement here - are you swearing that that's what he did, or is this your assumption - is that what he is doing?-- Well, again, it's my understanding of what he did. So, I can't swear that he did confirm it, because it's outside my area.

So when Dr Olsen was taking his measurements, for whatever purpose, and making notes, you took the GPS coordinates of the locations of the site photographs that have just been tendered; is that correct?-- I took them for my records. That's correct.

50

Did Dr Olsen take any notes as to the location of the photographs, in the application of his----- He did. He had his own GPS unit there.

55

And did you see any of the notes that Dr Olsen took in regard to the position of those sites?-- No, I didn't - didn't use his notes or adopt his notes, because, as I said, I was taking my own notes for that purpose, and a lot of the things I wouldn't have understood in terms of the species and communities.

Now, the photographs that you took don't correspond with the photographs that Dr Olsen reproduced in his report, do they?-- I can't recall with that, whether they're a direct correlation there.

Do you recall how Dr Olsen - how he recorded his position on his GPS?-- In terms of?

What datum he used, what coordinates he used?-- No, I don't, sorry.

So as to - so these sites here - the document has just been tendered - these site numbers here don't correspond with Dr Olsen's?-- I'm not too sure there, I would say they would be in the same area, but, as I said, he was - he was taking his own recordings there.

Yes, but the photographs that you've taken do not correspond with these site photographs and the location that you've produced on this picture?-- Sorry, could you repeat that question?

I'm talking about this document - this picture you've got covering the photos, that shows the sites that apparently relate to those photos that you showed in your evidence-in-chief. The question is, are these sites, as listed on this map, the same sites as Dr Olsen has recorded in his report?-- I haven't compared the two - two reports, so I can't say yes or no there.

Now, if you could just have a look - your Honour, if the witness could be given that compact disk that was in evidence in Exhibit 11, please. That photograph, where was that taken? Is this on the subject property is it?-- No, it's not, it's west of Thargomindah.

The Cooper Basin?-- Yes, it is.

Right. Just a moment. The next photo - go back to - the larger photo, is that the first one?-- That's the very first one, 274.

Would you go to the second photo, please. That's out in the Cooper, as well?-- Cooper basin, yes.

Third?-- Same, Cooper Basin.

How can you be sure where those photos are taken?-- Because I remember that particular investigation.

Do you have a GPS coordinate of these photos?-- Yes, I would. 1

Is it in this document?-- Not in this document, no.

5 Next photo? Same area?-- It is.

Keep going. That's in the same area?-- Same area again.

10 That's not on the subject property?-- It is not on this property. 10

Next. Not on Mr Knights' property?-- Not on Mr Knights' property.

15 Not on Mr Knights' property?-- Again, not on Mr Knights' property.

Next. Not on Mr Knights' property?-- No, it's not.

20 Next. Not on Mr Knights' property?-- No. 20

Next. Not on Mr Knights' property?-- No, it's not.

Next. It's Kye Station, isn't it?-- Sorry?

25 It's Kye, isn't it?-- No, it's coming back in towards Thargomindah there.

Next?-- Again, it's only coming back into Thargomindah. 30

Next?-- Coming back into Thargomindah, but not on Mr Knights' property. And again, and again. This is the first shot that's on Mr Knights' property. 30

35 So these are the irrelevant photos - the Thargomindah series, let's call them?-- Yes. So up to 288 is - is on a separate - separate issue.

Well, why would they be provided as part of the evidence for this prosecution, then?-- I'm sure I can say it was done by error, in copying the CD across. 40

40

If we could go over to the next photo, please. Now are these in order? Site 1, aren't they?-- Yes. This is site 1.

45

Next. There's uncleared timber there, isn't there? Not uncleared trees?-- I can zoom it up, if you like.

50 If you could give me the whole screen, that would be really good. That's better. Next photo, please. Next? Now, these - the trees on the right there, they haven't been cleared, have they?-- No, obviously not. No, it's - there's a fence line, if I can use the mouse - there is a fence line just here. 50

55

Now is this - is that - is this a piece of Mr Knights' property?-- I would have to check against the reference map. Excuse me a sec while I try and see the-----

1

5 See, what I'm trying to do is sift out the irrelevant photos from this series?-- Yes.

I just want to - this is on Mr Knights' property, is it?-- It is. This photo is at site 1, looking south. So it-----

10

10

Well, that means nothing to me?-- Right.

15 The question is, is it on Mr Knights' property?-- The fence line you see, that I indicated before, shows the fence line, the outer boundary of Mr Knights' property. So to the left is Mr Knights' property.

And to the right?-- Is an adjoining property.

20 Right. Now, go to the next photo, please? Those trees there haven't been cleared, have they?-- No.

20

25 Does that area form part of the polygon that makes up the alleged illegal clearing - unlawful clearing?-- No, it isn't. That's a photo of the adjoining property. So, again, we're taking a series of eight photos, in a clockwise direction.

30 So this one, which is the sixth one [indistinct] this is the neighbour's property again?-- Yes, it is.

30

That's irrelevant. Next one? Is that Mr Knights' property or the adjoining property?-- It's the adjoining property, as we've rotated around-----

35 Next? Is that the adjoining property?-- That's directed to the north-west, and I believe it would be the adjoining property.

40 Site 2, is that Mr Knights' property?-- This shot is to the north, and is of Mr Knights' property.

40

45 How do you know it's Mr Knights' property, though?-- We're using the location of the site, and the fact that's taken to the north.

You're not able to determine where these photos are taken without reference to this plan here, are you?-- No, obviously, there's 90 photos, so I wouldn't even try to have a recollection of that.

50

50

But there is no GPS coordinate embedded in these photos?-- No, our cameras don't have GPS ordinance built-in, no.

55 So the only way that we can be sure where these photos were taken is because of the location that you put on each of these pages, isn't it?-- That's correct.

And we've already had a whole sweep of irrelevant photos, taken out near Thargomindah, that have been included in this evidence, and now we go through them, we find, according to you, a lot of these photos are taken in the neighbouring property?-- Well, one of the things with these photos is not proving the areas that are being cleared; it's showing indication of the landscape. So the two things that can come from that. It does show timber on the ground or trees that have been pulled or pushed. It also shows neighbouring areas where vegetation is retained. It gives an indication of what the vegetation did look like.

The timber on the neighbouring property gives an indication of what the vegetation would look like?-- Well, vegetation communities obviously don't stop at a particular boundary, so it's-----

Well, depending on the management regime of the different properties?-- Yes. I'm not saying it's conclusive, but it does show - an indication-----

Well, it's absolutely irrelevant, isn't it?-- Well, it provides the indication. I said it's not there to prove a particular point.

It's not here to prove anything?-- No, I didn't say that.

Well, I'm putting it to you, it's not, is it, because it can't?-- Well, I'm saying it shows, at that particular point, what the landscape looked like.

Excuse me, your Honour. How do - even the direction of these photos, north, how do we know that that's taken in the north?-- It's my usual practice there - is to start on the north point and work your way - my way around.

Do you have a compass with you or anything?-- Yes, I do.

Right. And was this due north?-- Yes.

From your recollection?-- Yes, I place the compass on the ground near my feet and move around it, taking the photos.

But unfortunately with this, site 1 isn't the same as every - of these pages. There's no way - there's no grid that we can scale, with a scale ruler - are you familiar with that process? Scaling off GPS coordinates-----?-- Mm.

-----on a grid?-- Yes.

And there is no way that we can test this, is there?-- No. It's an indication, as I said.

It's an indication. Next photo, please. Is that Mr Knights' property?-- Yes, it is.

Next?-- That's a photo to the east, so again, it's Mr Knights' property.

1

Mr Knights' property?-- And see - see the - sorry?

5

Is this Mr Knights' property?-- Well, again, it shows the fence line, so the track on the left-hand side of the fence is Mr Knights' property, and adjoining side is, I believe, stock route, a rural road reserve, a reserve.

10

Next. Is that Mr Knights' property?-- No, it's the adjoining land.

10

Next. Mr Knights' property?-- The adjoining land.

15

Next?-- So again, Mr Knights' property is to the right of the fence, and there's adjoining land.

So this is Mr Knights' road here, this track we can see?-- The track down the fence line.

20

20

And there's - no trees have been cleared in that photo frame, have there?-- I don't believe so, no.

25

There appears to be some cleared in the neighbour's property, doesn't there?-- I can see, referring to one just about there - it could be just natural timber falling over, I'm not too sure.

30

How did you determine that the area has been cleared in Mr Knights' property, and it's not just natural timber falling over?-- Well, again, it is - if you're - in some of my observations, I did see scrape marks on some of the vegetation. But, again, it's-----

30

35

Some?-- Some. But certainly I'm not in a position to look at every single tree or every single hectare.

40

Next photo please. Is that Mr Knights' property?-- Yes, it is. That's to the north-west.

40

And that's standing timber there, isn't it?-- It is, in the centre of the picture.

45

That's not regrowth is it?-- I wouldn't describe that as regrowth.

Now, this area, does it form part of the polygons that make up the areas and the particulars that would be unlawfully cleared?-- No, I don't believe it does.

50

50

Beg your pardon?-- I don't believe it does.

55

So, this area hasn't been unlawfully cleared?-- I don't - don't believe so.

But you don't know?-- No. The-----

1

You're familiar with the area that's unlawfully cleared, as has been particularised in the complaint you swore?-- Yes, I am.

5

But you can't tell whether this photo depicts an area that has been allegedly unlawfully cleared?-- I am saying I don't believe it is, so I don't think that's an illegally cleared area.

10

Can you tell or not, definitively, yes or no?-- I'm saying no.

10

No. So, that photo is irrelevant. That photo has got nothing to do with this?-- These photos, as I said before, relate to showing the landscape. It is not a definitive proof of an illegally cleared area.

15

Well, it's not any proof, is it, because we don't know where they are, and we can't tell unless we - unless we take your evidence that he had - he had a compass on the ground and that's the direction of the photo?-- That's the evidence I provided.

20

20

We can't tell where they were. There's no way we can scale off - using these GPS coordinates that you've used - scale off on a that map in the front - picture on the front - to even determine where these photos were taken, is there?-- As I've provided in my evidence I've indicated where they are.

25

Yes. Next, please. There's standing timber there, isn't there?-- Yes, there is.

30

30

Does this area depict an area that is allegedly unlawfully cleared?-- No, it doesn't.

35

So this photo is irrelevant. Next, please. Does this photo depict an area that was allegedly unlawfully cleared?-- Site 3, and, no, it doesn't.

40

All right. So, that one's irrelevant. Next. Does this area comprise part of the particulars?-- No, it doesn't.

40

Next, please. Does this area comprise part of the particulars?-- No, it doesn't.

45

Next, please. This area comprise-----?-- No, it doesn't.

Next, please. Does that Nissan Patrol comprise part of the particulars?-- No, it doesn't.

50

50

Thank you. Next?-- No, it doesn't.

What's the area to the right of this car?-- To the right, we're on site 3, I think, to the west, so the other side of the fence is an adjoining property.

55

60

So, that's the neighbour's property. So, that's irrelevant.  
Next, please. Does that area form part of the  
particulars?-- No, it doesn't.

1

5 Is it on Mr Knights' property?-- The picture is to the north-  
west, so I don't think it is. I'm not - not 100 per cent  
certain there. I was looking at the fact that it's on the  
boundary.

10 Thank you. Next. We're on to site 4. First photo on the  
panel site 4. There should be one photo before that I've got  
- no, I'm sorry, that was the first one of site 4?-- This is  
the second one, sorry.

10

15 Does this area form part of the particulars?-- I would have to  
double check against the map that has been produced by the  
remote sensing team. The exact areas-----

Yes or no or don't know?-- Don't know.

20 Next, please. Does this area form part of the  
particulars?-- I'm not sure I would have to check against the  
map showing the particularised areas.

20

25 Next, please?-- Again, same answer. I would have to check  
against the map.

Next, please?-- The same answer there. I would have to check  
against the map of the particularised areas.

30 Next, please. Same answer?-- Same answer there.

30

Next, please?-- Same answer on this one.

35 Next, please?-- And the same answer on this.

Site 5. Does this area depict an area particularising the  
fence?-- I don't believe so but I would have to check against  
the map showing the particularised areas.

40 Next, please?-- It's the same answer there.

40

Next, please?-- This is a photo to the east and, again, I  
would have to check against the map.

45 Next, please?-- Same answer on that.

Next, please?-- This is a photo to the south and, again, I  
would have to check against - actually I could say there that  
it wouldn't, if it's a photo to the south.

50

50

I'm sorry, it would or-----?-- It would not-----

It would not?-- -----if it's a photo to the south.

55 Next, please?-- Again, no.



Next?-- It's a photo to the west, and I don't believe it is.

1

Next?-- Photo to the north-west, and I don't believe it is.

5 Now, the last - now, site 6?-- Site 6 doesn't relate to the areas as it's - I don't believe it had remnant vegetation on it.

10 Next photo. Is that an old fence post?-- That's an old fence post, I think.

10

Has it been unlawfully cleared?-- I believe - I'm not sure whether it's an old fence post or not but it's not in the unlawfully cleared area.

15

Site 7. Does that form part of the particulars?-- Quite possibly, but I would have to check against the particularised map. It's a photo to the north.

20 Next, please?-- I - my recollection is to the - past that small screen of trees that have been left is in the particularised areas. Again, I would have to check against the map.

20

25 But from this photo, we can see a large motor car and a man standing next to a fence line and next to that fence line, standing timber?-- Yes, and behind that there's actual regrowth.

30 We can't see what's behind that, can we?-- I can see it on my screen. You can see that's the-----

30

But has the standing timber?-- There's a row of - row of timber here.

35

Yes?-- There is regrowth vegetation behind there and where the pointer is at the moment, there is fallen timber that I can see.

40 Can we see - has a bulldozer chain gone around that?-- No. Obviously not.

40

45 Now, does this standing line of timber form part of the particulars of the unlawful clearing?-- No, I don't believe - no, it wouldn't. It's not cleared.

50 So, you've only particularised the offence insofar as trees that have been knocked over. Is that right?-- The area relates to the regional ecosystem that has been cleared, so it relates back to the regional ecosystem mapping. So when I've received maps back from the remote sensing team, that then provides the areas that have been illegally cleared.

50

55 Within those polygons, isn't it possible that there's actually standing timber within the polygons?-- It's quite possible. I'm not expert in that area.

Well, you've inspected it?-- We're talking about - not talking about individual trees. We're talking about ecosystems, though.

1

5 Yes. We're talking about clearing trees, though, aren't we?-- Well, it's clearing a regional ecosystem.

Yes. Clearing trees?-- Well, trees make up part of the ecosystem.

10

10

Yes, I understand that, Mr Elliott, but the question is, in the polygons that are depicted on the image that you got and you assessed, on the basis that you swore this complaints, as to the areas that have been cleared, have they been cleared or not?-- The information I have given is that they were cleared and that those areas are were then calculated for me.

15

Right. Now, so, this - where the car is, is that Mr Olsen's property?-- Mr Knights', yes.

20

20

Knights?-- Yes.

Sorry. Next photo, please. Is that Mr Olsen - does this form part of the particulars, sorry?-- I would have to check against the map to show exactly where those particularised areas are against these areas, these locations.

25

Check against the map?-- The map produced by the remote sensing team.

30

30

Next, please. Does this area form part of-----?-- That's a photo to the south east from that site and I would have to check against the map.

35

Next photo, please. Same question. Does this form part of the area?-- It's the same answer. It's to the south, so I don't believe it would. I would have to double check.

40

Don't believe it would?-- I would have to double check against the map.

40

Next photo, please?-- It's the same answer there.

45

Next photo?-- It's a photo to the west.

So-----?-- Yes. Again, shows that fence line that we saw in those earlier photos-----

50

Yes?-- -----in another direction.

50

And I would have to check against the map.

Next photo, please. Is that Mr Knights' property?-- It is. It is now pointing to the north-west across that fence.

55

Does this form part of the particulars?-- I would have to check against the map produced.

1

Thank you. Site 8. Does this area form part - first, is it Mr Knights' property?-- It is Mr Knights' property. It's a photo to the north from site 8.

5

Does that form part of the particulars?-- I believe it would, but again, I would have to check-----

You're not sure?-- I would have to confirm it against a map of the particularised areas.

10

Next photo. I won't even ask about that one. The next photo?-- As I take a series of eight photos, I can't hide a vehicle in it. So again, it's photo - that one to the east.

15

Does that form part of the particulars - that area?-- I don't believe so, but I would have to check against the map of particularised areas.

Next photo, please. Does that form part of the particulars?-- Photo to the south-east, and I would have to check against the map.

20

Next photo, please?-- Same answer there. It's going to the south, so I would have to check against the particularised-----

25

Next photo, please. Same answer?-- Same answer.

Next photo, please. Same answer?-- Same answer. That's pointing to the west.

30

30

Next photo, please. Same answer?-- Same answer. That's to the north-west showing where we had come from.

35

Site 9 is this photo?-- This photo is to the-----

Does this photo-----?-- Sorry?

Does this photo depict an area that forms part of the particulars of alleged unlawful clearing?-- No, this photo is to the north, so it shows across the fence.

40

40

The boundary. So it's not his property?-- No.

45

Next. Same answer?-- Same answer there. It shows - starts to show the track that runs along the fence there.

Next. Does this area form part-----?-- This photo is to the east. I believe it is, but I would have to confirm it against a map.

50

50

So you can't be sure?-- I would have to confirm it against a map.

55

Next. Same answer?-- Same answer. To the south-east.

60

Next. Same answer?-- It's to the south. I would have to check against the particularised map.

1

Next?-- To the south-west, and it would be the same answer.

5

So all this site, the same answer, is it? Is that correct?-- Except for, obviously, the photos showing to the north, which show the adjoining land.

Right. So these photos are either not Mr Knights' property, or you can't tell whether they form part of the alleged offence-----?-- My recollection is, it's very close to it, but, as I said, for accuracy, I would have to check against the particularised map.

10

Next photo. Same answer?-- Yes. Same answer there.

15

Next photo. Same answer?-- Well, this photo's to the north-west, so it would be showing the adjoining land.

20

The adjoining property. Site 10. Does this photo form part of----- ?-- This photo is to the north, and I believe it is in the particularised areas.

20

Next photo. Is this area particularised?-- This photo's to the north-east, and, yeah, I would have to check against the map - exactly.

25

Thank you. Next photo to the east. Same answer?-- Yes.

30

Next photo to south-east. Same answer?-- I would have to check against the map.

30

Is that remnant vegetation in the background, is it?-- Yes. I was just looking at that, and I believe it is in the background. That's why I would have to check against the particularised map.

35

Next?-- This photo's to the south, and again you see remnant vegetation in the background and cleared timber at the foreground. I would have to check-----

40

Can you tell how long that that timber has been on the ground?-- I wouldn't. I would be guessing and wouldn't be able to give a clear answer - exact answer on that.

45

Many years, though, isn't it?-- Again-----

It's dry isn't it?-- It's dry, but-----

50

No leaves?-- The ones in the foreground, I can't see any leaves on them.

50

But you don't know whether that's in or out of the particulars - that photograph?-- This photo is to the south. No, I would have to check against the particularised map.

55

Is there standing remnant vegetation in the background?-- In the background, I believe so, but-----

1

Next. Same answer?-- Same answer there.

5

Standing vegetation in the left background?-- Yes, so as we're moving in a clockwise direction, we picked up the vegetation that was retained in the background.

10 Yes. Next?-- Photo to the west. I would have to check against the particularised map to show the exact areas.

10

15 Next, please?-- Photo to the north-west. It's likely, but again, for accuracy, I would have to check against the particularised map.

Site 11. Is that Mr Knights' property?-- It is. Photo to the north.

20 That doesn't form the particularised area, does it?-- I'm not too sure. I would have to check, but I can see in-----

20

25 Next?-- That photo's to the north-east, and I would have to check against the particularised areas on the map.

Next. Same answer?-- It's a photo to the east. In the background, there would be the neighbouring property.

30 Next?-- If I show you the pointer, there's a fence post there, I think - is the boundary.

30

35 Same answer. It's the neighbour's property, isn't it?-- Neighbour's property in the background. Foreground - immediate foreground is Mr Knights' property.

Next, please?-- I would have to check against the particularised areas.

40 Thanks, yes, Next. Same answer?-- Same answer. And obviously you can see the retained area in the background.

40

Next, please. Same answer?-- I would have to check against it to be 100 per cent accurate.

45 Thank you. Next. Same answer?-- It's to the north-west, and to be 100 per cent accurate, I would have to check.

50 Site 12. Does this photo depict an area particularised in the offence?-- Potentially, I would have to check against-----

50

Potentially? Can you swear, yes or no?-- I couldn't swear definitely without checking the particularised areas.

55 Next?-- That photo's to the north. This photo's to the north-east, and it would be-----

Random vegetation, isn't it?-- -----the neighbouring property.

1

Neighbouring property. Next. Neighbouring property?-- Photo to the east, neighbouring property.

5 Next. Neighbouring property?-- Yes, I think it is.

Next?-- That photo's to the south. It shows the track running down the eastern fence, and on the right hand side-----

10 10

Remnant vegetation, isn't it?-- Well, again, I would have to check against the map, but it shows retained timber. It's on Mr Knights' property.

15 Next. There's no clearing there, is there?-- No, I don't believe so.

Next. Does that picture depict an area that forms part of the particulars?-- It's highly likely, but, again, I would have to check against the thing. I can't swear definitely yes or no.

20 20

Next?-- This photo's to the north-west from site 12, and I would have to check against the particularised map.

25 Thank you. Now, slide 90 - how many photos?-- I believe it's 90 photos, I think.

Ninety photos, plus the ones of the Cooper basin, Thargomindah: 96 photos?-- I'm not sure of the number.

30 30

Now, our of the total amount of photos that were tendered under this picture, there are six that are relevant?-- Well, the relevant-----

35 Six are relevant; isn't that right?-- I wouldn't agree with that. They are relevant for different purposes, where they show, as I said before, the landscape, and it's not a case of-----

40 They show the landscape of Thargomindah; they show the landscape of the next door neighbour's property. Those that show possible timber clearing, you can't swear whether they are in the particularised areas?--No, not without checking those - those maps.

45 40

Not without having a map that is useful enough for us to work out where you were?--The map indicates where I was on the property.

50 You, as the complainant, who swore this complaint and the particulars, cannot, without reference to another document, give any evidence as to the location of those photos?--As the complainant, I was provided with another set of maps which indicated a change of vegetation with clearing on it.

55 50

Excuse me, your Honour. Would you agree that the majority of those photos, which are actually on Mr Knights' property, show

standing timber in them?--I think it's a - it's a fair mix of standing timber and timber on the ground.

1

5 That wasn't the question. Would you agree that all the photos - all the relevant photos - show areas of standing timber? That one right there, for instance?--Yes, it shows what I would call regrowth.

10 No, in the foreground, the smaller timber, is that what you would call regrowth?--I will use the mouse. If you get back to, say, the middle of photo-----

10

Yes?-- -----you can see some vegetation coming back there.

15 And you term that regrowth?--That's what I would term as regrowth.

Now, the vegetation in the back of the photo, in the distance?--Showing the taller timber?

20 20

Yes?--Well-----

25 That's not regrowth, is it?--No, it's mature timber; whether it's remnant or not, I'm not in a position to - to say.

It hasn't been cleared, has it?--No, obviously not; it's standing timber but whether it's remnant or not, I'm not in a position to say.

30 So the - would you describe this pattern of apparently cleared at some stage in the past and apparently not cleared at the same time, at least, a mosaic pattern all through this property?--No, I wouldn't describe it as a mosaic, as in terms of small areas cleared, small areas left. There's some areas that have been broad-scale cleared, if you like, if you want to use that term.

30

40 In this photograph here, though, depicts an area that - a small area that some has been cleared and some hasn't, doesn't it?--It does show some - some timber that has been left, yes.

40

45 Excuse me, your Honour. Isn't it your job to know, though, the difference between a remnant and non-remnant vegetation?--No, it's the sort of position I would expect a - a botanist or a - a vegetation management officer to know.

50 But you determine remnant and non-remnant by a regional ecosystem map, don't you?--I don't determine what's remnant and non-remnant.

50

No, with reference to the regional ecosystem map, that's how you determine in the field, isn't it?--Yes, via a location, yes. That's correct.

55 In a location; then you determine, from that position, what the map determines is remnant and non-remnant; isn't that how it works?--Well, the map - if you like, the regional ecosystem

map is overlaid against what is done by a remote sensing team to determine those exact areas, so the overlay then determines what happens there.

1

5 But isn't the classification of the vegetation as per the regional ecosystem map?--That's correct.

Could the witness be shown this document, please, your Honour?

10 Can you describe that map?--The title shows that as Remnant 1999 Regional Ecosystems Lot on Plan 8 MGL33. It shows the - the subject property.

10

15 The subject property. That map was plotted 28th of May 2002?--That's the date on it.

From that plotted, wouldn't you agree that, if that map was plotted at that time, that would indicate that it was current at that time?--If that's the correct version. As I said, I'm not sure where the source - this map has come from. If that's the correct version of mapping.

20 20

25 Well, it has "Queensland Government" in the bottom left-hand corner?--Yes, I know but I haven't created it or seen it being created, so I'm - I'm presuming-----

I tender that document, your Honour.

30 BENCH: Well, now, that will be admitted in evidence and marked Exhibit number 12.

30

35 ADMITTED AND MARKED "EXHIBIT 12"

MR SHERIDAN: Can the witness be shown this document, please, your Honour?

40 40

BENCH: So what will I describe this as?

MR SHERIDAN: That-----

45 BENCH: Remnant-----

MR SHERIDAN: Remnant 1999 plotted 28 May 2002. There are quite a number of these, your Honour.

50 BENCH: Okay. So that one's Exhibit 12. How many have you got?

50

MR SHERIDAN: Seven in total.

55 BENCH: Well, can't you show them all to the witness at once?

MR SHERIDAN: They're all different, your Honour.



1

BENCH: Yes, well, he can't note their difference, can't he?

5 MR SHERIDAN: Yes, I just don't want get - I don't want get a confusion about - because I intend to cross-examine people in order with these.

10 BENCH: Right. So this is a technical area that just requires a lot of labelling, so you're going to show the next one now?

10

MR SHERIDAN: Yes, your Honour. And I would like that - I think it might be better if we could keep them separate because I can see-----

15 BENCH: Okay, yes. I just was trying to save a lot of writing but it's not going to work. Did you give me another lot of-----

20 MR SHERIDAN: A small amount of time spent on writing, your Honour, might be saving confusion in the next day and a half.

20

BENCH: Did you give me more than one lot? You did. I must have lost them. They have probably been eaten. Thank you. So you got seven?

25 MR SHERIDAN: Yes, your Honour.

BENCH: Okay, away you go.

30 MR SHERIDAN: Now, that document, Mr Elliott?--It's titled Updated Remnant 1999 Regional Ecosystems for the subject property, and this one - I'm not sure if the previous one had it, but this one has the signature of the - of Andrew Lavington, delegate of the chief executive.

30

35 What's the plot date on that one?--28 May 2002.

Thank you, I tender that document, your Honour.

40 BENCH: That will be admitted into evidence and marked Exhibit 13.

40

45 ADMITTED AND MARKED "EXHIBIT 13"

50 MR SHERIDAN: Could the witness be shown this document please, your Honour? Can you identify that document Mr Elliott?--Updated Remnant 1999 Regional Ecosystems for the subject property; plotted date is the 13th of November 2002.

50

55 Thank you, your Honour. I tender that document.

BENCH: That will be admitted into evidence and marked Exhibit 14.

60

1

5 ADMITTED AND MARKED "EXHIBIT 14"

MR SHERIDAN: Thank you, your Honour. Can the witness be shown this document? Can you identify that document please Mr Elliott?--It's titled Updated Remnant 1999 Regional Ecosystems for the subject property. It's plotted 28th of May 2002. It's - do you want me to describe it further?

10

15 No, thank you. I tender that document.

BENCH: That will be admitted into evidence and marked Exhibit 15.

20 ADMITTED AND MARKED "EXHIBIT 15" 20

25 MR SHERIDAN: Could the witness have this document, please, your Honour? Can you describe that document or identify that document please Mr Elliott?--It's titled Acme Downs Regional Ecosystems Status.

30 I don't think that document has actually the plot date on it, but there is a date underneath the scale bar. Produced by?--Produced by Natural Resources and Mines, Charleville, in brackets, 2002. And it has the data sources.

30

35 Thank you. I tender that document, your Honour.

BENCH: That will be admitted into evidence and marked Exhibit 16.

40 ADMITTED AND MARKED "EXHIBIT 16" 40

45 MR SHERIDAN: Excuse me, your Honour. That last - the Charleville - under the scale bar, produced by Natural Resources and Mines, Charleville, 2001 or 2002? There is a scale bar down the right hand side, your Honour?-- There's a scale bar down the right-hand side.

50

BENCH: Produced by Natural Resources and Mines, Charleville, 2001.

55 MR SHERIDAN: One. Thank you. Can the witness be shown this document, please, your Honour?--It's titled EPA Regional Ecosystems, in brackets, version four, and NR and M DCDB.

60

1

Does that have a map date on the right-hand panel, half way down, in bold?--It has the DCDB - DCDB-----

5 I'm sorry - down below that, map date?--Map date it has as 17 June 2004.

I tender that document, your Honour.

10 BENCH: That will be admitted into evidence and marked Exhibit 17. 10

15 ADMITTED AND MARKED "EXHIBIT 17"

MR SHERIDAN: Could the witness be shown this document, please, your Honour?--It's titled 2001 Regional Ecosystem Map and 2005 Satellite Image. 20

Now, down at the very bottom on the right-hand side - no, sorry. The disclaimer: State of Queensland Department of Environmental Protection Agency 1999. Down the bottom, please. "This is a copy of the certified" - can you read that for the record, please?-- It says, "This is a copy of the certified regional ecosystem map defined by the map extent for the purposes of the Vegetation Management Act 1999." 25 30

30

I tender that document, your Honour.

MR WILSON: Could I take a moment to consider that document, your Honour?

35 BENCH: Sure.

MR SHERIDAN: Which one do you want?

40 MR WILSON: The last one; just 2001. I just want to see the produced date. It has got, "produced by AgForward Services Proprietary Limited." 40

MR SHERIDAN: If the witness could be shown that when your Honour has completed it. 45

BENCH: I haven't got it back here yet. I thought they were looking at it.

50 MR SHERIDAN: I'm sorry, it's still there. 50

Now, that last document - that document that you have, which is-----?-- No, it's the satellite image produced by AgForward.

55 Which one have you got there?-- 2001 Regional Ecosystem map and 2005 Satellite Image.

60

1

Excuse me, your Honour, while I just confer with my friend.  
Excuse me, your Honour. I've had a discussion with my learned  
friend about that document and this document, which I asked  
5 the witness to be shown, and, by consent, the previous  
document and the document I've just given the witness be  
marked for identification, please.

10 BENCH: Well, you want - have you seen them before?-- I've  
never seen these copies before.

10

Okay. I will just mark "B" for identification.

15 MR SHERIDAN: "B" for identification.

BENCH: "B" and "C"?

MR SHERIDAN: "B" and "C", thank you.

20 BENCH: Thank you. Thank you. Which one was the first one?  
The purply coloured one, was it? The satellite one?-- Yes,  
your Honour, it was.

20

25 MR SHERIDAN: They're all in order.

BENCH: So that's B?

30 MARKED "B" FOR IDENTIFICATION

30

35 BENCH: And the 2001 Ecosystem map with the bright colours is  
C.

40 MARKED "C" FOR IDENTIFICATION

40

45 MR SHERIDAN: Thank you, your Honour. Now, could the witness  
be shown Exhibits 12 to 17 inclusive, please?

BENCH: All right.

50 MR SHERIDAN: I have a clip for your Honour, if you want to  
clip them together.

50

BENCH: No. You wanted them all separate; you're having them  
separate. 12, 13, 14, 15, 16 and 17. That's what you wanted  
to have a look at?

55 MR SHERIDAN: Yes, thank you, your Honour.

BENCH: Thank you. It's all going to him right this minute.

60

1

MR SHERIDAN: Now, Mr Elliott, if you could arrange those maps there in Exhibit order - your Honour will have written numbers on it. If you start at 12, have them in Exhibit order, so we  
5 don't get out of whack?-- Yes.

Now, the first map, Exhibit 12, are you looking at that?-- Yes.

10 Remnant 1999, plotted 28 May 2002?-- Yes.

10

That 28 May 2002 falls between the two offence periods; is that correct?-- I believe so.

15 Yes. Now, you can interpret regional ecosystem maps?-- As in identifying remnant areas as opposed to non-remnant?

Yes?-- Yes.

20 Yes. Good. Now, that first map, Remnant 1999, Regional Ecosystems, Exhibit 12 - the white areas depicted on the subject lot, they are non-remnant vegetation; is that  
right?-- This is the correct map for the time, yes.

20

25 Yes. Yes?-- White is non-remnant.

Yes. I just want to get the colours right. White areas on the subject lot are non-remnant. That's correct?-- Yes.

30 Clearing of those areas on the subject map is not assessable development?-- That's correct.

30

Okay. Now, the-----

35 BENCH: Can you just go back - say that again? The white areas on map - what's the map?-- It's Exhibit 12.

MR SHERIDAN: The white areas on the map on Exhibit 12.

40 BENCH: White areas on 12.

40

MR SHERIDAN: Clearing of vegetation in the areas marked white is not assessable development.

45 BENCH: Mmm-hmm.

MR SHERIDAN: That's correct, isn't it, Mr Elliott?-- That's correct. Non - it would be a non-remnant area.

50 Yes. It's a non-remnant area. Now, the light brown areas - sorry, your Honour, we haven't got any more copies of these.

50

BENCH: That's okay. I will listen on.

55 MR SHERIDAN: Yes. All right. Excuse me, your Honour. Yes. Your Honour, Exhibit 6, from memory, which you should still have up there - Exhibit 5, sorry.

60

1

BENCH: Exhibit 5, the one that has got no colour on it.

5 MR SHERIDAN: Exhibit 6, you will have, has a letter for a colour.

BENCH: Yes. I've got that one.

10 MR SHERIDAN: Exhibit 6. It's a different date and it's a different map, but-----

10

BENCH: It will give me the general idea-----

15 MR SHERIDAN: Yes, your Honour, with the colours - otherwise-----

BENCH: -----without confusing me totally.

20 MR SHERIDAN: Yes.

20

BENCH: All right. Okay.

25 MR SHERIDAN: I'm trying to avoid that, your Honour. It is - I'm trying to make it as logical and straightforward as possible.

30 So - okay, the white areas - we've been through that. Now, the light brown areas at the bottom in the southern block - central - that is a remnant of concern regional ecosystem; is that right?-- That light brown area would be, yes.

30

35 Yes. They've termed that sub-dominant; is that correct?-- It's one of the terms there. Dominant, sub-dominant.

Dominant, sub-dominant?-- Yes. Yes.

40 Okay. So the two - the pinks, if you will, the maroon and the light pink, are rendered endangered regional ecosystems?-- That's correct.

40

The brown and the light brown are remnant of concern regional ecosystems?-- That's correct.

45 The green is remnant not of concern regional ecosystems?-- It's an Aqua-green colour, I guess.

Now - yes, and the one below it, the lighter green?-- Yes?

50 No. There is - none of that appears on that map, is there?-- No. It shouldn't appear this far east.

50

55 Yes, there's no water. Okay. Now if we have a look at these remnant of concern - remnant endangered sub-dominant. They're - on Exhibit 12 the area that's taken up in the south-east corner of the southern block?-- Yes. Yes, that-----

60

The map, your Honour, is broadly similar.

1

BENCH: Mmm-hmm.

5 MR SHERIDAN: Now, those numbers down there, 11.3.28/6.4.4/6.4.1, those are three types of the regional ecosystem in what is known as a mixed polygon, aren't they?-- That's my understanding. Yes, that's right.

10 Right, now the numbers below, 80/15/5, represent the proportion of those ecosystems in that polygon, don't they?-- That's correct.

10

15 So in that - this pink area that we're looking at - 80 per cent of that area is made up of 11.3.28 regional ecosystem?-- That's what's recorded here.

20 Fifteen per cent in 6.4.4 ?-- That's what's recorded here, yes.

20

25 And 6.4.1 makes up 5 per cent-----?-- Yes.

30 -----of that mixed polygon. Now, the only one of those ecosystems in that polygon is the 6.4.1, isn't it?-- Sorry?

35 You're aware which regional ecosystem is endangered and not of concern?-- No. I don't have that sort of knowledge.

40 Okay. If we have a look at the north-east - north-west, sorry, corner of the southern block, do you see where that circle with the cross in it is?-- Yes.

30

45 And we have there 6.3.14/11.3.28?-- Yes, that's there.

50 Underneath, 80/20?-- That's there. Yes.

55 That indicates that 80 per cent of that polygon is 6.3.14, while 20 per cent is 11.3.28?-- Yes. That's is how it's mapped on this map.

40

60 Yes. Can you - can you tell me where the definitions of these regional ecosystems are held?-- The actual individual descriptions as opposed to status?

65 Descriptions, yes?-- There is an EPA database-----

That's the REDD, isn't it?-- Yes, that's it.

70 Now, the categorisation of those different ecosystems into "endangered", "of concern" and "not of concern," can you tell me where that is held?-- What, the definition of what is endangered?

50

75 No, not the definitions, but the categorisations of "endangered", "of concern" and "not of concern"?-- I believe it's in the same database, but I'm not - not sure.

It's in the Vegetation Management regulations, isn't it?-- I, again, can't offer that evidence. I'm not sure.

1

5 So, now, that is how we get a sub-dominant regional ecosystem, isn't it?-- Well, again, that's getting outside my area-----

10 No. From this map in the south-east corner again - if we go back down to that pink area down the bottom - the reason that's sub-dominant is that less than 50 per cent of that polygon is made up of an endangered regional ecosystem, isn't it?-- Well, I'm not involved in the mapping, so I don't know the distinctions there or the rules they have used.

10

15 No, but you can interpret these. You use these maps to interpret, on the ground, the status of the regional ecosystem, don't you?-- Not whether its dominant or sub-dominant.

20 No, no. But you use this map - I'm not saying - I'm not suggesting that you make these maps?-- No, no.

20

25 I'm suggesting - I'm putting to you, that you use these maps to determine the status of the regional ecosystem on the ground?-- We determine where vegetation has been mapped as "remnant".

Yeah?-- Yes.

30 For instance, if you stopped in that big white car of yours, down in that bottom corner, and that area had been cleared, you would look at this map and determine, well, 80 per cent of this area is 11.3.28, regional ecosystem, 15 per cent is 6.4.4, and 5 per cent is 6.4.1, wouldn't you?--Yes. That would be a logical conclusion.

30

35 So the fact that it's endangered in this instance only relates to 5 per cent of that polygon, doesn't?-- Well, again, I don't know the different statuses of those regional ecosystems, so I can't-----

40

45 Yes. But if I were to tell you that that was the case - for instance, if I were to say that 6.4.1 is endangered, wouldn't you deduce from looking at that map, that 5 per cent of this mixed polygon was, in fact, the remnant endangered 6.4.1 ecosystem?-- Obviously you're also taking into consideration what the other ecosystems are - but, yes.

50 Yes. And that 80 per cent of it - you're standing in the middle of that pink area, looking at the trees; that's what you determine from this regional ecosystem map?-- Sorry. Could you rephrase that?

50

55 If you're standing in the middle of the pink area, looking at the regional ecosystem map, thinking, "I wonder what all this is about," and you would look at that map, and you would know where you were from your GPS, and you would say, "80 per cent



of this polygon that I'm standing in is made up of 11.3.28 regional ecosystem"?-- Yes.

1

Somewhere in here there's 15 per cent that is 6.4.4. Somewhere else in here there is 5 per cent that is 6.4.1?-- That shows that those are the percentages of those communities inside that polygon.

5

Yes. Okay, right. Yes, that is what I wanted to get to the bottom of. And the other mixed polygons, where we had the sub-dominant the lighter brown and such, that's the same way they're interpreted, too, isn't it?-- Yes. That's the same-----

10

10

The first number relates to a specific regional ecosystem?-- Yes.

15

The second number relates to another?-- Yes.

And the number underneath - for instance, up where that circle with the cross is, 80/20, denotes there is 80 per cent of the first regional ecosystem number and 20 per cent of the second?---It shows that's the percentage inside those polygons.

20

20

Okay. Now, if you could have a look at Exhibit 13 - and I think this one is almost exactly the same as the one that your Honour is looking at?-- Okay. And this is a certified-----

25

This is the certified copy, isn't it?-- Yes.

30

30

Plotted on the same day - Exhibit 13, 28th of May 2002?-- Yes. That's the date that's on it.

Now, this is the updated Remnant 1999 Regional Ecosystem. Plotted on the same day: 28th of May 2002, which is midway between the offence period. There is a significant difference between these two, isn't there?-- Yes, there is.

35

Why is it, in Remnant 1999, the vast majority of the southern block was - I'm sorry - a large area of the southern block was white - now with this map, almost the entire area of white has gone to "sub-dominant of concern", hasn't it?-- That's what is shown on this map.

40

40

And a large area, that was white in the northern block, and has gone to "sub-dominant remnant", and "sub-dominant of concern"?-- Yeah. There was no real changes in that northern block.

45

And if we go then to Exhibit 14, which is plotted on the 13th of November 2002, which is the - about the midpoint of the offence period for count two, there are changes in that map as well, aren't there, between that Exhibit 13 and 14?-- Yes.

50

50

There are differences again.

55

For instance, in the middle of the southern block, there is an area of 11.2.28A-----?-- 11.3, I think.

1

Sorry, yes, you're right; 11.3 - which has gone from "not of concern" in Exhibit 12 on the 28th of May remnant, to "sub-dominant of concern" in Exhibit 13. And now it's "dominant of concern" in Exhibit 14, isn't it?-- Sorry. I see - I have picked up one section that goes from-----

5

Two dark-brown, irregular polygons virtually in the centre of that southern block?-- Exhibit 14 has the two-----

10 10

11.3.28A?-- Yes. In Exhibit 13 the areas - one of them looks "of concern", the other one is shown as "endangered".

15

Yes?-- And then in Exhibit 12, it looks like the same, "endangered" and "of concern".

Okay. Now, if we go over to Exhibit 15, which was also plotted on the 28th of May 2002, it has line work and the regional ecosystem numbers. That's all I want to know about that?-- Okay.

20 20

If we go over to Exhibit 16, which is the Charleville 2001 map - so this map actually pre-dates Exhibits 12 onwards?-- It shows the regional ecosystems as version 3. I don't think the other maps say which versions they're-----

25

No?-- They're plotted on.

30 30

So then, this one in the south-east corner of the southern block, the regional ecosystems are 11.3.28, 6.4.4 and 6.4.1?-- Yes.

But there are no percentages ascribed, are there?-- No. There are no percentages shown on this map.

35

No. But it does describe the ecosystem as "dominant/sub-dominant", "dominant/sub-dominant," doesn't it?-- It does, in the key on the right.

40 40

Yes, and "not of concern". It also has a grey area, doesn't it - "cleared" - the area depicted in grey-----?-- Yes, the area-----

45

-----is cleared?-- Yes.

It also has a light-blue area scattered through both subject blocks, that is denotes as being "disturbed"?-- That's shown there.

50 50

Yes. Now, do you understand "cleared" to be non-remnant?-- I would have to check with the author of the map to see what their intention was in showing it that way.

55

That's what you would assume, wouldn't you?-- If I match it up  
against the certified copies, then it seems to have some  
correlation to the non-remnant areas.

1

5 Now, the "disturbed" - have you seen that before, the term  
"disturbed," on a regional ecosystem map?-- Not like this, no.  
Not that I ever recall seeing it.

10 Yes?-- It's not part of the regional ecosystem mapping, I  
don't believe.

10

15 Yes. But this was produced by the Department of Natural  
Resources and Mines at Charleville in 2001 which is - well,  
the offence period in the first count is the 5th of October  
2006 - September 2001. So from that, wouldn't you say that  
this map was current during the first offence period?-- I  
wouldn't commit to saying that because I'm not sure who  
designed this map or where it's - where it came from or-----

20 No, I'm not asking you to do that. I'm asking you, from the  
date that appears on the map produced by the Department of  
Natural Resources and Mines, Charleville, 2001 - if that date  
be correct, as it appears on that map?-- It's at some stage  
during 2001.

20

25 Some stage during 2001? Now which regional ecosystem map did  
you use at the time of your inspection?-- I don't recall -  
see, I wasn't in a position where I could actually confirm any  
regional ecosystem mapping, and I'm not in a position where I  
30 can confirm that the species are what the communities are  
shown as.

30

35 But you - you're not in a position to, and you have had to an  
inspection?-- Well, I'm certainly not a - not a botanist.

40 No, I haven't suggested you are a botanist. But you have  
sworn this complaint on the basis of your inspection and  
analysis of the vegetation in the clearing on your inspection  
on that day?-- That's right. So I rely on expert advice in  
terms of where clearing has occurred and the mapping.

40

45 That's understandable, I suppose, Mr Elliott, when you look at  
the utility, for these purposes, of these photographs and  
their locations. You would have to rely on someone else,  
wouldn't you?-- Well, certainly it's - it's very wise,  
obviously, to if you're not sure of something, to check and  
make sure you have been given the right advice.

50 So if you have a look at the span of both offence periods -  
5th of October 2000 and 19th of August 2003 - I'm sorry, your  
Honour. Could your Honour - there are two documents that are  
marked "A" and "B" for identification.

50

55 BENCH: Yes.

MR SHERIDAN: Do you have them, Mr Elliott, or are  
they-----?-- No, I haven't got them.

1

BENCH: I have-----

5 MR SHERIDAN: Excuse me, your Honour. Could the witness be shown this document? Thank you, Mr Elliott. I'm sorry, it's getting rather confused up there. If you have a look at the document that I just handed to you, that's a regional ecosystem map of the subject property?-- It's titled 2003 Regional Ecosystem Map.

10

10 The date of that map?-- It has a date of 27 October '06

Yes?-- And even a time.

15 I tender that map, your Honour.

MR WILSON: Could I just have a look at that? I haven't seen it.

20 MR SHERIDAN: Sorry, your Honour. I've got three copies of that somewhere in the stacks behind me and I will - if my learned friend would have a look at it before I tender it.

20

MR WILSON: Thank you.

25

BENCH: Do you need access to the photos any more?

MR SHERIDAN: No, thank you, your Honour. I'm finished with those.

30

30

BENCH: Thank you. That is admitted into evidence and marked Exhibit 18.

35

ADMITTED AND MARKED "EXHIBIT 18"

40 MR SHERIDAN: If you just have a look at the map marked "B" for identification, that's dated 5th of September 2005?-- Yes, it has that date on it.

40

45 Yes. And that's another version of the regional ecosystem map which appears to be a copy of the certified regional ecosystem map defined by the map extent for the purposes of the Vegetation Management Act 1999?-- It has that comment, but it doesn't actually refer to a version of the mapping that I can see.

50

50

They don't refer to it?-- I can't see a version in the text on the right.

55 Copyright State of Queensland. Department of Environmental Protection Agency 1999?-- Okay. There is that date. But in terms of a version of the mapping, I'm not sure what they have

60

relied on here. I'm sure we could match it up against one of the other versions here.

1

5 If you go down to the third paragraph of the bar down the side?-- Yes.

10 "The positional accuracy of RE data maps to scale." Next sentence, "The extent of the regional ecosystem as of 2001"?-- Okay. There is a date then.

10

Yes. So this map, from your knowledge of regional ecosystem maps, depicts the extent of regional remnant - regional ecosystems as of 2001?-- At some point in 2001, yes.

15 Okay. And it was printed in 2005. So this map, then, printed in - printed on 5th of September 2005, but accurate as at 2001. Is that correct? Is that what you understand from that map?-- I guess, yes, that's what we could conclude from it, but-----

20 20

If you have a look at the document C for identification?-- Yes.

25 If you have a look down where we just reading before in the middle - towards the end of the third paragraph, "The extent of remnant regional ecosystem as of 2001"?-- It has that same comment there.

30 Yes. Printed in 2005. If you just have a look at the bottom - the south-east corner of the southern block that we were looking at before in that version, the pink area there on that map is endangered sub-dominant?-- Yes.

30

35 And the regional ecosystems listed there are 6.5.3, 6.3.25 and 6.4.1. Is that right?-- That's the listing there.

40 Underneath, 50/30/20. Is that, from your knowledge of RE maps, the percentages of those regional ecosystems represented in that sub-dominant polygon?-- It's what's shown on this map, but, obviously I can't verify the accuracy of the map.

40

No, but that's what this map shows?-- Yes, that's what this map shows.

45 And that was as at 2001. So that, again, is some time during the offence period of count one, or just outside it?-- Again, at some stage in 2001.

50 Yes. The offence period in 2001, 5 October 2006, September 2001. Count two is 24 August 2002, so this map is dated 2001. So all we can assume - that it may be relevant towards the end of the first offence period and, perhaps, it is not relevant at all between those two. Unless there was something that replaced this prior to the 24th of August 2002. Is that the way they work?-- Well, essentially, it can be replaced.

50

55

Yes?-- With the version of the mappings. But, as I said, I can't verify the accuracy of it, so whether-----

1

5 I'm not asking you to. I'm just asking you to confirm with what I'm seeing from the Exhibit, or the document marked C for ID, that you have. So, from any of these documents that you have before you, can you tell which is the relevant RE map for the offence period in count one, being 5th October 2006, September 2001?-- If I was trying to determine that, I would use data sources. Not from the maps you've provided me. I would have to get further information.

10

15 These are publicly available regional ecosystem maps, aren't they?-- I believe they are, but as I said, a number of them are certified.

Isn't - the regional ecosystems are defined by what appears on a certified map, aren't they?-- That's correct.

20 So, from what appears on a certified map, which of these maps is relevant for the offence period in count one?-- What was the offence dates again, sorry.

20

25 Sorry. 5th October 2000 and 6 September 2001?-- It's difficult for me to say when the - I'm not sure about these plotted dates, if that is the dates that refer to the regional ecosystem map at the time.

30 Well, isn't it true, though, if a map was plotted - if a certified map was plotted on the 28th of May 2002, it would be valid on that day at least, wouldn't it?-- You would presume so, but, obviously, we have to speak to the author of the maps to make sure that that's what the case is.

30

35 But a landholder can't be expected to go and speak to the author of the map to determine its validity, can he?-- If they're relying on the map, I would suggest that it would be-----

40 Can't they rely on the map, or is this map not reliable?-- Well, as I said, I don't know whether it's reliable or not, but if they are obtaining information from the Department or from another service, then, obviously, they need to be sure that they can rely on that information.

40

45 Is it the case, if one was the owner of the subject lot, and one went into the Department of Natural Resources and Mines and obtained a certified map, such as Exhibit 13, on the 28th of May 2002 - shouldn't one be able to assume that that was the status of the regional ecosystems as at that day?-- If a person was told that was the status at the day, yes.

50

55 What, are you implying, if you weren't told that, that-----?-- Well, if-----

I mean what's the value of a certified map?-- Well, the certified map - if it says that this the mapping today, on

1  
this particular date, then obviously it shows what the mapping is.

5 Yes. So, this map, we can assume, because it was signed by someone?-- Andrew Livingston.

10 Andrew Livingston - and plotted on the 28th of May 2002 - that that would be the current regional ecosystems status as at that date - at that - at that date?-- Yeah. I can only-----

10 You would be entitled to rely upon it?-- I can only assume that's - that's correct.

15 You would be entitled to rely upon it?-- Well, again, it seems to be there could be a conversation there or there could be other information that has been provided. I don't know. If this is the case, that this map was provided, and said on this day this is the mapping, I believe it would be safe to assume.

20 I - I see where you - you're a bit reticent, Mr Elliott, but is it not the case, if all things being equal - let me put it that way - all things being equal, a landholder who wanted to clear vegetation and who went in to the Department of Natural Resources and Mines and asked for a remnant - a regional ecosystem map, and were given these documents, would not he be  
25 entitled to rely upon them?-- If that's the - the question they asked and that's what they were told, yes.

30 Yes. I want to clear some land on my property and my property is lot - my property is-----?-- 8MGL33.

-----Acme Downs, and the person who gave me the map came out with this, you would be entitled to rely on it-----?-- Yes.

35 -----because if you went and cleared, then it's not possible for these map changes to come back and bite you retrospectively, is it?-- No, of course not. It's the time of the query, the time of the activity; it's the mapping that would be in place at that time.

40 Yes. Good. That's why it's vitally important that we know which map was valid during the offence periods, isn't it?-- Yes, it is.

45 Yes. And at this stage we don't, do we?-- That's not evidence I can provide here based on - on these maps.

Well, you swore the complaint, Mr Elliott?-- Yes, and I relied on evidence of other people.

50 I understand that. Which one? We've got about 12 regional ecosystem maps up there. They span from 2001, which is - maybe some time within the first period, till 2006, which is the last Exhibit you got, which is miles past it. My question  
55 is which map was current at the time; which map was used to calculate the areas allegedly unlawfully cleared?-- I can't answer that question.

1

Why did you swear a complaint, then, if you don't know?-- Because I relied on a separate map; I didn't rely on any of these maps. I relied on the evidence of the remote sensing team to develop that actual map which I can rely on.

Why couldn't you rely on any of these? They're the official maps, aren't they?-- Well, they are official maps but-----

10 They're certified maps?-- Yes.

10

See, that's the problem we get. This is what the landholder gets and then when you come to prosecute, there's some other dark secret, whatever, data base that someone else has got. Whoever we ask, "Which one did you use," the answer it just consistent, "Someone else has got it. The remote sensing team has got it. EPA has got it. Someone else has got it." We get one set of data that the person goes and tries to do the right thing on and avoid prosecution, and then when things go wrong years later, we get maps that are produced from somewhere else, with a different set of data, and every person I get in that box and try and find out where it is or what it is or which map they relied on at the time of inspection, you get the same answer. It makes it almost impossible, doesn't it, to work out what was the status of the regional ecosystem during the offence period. Was it not remnant? Was it remnant of concern sub-dominant? Was it endangered sub-dominant? Was it not of concern? Was it cleared? Was it disturbed? There's just a whole suite of variation. That is the difficulty we have trying to determine that what was what at the time, isn't it?-- Well, as I said, using these maps - these aren't maps I relied on to swear the complaint summons. I'm assuming that, in the brief, there is the maps coming to be produced.

20

30

35 We get back to my question again: which map did you rely on?-- These maps produced but I - and I don't believe they're admitted into evidence yet - that show those areas.

40 As at the offence periods? So, if we get a map produced here in evidence at some stage in the future that shows anything but the relevant maps at the time of the offence period, it can't be relied on, can it?-- I'm sorry could you-----

40

45 If we got a map that's produced here some time within the next two days and someone said, "Yeah, this is the map that was valid at the time," if it doesn't match up with any of these publicly available maps that were available to the landholder, then the landholder's being prosecuted on something completely foreign to this, isn't he?-- I see - see what you're saying but-----

50

55 Thank God for that. Sorry. Excuse me, your Honour?-- If I can continue? Essentially, if these maps were - came from the Department, they are the certified maps for that particular time, then that's what they can rely on.

60



But you say that even - if we have a look at Exhibit 13 which  
you say - and Exhibit 14, which you said was signed by Andrew  
Livingston, certified - Exhibits 13 and 14 - plot date 28 May  
'02, 13 November '02, the 13 November is right in the middle  
of the offence period for the second count. Surely this must  
be the map you relied on to particularise that charge?-- I  
can't say whether that is - is the map. As I said, there's  
a-----

Well, it's a certified copy, Mr Elliott?-- So, it should be  
the accurate RE mapping for the property.

Was this mapping the mapping you relied on when you  
particularised the charge?-- I don't know.

You have averred - do you understand the nature of averment?

BENCH: How many times do you want him to say, he doesn't  
know, Mr Sheridan? You're not going to-----

MR SHERIDAN: Sorry, your Honour.

BENCH: You're not going to get - you're not going to get  
anything else

MR SHERIDAN: Very frustrated.

BENCH: He doesn't know what he used.

MR SHERIDAN: Apparently. Okay. Nothing further, your  
Honour. Thank you, Mr Elliott.

BENCH: Wait a minute

MR SHERIDAN: Sorry, your Honour.

BENCH: What has happened with our man who was doing the  
clearing? Is he giving evidence?

MR WILSON: Yes, we hope to call him, your Honour.

BENCH: I'm sorry?

MR WILSON: I was hoping to call him today, so you can get  
away.

BENCH: Okay. Is he going to give evidence, is he?

MR WILSON: Yes.

BENCH: And you're not bothering to call the other two?

MR WILSON: No, they have gone. They have chosen to-----

BENCH: Now, you're not calling Glynn Knights or Geoffrey  
Knights?

MR WILSON: They've gone home, your Honour. They've chosen to exercise their-----

1

BENCH: Okay. But you're not calling them?

5

MR WILSON: No.

MR SHERIDAN: Thank you, your Honour. In closing, could the witness be shown this document, please?

10

BENCH: I'm sure he would love to see another document.

10

MR SHERIDAN: I aim to get all this paper from here up to there by the end of the week, your Honour.

15

BENCH: It's not the end of the week.

MR SHERIDAN: By Thursday.

20

BENCH: By - by Thursday mid-morning, so you can make submissions.

20

MR SHERIDAN: Can you identify that document, please, Mr Elliott?-- It appears they're a photocopy of a page from my notebook.

25

Now, that's - we're interested in, half way down there, the - it's page 89?-- Yes.

30

Is that right?-- Yes.

30

So, from the third - the top of page 89 is that, "12.45 at homestead"? Does that relate to the first - is that what that reads, "12.45 at homestead"?-- Yes.

35

Does that relate to the first visit at the Knights' property?-- I believe it would, yes.

Does it then say, "Spoke to Knights"?-- Yes. On JF tape.

40

On JF tape?-- Yes.

40

I tender that document.

45

BENCH: Thank you. That will be admitted into evidence and marked Exhibit 19.

50

ADMITTED AND MARKED "EXHIBIT 19"

50

MR SHERIDAN: Thank you, your Honour. I have nothing further.

55

BENCH: Thank you. Yes, please, Mr Wilson. How long are you going to be?

1

MR WILSON: Ten minutes, perhaps - 15.

5 BENCH: Sorry. If you have to stand down, don't discuss your  
evidence, because if we're going to get the other man who has  
given his evidence about land clearing, we can't afford 10  
minutes of re-examination now, so you won't be able to discuss  
the case.

10 If we get finished with the land clearer by 4.30, I will call  
you back in. If you wouldn't mind waiting  
outside?-- Certainly, your Honour.

10

15 WITNESS EXCUSED

20 BENCH: Could you call your witness, please, about the land  
clearing.

20

MR WILSON: Mr Nathan Gray.

25

30

40

50

60

NATHAN KIM GRAY, SWORN AND EXAMINED:

1

5 MR WILSON: Could you tell the court your full name,  
please?-- Nathan Kim Gray.

And whereabouts do you live?-- Carter Parade in Bollon. Lot  
13.

10 10

Okay. And what's your occupation?-- Earth-moving  
contractor/grazier.

Okay. So how did you come to be involved in this matter?

15

BENCH: That's not a proper question, thanks. This person is  
not a lawyer; they don't know about the rules of evidence.

MR WILSON: Okay.

20 20

BENCH: We're relying on you to ask them proper questions.

MR WILSON: Okay.

25 So how long have you lived in the Bollon district?-- Since  
1976.

Okay. And how long have you known Mr Knights?-- Would have  
started to get to know him from about 1980, when I was  
involved with his kids at school around the same time.

30 30

Okay. What age were you then?-- Seven or eight years old.

Okay. And what - what sort of work do you do?

35

BENCH: Earth moving contractor/grazier, the man told us.

MR WILSON: Yes. I had forgotten.

40 40

Now you cleared some land on Acme Downs?

BENCH: Excuse me. Why do you think you're allowed to ask  
leading questions? Or have you got an arrangement with your  
friend?

45

MR SHERIDAN: There's no arrangement, your Honour, I was just  
about to spring.

BENCH: No leading, thanks.

50 50

MR WILSON: Okay. I was just trying to move some things.

BENCH: No, well, no leading.

55 THE WITNESS: I don't have to stand, do I?

BENCH: No, you're right. You only have to pay attention.

1

MR WILSON: Okay. Have you cleared any property on Mr Knights' property, Acme Downs?-- Yes, I-----

5 BENCH: Okay, well, as I said before, if you're worried that  
your answer may incriminate you in an offence under any of a  
myriad of legislation about land clearing, not just the  
legislation that we know about here today, but it could be any  
10 legislation, you're not forced to answer. You're not here to  
give evidence against yourself. I warn you that anything you  
do say, it is - you have taken an oath and it can be used to  
prosecute you. So you're not obliged to incriminate yourself  
and if you wish to claim privilege, you can. And I am not  
able to give you legal advice about what the law is or what  
15 you could be prosecuted under so - as I explained that to you  
before. So you've been asked a question: did you clear some  
property for someone called Knights? Not specified who the  
Knights is, but some person called Knights, and you can answer  
how you please?-- We have been involved in some fodder  
20 harvesting on the property and have done contract work for Mr  
Knights. 20

MR WILSON: Do you recall when you did that contract  
work?-- Some time in - not exactly, no.

25 Okay?-- Sometime from '01 till somewhere in '03, as far as I  
know.

30 So in '01 can you be - how much work did you do then?-- It's  
going back a bit too far to answer your question reasonably. 30

Can you estimate how many hectares you cleared?

35 BENCH: Well, I think you had better be careful with the use  
of the word "cleared," because the witness said he had been  
involved in some fodder harvesting, so that's what he said he  
did. So unless you want to clarify that with him, can you  
please use his terms, which are "fodder harvesting"?

40 MR WILSON: He used "fodder harvesting" and another term, your  
Honour, which I just can't quite recollect. He didn't----- 40

BENCH: He said, "We have been involved in fodder harvesting  
on the property. We have done some work for Mr Knights."  
45 That is what I wrote down. I didn't write him down using the  
word "cleared" at all.

MR WILSON: Okay. My apologies.

50 BENCH: If you did, I'm wrong so - that's what I wrote down.  
Is that reasonably accurate?-- Yes. 50

MR WILSON: So describe the work that you did, how you  
actually did it? What sort of machinery did you use?-- I need  
55 a bit of time to answer this question. Just - just say the  
question again, please?

60

Doing this sort of work, what sort of machinery did you use?-- Bulldozers, yeah.

1

5 Okay. So if we go back to the first occasion in 2001, what sort of bulldozers did you use?-- Wheeled machines.

BENCH: Sorry?-- Wheel dozers, as such. Yes.

10 Wheel dozers?-- Yes.

10

MR WILSON: Okay. How many were involved?-- Machines?

Yeah, wheel dozers?-- Two.

15 Two? And how did they operate?-- With two machines in a chain.

Okay. And what did you do with the dozers and the chain?-- We pulled some country, under instructions from Mr Knights.

20

When you say "Mr Knights," which Mr Knights?-- Richard Knights.

25 How did he give you those instructions?-- It's going back a fair while but, basically, verbally. Face to face.

And was he present when you were doing the working with the dozers and the chain?-- Yes.

30 Obviously he - was he - whereabouts was he? What was he doing?-- It's going back a bit too far for me answer that question accurately.

30

35 So were you paid for this work that you did?-- Yes.

Can you recall how much?-- No.

Can you recall how long you worked?--No, not really.

40 Do you recall whether you charged him for the work?--Yes, I don't remember that he never paid us to do the work.

40

BENCH: Sorry?--He did pay us to do the work. I don't remember that he - he never paid.

45

MR WILSON: Can you tell the court what numbers appear on the top of that invoice, please?--The actual invoice number?

Yes?--7-6.

50

Okay, so can you tell - what's that - how much is that invoice for?--\$6864.

55 Okay. And who's that - who's that invoice statement made out to and what - could you just describe the document?--It's made out to Richard Knights.

On a date?--10th of the 1st '01.

1

And from?--EN, NK and RM Gray.

5 Okay. And-----?-- PO Box 14, Bollon.

Okay. Are you one of those - is it a company or business name?--It's just a partnership.

10 And what does it say the - that's for?--Regrowth pulling.

10

How many hours?--Thirteen hours.

15 Now, do you know where - do you know where you did that work?  
Can you describe on a map where you did it?--Somewhere on Mr Knights' property north of the Fernlea Road.

Your Honour, I just seek to tender those documents.

20 BENCH: North of what?

20

MR WILSON: Fernlea Road?--Fernlea Road which divides the property in two.

25 BENCH: Have you got these documents, Mr Sheridan?

MR SHERIDAN: I've got document number 76. Which other ones are there?

30 MR WILSON: I've only got him to 76 at the moment.

30

MR SHERIDAN: Sorry, there's only one document up there, I think, isn't there?

35 BENCH: Okay, so invoice 76 is Exhibited into evidence and marked Exhibit 20.

40 ADMITTED AND MARKED "EXHIBIT 20"

40

45 BENCH: So, this is the best we've got; something that's ripped out of a book?

MR WILSON: I have got a better one, your Honour.

50 BENCH: Sorry?

50

MR WILSON: I have got a better one. Perhaps I could - Perhaps-----

55 BENCH: I will hand you back that "raggedy" old copy and have a look at what you have got there.

MR WILSON: Was that invoice - was that Exhibit 20, your Honour? 1

BENCH: No, well, you took it back. Is that the same thing?

5 MR WILSON: Is that the same document?--Yes.

BENCH: Thank you. That - what's before the witness now be admitted into evidence and marked Exhibit 20, if I can get it up here. Thank you. Yes, thanks. 10

MR WILSON: I'm just looking for another good document.

I will just show you another document.

15 MR SHERIDAN: I object to that document, your Honour.

BENCH: On what basis?

20 MR SHERIDAN: Relevance. The document that has been disclosed to me, invoice number 56, has a date of 14th of October 2003; the offence date for count two is the 24th of August 2002 to the 19th of August 2003. This invoice is two months outside the offence period. 20

25 BENCH: Yes, Mr Wilson?

MR WILSON: Your Honour, when that work is done you normally send out the invoice later, to pay for it. And the defendant might be able to explain what it's for. 30

BENCH: Not if you're a good business person, you don't leave it two months before you get paid, because you've got to pay your fuel bill. Anyway, so, what, these invoices - you don't give them when you do the work?--I don't wish to answer that question because it was too long ago.

35 So you don't know when? Okay, well, what's your submission now, Mr Wilson? 40

40 MR WILSON: Well, I haven't sought to tender those.

BENCH: Okay, okay.

45 MR WILSON: I just sought those questions about it.

Now, I've just shown you that invoice number 56. Who is that made out to?--RTM GA and GI Knights.

50 Okay. And what was that for?--Fodder harvesting. 50

Okay. When you say fodder harvesting, what do you mean?--Feeding livestock with - with two bulldozers.

55 Okay. So you had two bulldozers then, did you?--Yes.



And what sort of bulldozers? Trackdozers,  
wheeldozer?--Trackdozers.

1

5 And how - how were they used?--Used for feeding livestock,  
with a chain hook between them.

Okay. And many hours did you do that for?-- Sixty hours.

10 Do you recall when you did that?-- Somewhere with - inside,  
roughly, a month or two before the invoice.

10

15 Now, this 60 hours, how long a period was that spread over?  
From when you start and when you finished?-- It's going back a  
while. It may be a month to six weeks. I don't remember.  
It's three or four years ago. Three years ago.

So a month to six weeks. Who was with you?-- My brother, Bob.

20 He drove the other dozer, did he?-- Well, -----

20

BENCH: Excuse me.

MR WILSON: Sorry.

25 BENCH: Well, I did ask you not to lead.

MR WILSON: Sorry.

30 BENCH: Mr Sheridan hasn't objected yet.

30

MR SHERIDAN: I'm in a difficult position; he has had his own  
legal advice, I assume.

35 BENCH: No, I meant about the leading.

MR SHERIDAN: Yes, your Honour.

BENCH: Thank you.

40 MR SHERIDAN: I object. He is leading the witness.

40

BENCH: Thank you.

45 MR WILSON: What did you brother Bob do?

50 BENCH: Look, if you're going to take some risks with yourself  
about your evidence, I think you had better think carefully  
about giving some evidence against your brother. Look, I  
gave you a warning before about you can claim privilege, but  
you're being asked questions to give direct evidence under  
oath about your brother. So, if you're going to give evidence  
against him, then you need to think carefully about that.

50

55 MR WILSON: I will withdraw the question, your Honour.

BENCH: I can hardly see why it was necessary, Mr Wilson.

MR WILSON: I wouldn't think it took us anywhere,  
particularly, your Honour.

1

5 BENCH: Well, you must have a strange relationship with your  
brother - is all I can say.

MR WILSON: So you said there was two dozers and a chain. How  
did you work that?

10 MR SHERIDAN: Your Honour, I understand perfectly the warning  
you've given the witness on a couple of occasions, but perhaps  
it might be opportune to actually tell the witness what he's  
meant to say if he wishes to exercise his privilege.

10

15 BENCH: Well, I told him that. He just says - he has already  
done it once, so he knows perfectly well what to do. He said,  
"I don't wish to answer that, I wish to claim privilege."

MR SHERIDAN: Very well. Thank you, your Honour.

20

BENCH: Yes, Mr Wilson.

MR WILSON: So, this is the second occasion, 2003; you said  
there were two trackdozers and a chain. How did they  
operate?-- I don't wish to answer the question. There were  
two tractors with a chain.

25

Okay. So how many - there was 60 hours. How many hectares do  
you clear per hour with that set up?-- Roughly - it can vary  
depending on the timber. With this particular case, I don't  
really know, but roughly 35 acres - 25 to 35 acres an hour.

30

Any idea how many hectares were cleared?-- No.

35 Would it be over 100?

BENCH: He said no.

MR WILSON: I was just trying to assist.

40

BENCH: You're leading.

MR WILSON: Now, in relation to this - what you call fodder  
feeding - who did you take instructions from?-- Richard  
Knights.

45

And how did you come to be employed?-- Through word of mouth  
and local knowledge.

50 Okay. Who asked you to do the work?-- Richard Knights.

50

Were you paid for the work?-- Yes.

How much was the payment?-- Total amount on the invoice.

55

Which is?-- \$27,720.

Okay. And do you recall how that was paid?-- It's going back a long time, but it would have been by cheque.

1

Okay. And this invoice 56 is for?-- Fodder harvesting.

5

I just seek to tender that document - invoice 56.

MR SHERIDAN: I object, your Honour. It still hasn't been established whether-----

10

BENCH: I thought your defence was fodder harvesting. Am I wrong?

10

MR SHERIDAN: We haven't-----

15

BENCH: So you are objecting. You don't want it to go in that this man described it-----

MR SHERIDAN: Well, it's outside the offence period, your Honour. Even if that were our defence - this evidence - in my submission, it doesn't do us any use, because it has apparently occurred outside the offence period.

20

20

BENCH: I had better have a look at the document. Can I have a look at that please, Michele? Yes, I will hear your submissions about why it's relevant Mr Wilson, as it's well outside the six-week period that the witness has told us about. Mr Grey said it would have been a month or six weeks before the date of invoice he did that work. So it's well outside the offence period.

25

30

30

MR WILSON: Well, I asked him how much he had been paid for the work - he was paid for the work. He said 27,720, which is the amount on the invoice. He said it was - he said he did 60 hours. He said it was for fodder harvesting.

35

BENCH: Yes, I know. I said to you, how is it relevant when it relates to work done outside the offence period.

MR WILSON: But he said that this invoice was sent out after he had done the work - a couple of months later.

40

40

BENCH: Not a couple of months. He said four to six weeks. He said he did not have a clear recollection, but it was most probably the work was done between four and six weeks before the invoice went out. So, in the face of that evidence, how is this invoice relevant?

45

MR WILSON: Maybe I could ask him some more questions about it, your Honour.

50

50

BENCH: No, you asked to tender it, and I'm asking you on what basis, and you're not going to get to cross-examine your own witness.

55

MR WILSON: No, I know that, your Honour.

BENCH: So what sort of questions could you possibly ask now, at this stage, that would make it relevant?

1

5 MR WILSON: Well, as a matter of inference, the amounts that he paid is the same as on the invoice for the clearing, he said.

10 BENCH: Well, the amount is irrelevant. The thing that - the objection is the date of the invoice, Mr Wilson. The objection is: this is not relevant because the work was done at a time after the offence period.

10

15 MR WILSON: And the witness said that he sent the invoice out after - after he had done the clearing. The latest date in the offence clearing is the 19th of August 2003. This is dated 14th of October-----

BENCH: More than two months after.

20 MR WILSON: September, October, which is-----

20

BENCH: Two months.

25 MR WILSON: 19th of August, 19th of September - just under two months. 19th of October. It's under two months, your Honour.

30 BENCH: The witness said, "One month or six weeks earlier, I don't remember." That is outside the offence period. If I go back one month to six week before the 14th of October, it is outside the offence period.

30

MR WILSON: Well, perhaps it could be marked as-----

35 BENCH: Well, I'm going to - I hear your objection, Mr Sheridan. I note your objection. We could be here till midnight arguing about this. It has no weight. It has no weight to the offence period. I am admitting it into evidence but it is of no use.

40 MR SHERIDAN: Thank you, your Honour.

40

BENCH: It is admitted into evidence and marked Exhibit 21.

45 ADMITTED AND MARKED "EXHIBIT 21"

50 MR WILSON: Thank you, your Honour. Could you tell the court how you carried out the fodder feeding?

50

55 BENCH: He already did: two tractors, a chain. He did not wish to answer another question about it. You don't get him to - you're not going to just badger him, Mr Wilson, by asking him the same question again. Mr Gray rightly said to you he

1  
didn't want to answer it. So I'm here, I've got to protect  
Mr Gray from being overborne.

5 MR WILSON: I'm not trying to "overborne" him.

BENCH: Well, don't ask him the same question after he has  
told you he doesn't want to answer it, thanks.

10 MR WILSON: What fodder did the cattle eat?

10 BENCH: Did you see any cattle eat?-- There were sheep there,  
as well.

15 Sheep?-- And cattle.

Sorry?-- There was sheep and cattle.

Sheep and cattle.

20 MR WILSON: And how did - and what did you see?

MR SHERIDAN: That's leading again, your Honour.

25 MR WILSON: No, "what did you see" is okay.

MR SHERIDAN: Yes, your Honour. I withdraw that objection.

30 BENCH: If you can remember?-- It's going back a while but  
there would have been quite a few bits of edible scrub in  
there. If you could produce a list that I could look through,  
I could read them out to you. Mulga, wilga; a few others.

35 What did you last say? A few others?-- There would be a few  
others; I can't name them, off the top of my head.

MR WILSON: I have no further questions, your Honour.

BENCH: Thank you. Any cross-examination?

40  
CROSS-EXAMINATION:

45 MR SHERIDAN: Now, Mr Gray, you said you undertook fodder  
harvesting in the northern block somewhere; is that  
correct?-- Could I have both invoices, please?

50 BENCH: Sure. Just be careful you don't give Exhibit 21  
weight now, Mr Sheridan. I'm not trying to teach you how to  
suck eggs.

55 MR SHERIDAN: I'm happy to be taught, your Honour. Now you  
said you cleared regrowth; is that correct?-- On the northern  
side of the property.

By regrowth, do you mean trees that had been pulled before?-- Well, in the country we pulled on, the northern side of the property had been pulled before.

1

5 Nothing further, your Honour.

MR WILSON: I have no further questions, your Honour.

BENCH: I will just check.

10

10

MR SHERIDAN: Sorry, your Honour.

BENCH: Mr Sheridan, do you want to ask something else?

15 MR SHERIDAN: I'm just getting some more, as I hit the seat.

BENCH: Just checking with Mr Sheridan.

MR SHERIDAN: No, your Honour, thank you.

20

20

BENCH: No one has got any-----?-- Before we get our wires crossed, '03 invoice is on the southern side of the property.

'03 is the southern? And '01 is the northern?-- Yes.

25

Thanks, Mr Gray. I'm sorry you were delayed all day; that wasn't my intention. I did want you to get some advice if you needed it, so I'm sorry you've been kept here all day. Thank you for waiting and giving your evidence?-- Thank you.

30

30

And you're free to go now. Just leave your invoices there.

35

WITNESS EXCUSED

BENCH: We might call that other witness back, seeing as there's only going to be 10 minutes in re-examination, and finish that off. Thank you. So, any indication from your side whether you're going to be calling evidence?

40

40

MR SHERIDAN: The indication from this side is not, your Honour.

45

BENCH: So we're about half-way there. With this last witness. Five out of ten. Hop on back down, thanks, Mr Elliott.

50

50

VICTOR CRAIG ELLIOTT, RECALLED:

1

5 BENCH: The oath you took earlier will apply with equal force  
and Mr Wilson has about 10 minutes of re-examination, so you  
should be out of here by five?-- Thank you , your Honour.

10 Thank you. Yes, Mr Wilson?

10

RE-EXAMINATION:

15

MR WILSON: Could the witness see Exhibits 12, 13, 14, 15, 16,  
17?

20 BENCH: "B" and "C" and 18 as well?

20

MR WILSON: Yes, please. Just before we got to that -  
Dr Olsen, when he was employed, what was he employed to  
do?-- In terms of the contract, to attend at the property and  
25 do assessment of the property.

Yes. I will just ask you to look at the southern property, as  
it appears in the Exhibits - 12, 13, 14 - in the south-east  
side. That's in Exhibits 12, 13, 14, 15, 16, 17, and "B" and  
30 "C." Also 18 - except leave out 18 for the moment. Is there  
anything consistent about-----?-- Well, the ones that show the  
actual regional ecosystems status, each one shows it as  
endangered in that - that corner.

30

35 Then on Exhibit 18, what does that corner show as? What's the  
- I'm sorry, the one on the bottom, there?-- I'm sorry.

Yes. Which one is that up to? That's Exhibit-----?-- Exhibit  
18. It's more fragmented, shows areas of endangered regional  
40 ecosystems on that one and other areas of non-remnant  
vegetation.

40

So can you explain why that has changed on that one? Do you  
know?-- I would say there has been some sort of re-mapping of  
45 the area but it's not area that - something I have been  
involved in.

Okay. When you say "re-mapping", why would they re-map  
it?-- It could be for-----

50

50

MR SHERIDAN: Your Honour, these questions didn't arise in  
cross-examination, I believe.

BENCH: Half of that sounded like it was more like conjecture.  
He can only guess why someone would remap.

55

MR WILSON: Well, he mentioned it.

60

MR SHERIDAN: Well, your Honour, I cross-examined him at length about these maps and his answer to all most every question was that, "I don't how they make them. It's nothing to do with me. I've got no expertise in that area." And now he seems to be drawing expertise from him on that very subject. If he had something to say about it, I wish he would have said it to me an hour ago.

1

BENCH: Yes, Mr Wilson, are you trying to support your question? Are you conceding defeat and moving on to something else?

10

MR WILSON: No, well, I thought that he mentioned re-mapping. I just wondered whether he could extrapolate on what he meant. I asked him-----

BENCH: He doesn't know about mapping.

MR WILSON: Well, he said re-map.

BENCH: Do you know about re-mapping now. Have you just - when you stood outside did some bolt of lightning come down and give you some further insight or what's happening here?--No, your Honour, essentially, I can see it's - it's something - there's a different version of mapping and-----

They got more data from somewhere?--Potentially. There could be a number of reasons. It's just conjecture; you wouldn't know?--I don't know the process that has initiated it or who initiated it.

MR WILSON: In the bottom left-hand corner of the - which is the south-east of the top block in maps - Exhibits 12, 13, 14, 15, 16, what can you say about that? I haven't got all those other maps?--In those maps, that's of the northern portion of the property-----

MR SHERIDAN: Excuse me, your Honour, I don't believe this question arose out of cross-examination, either. I didn't cross-examine this witness on the south-east corner of the northern block. I cross-examined him about the south-east corner of the southern block in every map. But as for the northern block, I did not direct one question towards it.

MR WILSON: I was just trying to clarify my friend's-----

MR SHERIDAN: Your Honour, the process of re-examination is not to clarify anything that I've said. It's to bring to the witness questions that arose in cross-examination.

MR WILSON: Well, the question that arose was my friend was pointing out the changes in the map. I'm just trying to show that there are some things that didn't change.

BENCH: Well, you know what? You can spend 15 minutes trying to convince Mr Elliot about that, and it might give you a nice warm feeling, but the documents do speak for themselves, and,



really, you should be convincing me of that, because I have  
got a pair of eyes and a brain, and I have the Exhibits here.  
So it will not take a great deal of scientific know-how to be  
able to look at them and go, "Oh, look, that's the same in  
that area." So do we need to do this, Mr Wilson?

1

MR WILSON: Well, look, your Honour, if you are prepared to  
have - compare them all, I'm quite happy to leave it as it is.

BENCH: Well, that's what there up here for me to do. I would  
prefer not to. I would prefer to be probably having a simple  
case, but I - there all up here so I have to look at them now.

10

MR WILSON: Well, I am just trying to draw it to your  
attention. That's all your Honour.

BENCH: Well, you're not; you're asking - you're cross-  
examining Mr Elliot, who has already said he is not -  
expertise in the mapping area and he relied upon someone else  
to give him the information. So you're just going to make it  
harder for him. He's looking a bit pale already.

20

MR WILSON: Well, Mr Sheridan had-----

BENCH: Okay. I'm just saying to, you don't have to convince  
Mr Elliot. If it's just comparing the maps, you can do that  
in submissions and I will look at them.

MR WILSON: Okay.

Are you able to - you gave evidence about all those sites in  
that - I don't know what the Exhibit number is - my copy is  
actually up there but I think it's the map. I think it's  
Exhibit 12, Remnant Plotted - no. Exhibit 10. Exhibit 10.

30

BENCH: Exhibit 10.

MR WILSON: Just hang on to that for a minute. And my friend  
spoke to you about the number of those sites and where they -  
and where they were. By comparing those maps, are you able to  
clarify that evidence about whether those sites were in a  
cleared area or not?--In terms of the subject of the charge?

40

In terms of the RE mapping - in terms of the RE mapping?--In  
terms of the RE mapping, it can be compared against the -  
these versions.

Yes?--And shown where the - the sites are.

Okay?--An indication.

50

So when you look at those there, could you describe - you've  
actually got my copy up there. Could I get that back,  
actually?

BENCH: What? No, that's Exhibit 10 now.

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60

MR WILSON: Yes, but underneath that is my copy.

1

THE WITNESS: As in, one of these?

5 MR WILSON: And also the-----

BENCH: Well, anything over there, that has not got an Exhibit marking on it, I'm happy for you to have, so long as it's not Mr Sheridan's.

10 10

MR WILSON: Do you mind if I go and get it? And also the ones underneath it, the photos; they're not part of Exhibits, either, I don't think.

15 So, by using this site map, are you able to then say what the location of the REs are on this site that - where you took the photographs?-- Depending on which version of the mapping we have - have in front of me?

20 Okay. Well, if we look at sites 9 - or, sorry, 10, 11 and 12, just down-----?--Ten, 11, 12, down the eastern boundary-----

20

Boundary on the southern block?-- -----on the southern block, yes. Using Exhibits 12, 13, 14-----

25 Yes?-- Site 10 appears to be close to the location of-----

BENCH: Are you only doing this visually while your sitting up there?-- This - in answer to that question, yes, your Honour.

30 30

I disallow the question. If this is a matter of - matter of looking at the four different visual images and seeing, by using your eye, where it was, I'm not going to be swayed by what Mr Elliot says. I am going to look at it myself.

35 MR WILSON: Okay. Sorry, your Honour.

BENCH: But, Mr Elliot, no one came in here with a map, with the GPS coordinates on it plotted and marked, so - and they're not - the GPS plots are not put on to one of these maps, so I don't intend Mr Elliot to do it now just visually, because that is - I can do it as reliably as Mr Elliot, I think.

40 40

MR WILSON: Okay. Well, I leave it to you, your Honour.

45 BENCH: Thank you.

MR WILSON: I have no further questions.

50 BENCH: Thank you. Thanks, Mr Elliot. That's the end of a long day. Just leave all those Exhibits up there, make sure you don't have any others.

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55 WITNESS EXCUSED

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BENCH: Now, I take it you're here in Dalby now, Mr Sheridan,  
so-----

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MR SHERIDAN: No, your Honour, we're - Dalby's full in; we're  
in Toowoomba. We're driving back and forth each day but we  
can get up earlier. We can get here at whatever time your  
Honour wishes to start.

10

BENCH: Well, I wanted to start on time this morning, because  
I don't want this to go longer than it has to, so I wanted to  
start at nine in the morning.

10

15 MR SHERIDAN: Yes, your Honour.

BENCH: Any chance everyone can accommodate that - nine?

20 MR WILSON: Yes, your Honour, I will be here.

20

BENCH: Fantastic. Well, we will adjourn till nine, and  
hopefully we will get all the evidence finished tomorrow.

25

THE COURT ADJOURNED

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# Transcript of Proceedings

MAGISTRATES COURT

CORNACK, Magistrate

MAG-183067/05(2)

DALB-MAG-796/06

DEPARTMENT OF NATURAL RESOURCES

Complainant

and

RICHARD TUDOR KNIGHTS

Defendant

DALBY

..DATE 31/10/2006

..DAY 1

**WARNING:** The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

MR P J WILSON (instructed by Town Planning) for the  
prosecution

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5 MR P D SHERIDAN (instructed by Clewett, Corser and Drummond)  
for the defendant

10 MICHELE ILLONA PETERSEN APPOINTED AS RECORDER

10

15 BENCH: In accordance with the Recording of Evidence Act, I  
direct that the evidence and proceedings in this trial will be  
recorded by mechanical device, and that Michele Petersen will  
be the recorder. This is the hearing of a complaint against  
Richard Tudor Knights and it is the complaint of Victor Craig  
Elliott. Yes, Mr Wilson?

20 20

MR WILSON: Thank you, your Honour. Your Honour, just a  
preliminary point. I will just hand up copies of the  
certificate of title.

25 MR SHERIDAN: That's by consent, your Honour.

MR WILSON: And also a registered plan.

30 MR SHERIDAN: Yes, that's by consent, your Honour.

30

BENCH: The title search will be admitted into evidence and  
marked Exhibit 1.

35 ADMITTED AND MARKED "EXHIBIT 1"

40 BENCH: And the plan will be admitted into evidence and marked  
Exhibit 2.

40

45 ADMITTED AND MARKED "EXHIBIT 2"

50 MR WILSON: Thank you, your Honour. You don't require an  
opening, your Honour?

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BENCH: No. Do you, Mr Sheridan?

55 MR SHERIDAN: Yes, if it please, your Honour.

BENCH: Well, Mr Sheridan requires one so we had better have  
one.

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1

MR WILSON: Thank you, your Honour. These charges relate to Mr Richard Tudor Knights clearing parts of his property in 2001 and 2003. The evidence for the prosecution will be that he made an application for a permit to clear that property and that application was refused. And even after the refusal of that application, he had already cleared some before he lodged the application, he proceeded to clear it after his application was refused. And even after he cleared it, he then lodged an appeal against the fact that he never was granted that permit.

10

BENCH: What happened to his appeal?

MR WILSON: The appeal was just - was never pursued, your Honour, in the P and E Court.

BENCH: Well, would it have made a difference if his appeal was successful?

20

MR WILSON: Well, it's not known whether it would have been successful or not, your Honour. If it was successful, I assume that it would have made a difference. Your Honour, as a consequence of a satellite image report, investigators proceeded to the property, namely, Mr John Forcier, Craig Elliott. They spoke to Mr Knights, who declined to be interviewed, and they inspected the property, took photographs at certain GPS points and they then departed the property. At a later point Mr Elliott returned to the property with a vegetation expert, Mr Olsen, who conducted further field inspections in respect of the property.

30

BENCH: How much land do you say is cleared in 2001 and how much is cleared in 2003? And have you got - so will someone be producing a plan with some highlighted areas?

MR WILSON: Yes, your Honour, we will have-----

BENCH: So, how much in 2001?

40

MR WILSON: I just need to find that document.

BENCH: So that, I take it, is charge 1, is it?

MR WILSON: Yes, your Honour. Those-----

BENCH: That's between October 2000 and September 2001.

MR WILSON: Yes, your Honour. But those areas may change. There has been-----

50

BENCH: What do you mean it may change?

MR WILSON: Well, there will be evidence about what the actual areas were, because it has been examined in greater detail and it would be-----

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BENCH: So your complaint currently says 166 hectares of remnant endangered vegetation and 11 hectares of remnant not-of-concern vegetation.

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5 MR WILSON: That's correct, your Honour.

BENCH: And the charge 2 is over 744 hectares; 683 remnant endangered vegetation and 61 being remnant of concern.

10 MR WILSON: Yes, your Honour.

10

BENCH: Thank you.

15 MR WILSON: Well, during the course of the trial, the first one, the dates may change from the 5th of October 2000 to the 6th of September 2001.

BENCH: Well, I tell you what, they won't be just changing.

20 MR WILSON: No, well, subject-----

20

BENCH: You just - it will be you may have to make an application, but it may not be granted.

25 MR WILSON: That's true, your Honour. But it may be that the evidence will - that you might consider changing them under the Justices Act.

BENCH: Yes, well, this is the complaint-----

30 MR WILSON: Yes.

30

BENCH: -----that Mr Knights is here to answer.

35 MR SHERIDAN: Thank you, your Honour. The complaint as sworn is the case which the defendant has to meet. Is that-----

BENCH: Mmm-hmm.

40 MR SHERIDAN: Thank you, your Honour.

40

MR WILSON: Thank you.

45 BENCH: And if you're wanting to change it, and you don't think you're going to be able to prove this, you're going to be in a big lot of difficulty, aren't you? If you start a three-day trial without disclosing to the defence and to the court any problems you have; because if I disallow your application for an amendment, what's going to happen? Anyway, 50 that's a matter for you. You've decided to proceed today.

50

MR WILSON: Yes. Yes, your Honour.

BENCH: Thank you.

55 MR WILSON: Well, there has been a certificate provided to the defence, that outlines those issues. Now, in relation to

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those issues that I've outlined, there will be other evidence  
in relation to the files, the keeping of the files, at the  
Roma office, and documents on that file. There will be  
evidence from the person that examined the property in  
relation to the permit application. There will be evidence  
from the contractor who cleared the property.

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BENCH: The one contractor did both, did he?

MR WILSON: Yes, your Honour. That's the opening, your  
Honour.

10

BENCH: Is there any chance we can shorten things by you  
formally agreeing to the application going in that your client  
lodged? Or does he dispute that he lodged it?

MR SHERIDAN: Well, that is a question that I had for your  
Honour. But the application and - the application for the  
permit, however that ended up, in my view, is completely  
irrelevant. We're changed here with starting assessable  
development without permit. So the fact that an application  
and all the details and all the paperwork that went with that  
went in, was ultimately refused, and now my instructions are  
it's still pending. It's still pending. The appeal's still  
pending in the Planning and Environment Court; it has never  
been finally determined. The fact that we apparently made an  
application is irrelevant. I mean-----

20

BENCH: Well, you say it's - how you say it. I would have  
thought you would say it was highly relevant.

30

MR WILSON: Well, the permit is highly relevant, your Honour,  
because we say that the area that he applied to clear is the  
area that he did clear without a permit. And it shows his  
motive behind it. It also shows that he's the person that had  
the authority to run the property, because there's a number of  
names on the title.

BENCH: Well, is your evidence that he commenced clearing  
before he lodged the application?

40

MR WILSON: He commenced some before he lodged the  
application, and he commenced some before he had been refused,  
and continued after he had been refused. But the issue with  
the permit, your Honour, is how it ties in with the area  
cleared. It's relevant and that's why we say it should go in  
the application.

MR SHERIDAN: Your Honour, I would have thought if the charge  
reads, as it does, without a development permit, all the  
Department has got to prove is that he doesn't have a permit  
and that can be done from a search of their records. If no  
permit exists on their records, well, he doesn't have a  
permit.

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55



BENCH: Well, it would prove the offence and then if they want to make a claim that it's a circumstance of aggravation on penalty, that would be a different matter.

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5 MR SHERIDAN: Yes, your Honour, and that - as with a lot of the statements from the witnesses that appear to have been called in the next three days, their evidence may well be relevant to a submission on penalty, but as far as having any relevance at all to the matter before the court, they are not relevant at all, in my view.

10 10

BENCH: So, you're not consenting to a copy of the application going - for a development permit going in?

15 MR SHERIDAN: No, your Honour. It's - as I've submitted, the application and the refusal and the subsequent appeal is now before the Planning and Environment Court, so if - I mean, as I said, the charge is without a relevant permit. If he doesn't have one, all I've got to do is prove he doesn't have one, rather than go through the whole process of calling evidence from the matter that he has applied for a permit. And there's no - this idea of the motivation and the malice and some other behaviour that this might imply is completely irrelevant to the issue. The issue is, did he have a permit or not and that-----

20 20

BENCH: That seems to be strictly, logically correct, but I don't know - so, I suppose, what you're going to have to do is be on your feet quite a lot and if Mr Wilson asks a question that you think is irrelevant, you can say it's irrelevant. Now, you've been put on notice, Mr Wilson, that Mr Sheridan believes that anything to do with an unsuccessful application is irrelevant. If it is unsuccessful, I fail to see how it can be of any assistance in proving beyond reasonable doubt the elements of the offence; and it may be that you just want to prove the offence and then on sentence that - this is a matter for you. You might want to argue the point, but I'm not going to decide it now, because if you can come to an agreement about that, then it may be relevant on sentence, but if you want to push the point, I will make a ruling every time Mr Sheridan objects.

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40 40

45 MR WILSON: Some of these things are particulars, your Honour. It is not necessarily the wording of the charge. It is the particulars that-----

BENCH: Well, no. Elements of the offence is what we're concerned about.

50 MR WILSON: Yes. Well, the elements will remain the same but some of the particulars will change. I understand that's-----

50

MR SHERIDAN: Your Honour, that's a-----

55 BENCH: I only - I only go the one - I think you're on a different train track to me and Mr Sheridan, so I will leave it, thanks.

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MR SHERIDAN: I feel the sand shifting under my feet, your Honour, at this very early stage. I just want to be quite clear of the case that the defendant has to meet. If that's his - as particularised here, I don't want to-----

BENCH: You've got the complaints. It is in writing. It's that area. It's between those dates. It's without a permit.

10 MR SHERIDAN: Thank you, your Honour.

10

BENCH: Anything else?

MR WILSON: No, thank you.

15

BENCH: Thank you. Call your first witness then, thanks.

MR WILSON: Your Honour, I will call Glynn Alexander Knights.

20

20

GLEN ALEXANDER KNIGHTS, SWORN AND EXAMINED:

25

MR WILSON: Mr Knights, could you tell the court your full name?-- Glynn Alexander Knights.

30 And you live at? Whereabouts do you live?-- 449 Greenmount Nobby Road, Nobby.

30

Now, you're the brother of the defendant here today?-- Yes.

35 Now, I will just ask - the reason that you're here today is that you appear on the certificate of title as 1/12th ownership. Is that correct?-- Yes.

40 And what - what interest do you have in the property other than that? Do you have any-----

40

BENCH: I think I had better give this witness a warning, then. If he's an owner, isn't he caught by the same legislation?

45

MR SHERIDAN: Yes, your Honour, there is deeming provision in section 67A, I think. Sorry. I have it right here.

50 BENCH: Have you been given - have he got an indemnity from the attorney?

50

MR WILSON: No, your Honour.

55 BENCH: Have you had any legal advice about this?-- No.

Well, you see, the prosecution here is trying to prove that one of the people who has an interest in this land has carried

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out some development without a proper permit and that's a pretty serious sort of charge, and if you own 1/12th of that land, there's a provision in the same Act which says that you're liable as well. So if you give evidence, today your own evidence can be used to prosecute you later. Ordinarily a person in your case would have legal advice and would have a letter from the prosecution saying they're agreeing not to prosecute you for any offence on the basis of you giving evidence, but you don't have that?-- They told me I wouldn't be prosecuted but I don't have any indemnity.

Well, if they told you, there's an old legal maxim which goes, "An oral undertaking is not worth the paper it's written on."

MR SHERIDAN: 67A is the deeming provision, your Honour, and I will - do you have a copy of these legislation?

BENCH: Probably don't need it-----

MR SHERIDAN: I've got one.

BENCH: -----at this stage. I will look it up later.

MR SHERIDAN: "Responsibility for authorised clearing of vegetation. Subsection (1), the clearing of vegetation on land in contravention of the vegetation and clearing provision is taken to have been done by an occupier of the land in the absence of evidence to the contrary. Subsection (2), in this section 'occupier of land' includes, for freehold land, the registered owner."

BENCH: Okay. Well, it's up to you what you go ahead and do now, Mr Knights, but if you want to - you've got a couple of choices. You can ask me if you can stand down till tomorrow, and get some legal advice about the matter or talk to the prosecuting authorities. They may be able to quickly do you up some sort of undertaking or indemnity saying you are not going to be prosecuted, and that might be of comfort to you. That's a first choice. The second choice is you can go ahead now without that and trust in the government that they won't do the wrong thing and prosecute you later. That involves a high level of trust. You would have to do that with me giving you a warning that anything you say under oath can be used in proceedings against you as well. So, you may or may not want to do that. You may want to claim privilege and you may want to seek some legal advice about the matter. So, I don't know what sort of penalty we're - the prosecution is talking about here but there's quite a large amount of land that's alleged to have been cleared, and it is listed for three days; so it is something that's going to be very technical and involve a lot of legal expense one way or the other. So I think that's your three choices: ask if you can stand down and give your evidence tomorrow, and you can talk to Mr Wilson or his colleagues about getting something in writing; ask for an adjournment to get some legal advice; or proceed, trusting fully what they told you. I don't know if the person who told you that has authority. I don't know if they can bind the

DPP, for example, who might choose to commence proceedings  
against you, or some other department might choose to commence  
proceedings against you based on the same facts. I don't know  
any of that. Or you can go ahead and simply decline to answer  
5 any questions on the grounds that you're claiming privilege.

1

So, they are your four options. So you can just claim  
privilege if you want, because if you are asked something that  
10 might prove a case against one co-owner, it might also prove  
it against you, so you can just simply decline to answer any  
questions and claim privilege. And if you would like to have  
a cup of tea and think about what you want to do, I will give  
you that option, as well?-- Can I do that?

10

Yes, sure. Please don't discuss what's happening here with  
anyone other than a lawyer, or someone who's not involved in  
the case, so someone who's not an owner, not - hasn't got an  
interest, and who's not on the witness list. I don't think  
20 there's any other - yes - so, for example, could you please  
not discuss it with Geoffrey Knights, because he's a relative  
of yours?-- Okay.

20

Okay? And, well, we will see you back here in, say, an  
25 hour?-- Okay.

WITNESS EXCUSED

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30

BENCH: Thank you. Does the same apply to Geoffrey Knights?

MR WILSON: It does, your Honour. But there is one thing.  
35 The section that Mr Sheridan read out to you didn't come into  
force until March 2003.

BENCH: I'm not going to give someone legal advice. I'm not  
40 here saying yea or nay either way. I'm just saying if there's  
- if they haven't got an undertaking or an indemnity, they  
should have. And if you want to call in the other Mr Knights  
now, I don't know what you're going to use him to prove, or -  
is he an owner, as well?

40

MR WILSON: One-twelfth, your Honour.

BENCH: Okay. Well, do you want to get him in, and I will  
50 tell him the same information?

50

MR WILSON: Okay. I just call Geoffrey Ian Knights.

BENCH: Anyone else on this list who is an owner?

MR WILSON: No, no, that's all, your Honour.

55

BENCH: And has the contractor who did the clearing - has he got an undertaking? 1

MR WILSON: He's out of time, your Honour.

BENCH: Has he got an undertaking?

MR WILSON: No.

BENCH: Are you Geoffrey Knights? 10

MR G KNIGHTS: Yes.

BENCH: We're not going to get you to give evidence at this stage. I just wanted to tell you what has just happened with another witness, so that you can have an opportunity to think about what you want to do. As I understand it, you are a co-owner in a piece of land, and it's that piece of land one of the other co-owners is being prosecuted today. They're being prosecuted for some serious offences and I understand that the Department of Natural Resources would like you to give evidence. I've just asked the last witness whether they had anything in writing that guaranteed they would not be prosecuted by the Department of Natural Resources or any other Crown instrumentality, including every other department, and including the DPP if they have an interest. 20

I was told the other witness didn't have anything in writing, that they had just been verbally told they wouldn't be prosecuted. I indicated to the witness they might want to get some legal advice about that, because that may not guarantee that they won't be prosecuted. So, I told the last witness they had four choices. I would be giving them a warning not to give - that they don't have to give evidence if they don't want to, because it might incriminate them in an offence, so they could take an oath and just say, "I claim privilege" to every question that's asked them about the clearing. 30

They could contact someone from the Department of Natural Resources and see if they could get a written indemnity or undertaking that they wouldn't be prosecuted. They could give evidence today and trust wholeheartedly the prosecution, because they had no reason to doubt that anything bad was going to happen, but bearing in mind that I don't know whether the person in the department had the required authority to bind everybody else in the Department and to bind every other authority; or they could ask for an adjournment to get some legal advice about the matter and come back. 40

MR G. KNIGHTS: That's a fair bit to digest, your Honour. 50

BENCH: So I just said to the other witness, do you want to go and have a cup of tea and think about what you want to do, because I know it's something that I've sprung on you.

MR G. KNIGHTS: I think I would take that option.

1  
BENCH: Have a cup of tea and think about it. Okay, then.  
Well, I asked the other witness not to discuss the case with  
other witnesses, but I suppose, if you want to discuss what  
you both want to do, I've got no problem with that, because  
5 you haven't taken an oath yet, and it's not - so long as you  
don't discuss the evidence in the case. Okay? We'll see you  
in about an hour - I told the other witness - and I've  
indicated that someone from Mr Wilson's department might be  
out to talk to you later on. Thank you. 10

MR G. KNIGHTS: Very good. 10

BENCH: Mr Wilson, I'm expecting an immediate apology for: (a)  
your phone going off, and (b) you leaving the - not only the  
15 bar table, but the courtroom without seeking leave to do that  
in the middle of a trial.

MR WILSON: I've been in - I'm sorry, your Honour. It's just  
that I had my pager, and it just for some reason----- 20

BENCH: Look, there's a sign out there saying "Turn your  
phones off". I'm trying to talk to one of these men about  
something serious, and your pager's going off. And you didn't  
just turn it off, you let it continue to ring. 25

MR WILSON: Yes. Well, your Honour, I couldn't turn it off.  
That's why I took it outside. I just had to get rid of it.  
It has never happened to me before. I apologise unreservedly.

BENCH: Thank you. Well, next time if you are leaving, you  
30 should ask for leave, because I could look up, there's no  
prosecution there, and I can simply write "Struck out for want  
of prosecution."

MR WILSON: I'm sorry, your Honour. I was just on the horns  
of a dilemma. I thought the best thing to do was to get rid  
of it. 35

BENCH: Thank you. Now, is there any other witness in here  
40 who's going to have a problem? 40

MR WILSON: Not that I'm aware of - maybe, yes.

MR SHERIDAN: Your Honour, Mr Gray will have a problem,  
45 because-----

BENCH: Is he out there? Is he outside now?

MR SHERIDAN: Yes. 50

BENCH: Go and call him in, because it's not up to you to give  
him advice that he has got a problem. 50

MR SHERIDAN: No, it isn't, your Honour. I'm just pointing it  
55 out to your Honour.

BENCH: I'm just going to point it out that he may have a problem, and it's up to him.

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5 MR SHERIDAN: The response of my learned friend, that a prosecution of Mr Gray may be out of time, is not entirely correct, because section 68 subsection (4) says that, "Despite the effluxion of time, the court may, if it considers it just and equitable, in the circumstances, at any time extend the time set under the section, so it's - there's no bar; well, there is still a discretion.

10

BENCH: Yes. You want to bring Mr Gray in?

15 MR WILSON: I apologise about that phone, your Honour.

BENCH: No, you've apologised. That's all I needed, thank you. Have you got it turned off now, or outside with somebody else?

20 MR WILSON: Outside. I've had my pager before, and it has never ever done that. It just started beeping and getting louder.

20

25 BENCH: Thank you. Mr Gray, we're not going to get you to give your evidence yet. I just wanted to talk to you about something-----

MR GRAY: Yes.

30 BENCH: -----before we start, and that is, I understand that you're Nathan Gray.

30

MR GRAY: That's right.

35 BENCH: And the prosecution, the Department of Natural Resources, is going to call you to give evidence against Mr Knights over here, because they're going to say you're the contractor who cleared the land and there wasn't a development permit. Now, I understand you may have been told that you won't be prosecuted yourself and it's safe to give evidence. But, I don't know whether you've got anything in writing about that, and ordinarily witnesses get something in writing before they give evidence, to guarantee that they won't be prosecuted by the Department of Natural Resources or by some other department of the government.

40

45 And I don't know whether the person who told you orally you won't be prosecuted has the authority to bind everybody in that department, and there's a special provision in the Act which says even though it's technically out of time you could still be prosecuted. Now, I've just raised a similar sort of issue with two other witnesses and I've asked them if they would like to seek some legal advice themselves about it, or if they would like to have a talk to someone in the Department about getting something in writing before they give their evidence, or whether they would like to give evidence and just trust whoever told them they wouldn't be prosecuted, but

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bearing in mind I will have to give you a warning that whatever you say under oath can be just used against you in another case and can be used to prove you're guilty, or you can claim privilege.

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So, you can take an oath and then just refuse to give any evidence and claim privilege. So, I suggested to the other two witnesses they might want to go and have a cup of tea and think about that, because it's a lot to, you know, take on board all of a sudden. So, the problem is, I understand you have been told something but you don't have anything in writing, so it's about you satisfying yourself, that when you give evidence, what you say won't be used against you later.

10

15 MR GRAY: Yes.

BENCH: Do you want to have a cup of tea and think about it, and talk to your wife, as well? I presume that's your wife there.

20

20

MR GRAY: I would like to, thanks, yes.

BENCH: You would like to?

25 MR GRAY: Mmm.

BENCH: Okay. Thank you. Well, I will give you an hour to have a cup of tea and a chat about it.

30 MR GRAY: Thank you.

30

BENCH: Sorry I can't provide the tea, as well.

MR GRAY: Yes. No worries.

35

BENCH: Now, do you want to go and have a chat to your superiors for 10 minutes, or do you want to call another witness?

40 MR WILSON: I wouldn't mind a short adjournment if I could, your Honour.

40

BENCH: Well, so long as we don't blow this trial out into more than three days, because it is going to be costing Mr Knights an arm and a leg to be here for three days. So, I am not saying anything rude about his lawyers but that is just what litigation costs. It costs a lot of money. So I don't want to give you a long adjournment because we didn't start until 10 to 10 and we should have been starting at 9.30 and I don't want to sit until 8 o'clock every night to get it finished. So, I'm happy to give you a 10 minute adjournment if you think you can resolve something in 10 minutes. Thank you.

50

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55 MR WILSON: Okay. Thank you, your Honour.



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THE COURT ADJOURNED

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THE COURT RESUMED

10 BENCH: Yes, Mr Wilson.

10

MR WILSON: The prosecution's tender will proceed?

BENCH: Sorry.

15

MR WILSON: We're going to proceed. I will call my next witness.

BENCH: Yes.

20

MR WILSON: I call Patricia Ann Campbell.

20

MR SHERIDAN: Your Honour, this is - the statement that I have from this witness, Patricia Ann Campbell leads me to the submission that her evidence is-----

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BENCH: Just let her take the oath first.

30

PATRICIA ANN CAMPBELL, SWORN AND EXAMINED:

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35 BENCH: So you are going to argue about the relevance?

MR SHERIDAN: Yes, your Honour. There is nothing in the statement that I have been provided with that shows any relevance to the issues before the court. We do note that the witness has witnessed her own signature, but, anyway, that's by the bye.

40

40

BENCH: Okay. Well, you are on notice, Mr Wilson.

45 MR WILSON: Your Honour, this - the witness here will produce the departmental file which will show-----

BENCH: I'm not having the whole file, thanks.

50 MR WILSON: I beg your pardon?

50

BENCH: Why would I want a whole file?

MR WILSON: Well, it will - it is part of the evidence that we want to put forward to show-----

55

BENCH: The whole file?

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1

MR WILSON: Yes, your Honour. If it's a departmental file, it's much better to put the whole file than to pull it apart and put pieces in.

5

BENCH: I don't think a whole file would be admissible.

MR WILSON: Well, they are the business records, your Honour.

10 BENCH: What, the whole file? You want me to read a whole file?

10

MR WILSON: No-----

15 BENCH: Well, it can't be tendered into evidence unless you want me to read it.

MR WILSON: Well, there will only be relevant parts of it, your Honour.

20

20

BENCH: Well, pull the parts out, then, otherwise Mr Sheridan is going to have an objection to bits of it that are irrelevant being in. Anyway, you ask your questions. Mr Sheridan will object; I will make a ruling.

25

MR WILSON: Okay, thank you, your Honour.

BENCH: Thank you.

30 MR WILSON: Thank you.

30

Could you tell the court your full name?-- Patricia Ann Campbell.

35 And whereabouts do you work?-- Natural Resources and Water in Roma.

Okay. And what are your duties in that office?-- My duties are administration officer compiling government files, things like that, administrating of correspondence.

40

40

Okay. And in relation to tree clearing, what files do you handle in relation to that?-- Vegetation management files.

45 I will just show you this file.

MR SHERIDAN: I object, your Honour. Further to my previous point, I don't know what is in that. I may have had parts of this disclosed to me; I may not have.

50

50

BENCH: Has it been disclosed, each and every page of that file?

55 MR WILSON: Each and every page has been disclosed to Mr Sheridan.

60

MR SHERIDAN: If I could just have a look at it, please, your Honour?.

1

5 BENCH: Hasn't the Act got some sort of provision where you can just give me a certificate?

MR WILSON: No, it hasn't, your Honour.

10 BENCH: Well, why - is something happening to affix that, because all you need to do is give the court a certificate saying there is no permit, or are you going to make a concession that there is no permit, Mr Sheridan?

10

15 MR WILSON: It is not about the permit, your Honour.

BENCH: Well, what is it about?

MR WILSON: It is about showing his motive and also his-----

20 BENCH: His motive?

20

MR WILSON: And also to stop - to stop some defences that he can raise.

25 BENCH: No, you don't do it that way, sorry.

MR SHERIDAN: Your Honour, this-----

30 BENCH: This is not a charge that requires you to prove motive.

30

MR WILSON: No, no, but-----

35 BENCH: So motive has got nothing to do with this charge.

MR WILSON: I am sorry, motive might be the wrong word.

40 BENCH: And as I explained to you, Mr Sheridan is going to argue - you know what he is going to argue: that it is irrelevant to proving the guilt or otherwise of Mr Knights. So motive is irrelevant.

40

45 MR WILSON: Well, we say it is relevant, your Honour, because this application-----

BENCH: What - where - on what authority do you say motive to a charge of carrying on a development without a permit - what - the motive is to carry on the development without a permit?

50 MR WILSON: I will withdraw that, your Honour. What I am saying, this application reflects the area that was cleared illegally and the-----

50

55 BENCH: You want to lead evidence of an application that was refused?

MR WILSON: And also to show that the person who made that application - there was a number of landholders in this - the person that had the running of the property and who the dealings were with. And this file shows that. It shows who the correspondence was with; who made the application.  
So-----

1

BENCH: Okay. I am just waiting for Mr Sheridan. Did you get the whole of that file?

10

10

MR SHERIDAN: Sorry, your Honour, there's only about 100 pages. Yes, we did.

BENCH: Isn't there something in the Acts Interpretation Act that says that you don't even have to prove there was or wasn't a development permit? That the defendant has to prove that?

15

MR WILSON: There's something in the Justices Act about the proof of a negative.

20

20

BENCH: Yes.

MR SHERIDAN: Section 76, your Honour, that is for defences. That's reversal of the onus of proof. If we-----

25

BENCH: So you are the one who has to prove there is a development permit if there isn't one?

30

30

MR SHERIDAN: Yes, your Honour, or, alternatively, if we expect - if we wish to raise a defence, the onus is reversed onto us and the balance of probabilities, and then my friend has to prove the absence of that defence beyond reasonable doubt.

35

BENCH: Well, do you say he should be doing that now in his primary case or as a rebuttal?

MR SHERIDAN: With respect, your Honour, it is - I don't want to make any submissions as to how the prosecution should-----

40

40

BENCH: Well, you are objecting and Mr Wilson is saying he needs to lead this evidence to cut you off at the pass for any defence you may have.

45

MR SHERIDAN: All right, then, on that basis, he has to prove - the charge is without a development permit, all he has got to prove is that we didn't have a development permit. And I am not sure how - what department searches or how the existence of development permits is recorded.

50

50

MR WILSON: Your Honour, it is not about whether he had a development permit or not. There is such things as routine management and essential management-----

55

BENCH: Where is that in the charge? Where is the words, "routine management"?

1

MR WILSON: Well, your Honour, it is quite complicated, this. You have to go to the Integrated Planning Act.

5 BENCH: Well, no, where are you required to prove those things in this charge? The charges says, "Richard Tudor Knights did start assessable development, namely, clearing of native vegetation on freehold land without a development permit."

10 MR WILSON: Because it says - there is a development that is not assessable under those-----

10

BENCH: Sorry?

15 MR WILSON: There is a development that it is non-assessable if it's for routine management or essential management, that is, fodder feeding, fence-line clearing, roads, things like that, building yards. And we just want to negate that, your Honour, because there is also non-assessable development. So, we anticipate that their defence will be that they use this for fodder feeding, and we want to negate that defence at this point, to show that he had an intention to clear this property for commercial gain not for fodder feeding.

20

25 And to do that we need to put this file in to show - and in addition to that, also to show that he is the person with the management of Acme Downs - the person responsible, not his brothers.

30 BENCH: All right. I don't see how the file is going to prove that.

30

MR WILSON: Well, there is an application on there - the correspondence on there which-----

35 BENCH: Well, that doesn't prove that any one person is necessarily any more responsible than the others.

40 MR WILSON: We will be asking your Honour to draw an inference of that together with this and other evidence that will be lead.

40

45 BENCH: Okay. So do you say that - do you concede Mr Wilson can produce this now to negative a possible defence that is reasonably made out on the evidence?

MR SHERIDAN: He can produce this file as evidence of a permit application but as to its application in negating a statutory exemption, I don't believe it will help at all.

50

50 BENCH: You don't - so you are not - you are not maintaining your objection about this file?

55 MR SHERIDAN: I have gone through the file in those few minutes and it seems that everything on the file has been disclosed, your Honour.

60

BENCH: Okay. Thank you, so you withdraw your objection?

1

MR SHERIDAN: Yes, your Honour.

5 BENCH: Thank you. You can show the file to the witness.

MR WILSON: Thank you, your Honour. I might just give the witness some tags.

10 BENCH: No, sorry, that is not going to work.

10

MR WILSON: It is only for convenience that-----

15 BENCH: No, it is not going to work. If you are going to get the witness to do something, it can't be with a tag, because they can be easily taken off and the evidence is lost. So you have to get sticky tape or staple something to them, or I presume - or if every page is paginated, or if it is in date order - I presume it is at least in date order - she can just  
20 tell me the date on the top of the page. But if this witness puts that green sticky thing in and then I pull it off, I will be interfering with evidence. I don't want to get myself into any trouble, thanks.

20

25 MR WILSON: It was only to assist the court, not to-----

BENCH: Well, I would rather you didn't, thanks.

MR WILSON: Okay.

30 Now, can you tell the court what that file represents?-- This file would represent a landholder applying for a - well, it is an application for a clearing permit.

30

35 And who made that application, from the documents?-- On the top. I will just find the application on the file. The applicant's details are R, R T and M Knight and the contact person is Richard Knights.

40 And who - is it signed by anyone?-- It is signed by R T Knights or R J Knights - I think

40

it's a T - as the applicant.

45 Okay. And is there any correspondence on the file?-- There is correspondence. The correspondence - first of all, it would probably relate to a receipt letter that we actually sent to the landholder just to say we are in receipt of their application; that our office has received it, and that the  
50 application is properly made. So everything we require for assessment is there.

50

55 All I'm asking is, who was all the correspondence to and from in respect of that permit?-- Looking - a lot of this addressed to Richard Knight and others.

Okay. And what was the outcome of that application?-- The decision that was made has been a refusal.

1

5 Okay. The - are there maps in there of the area that was applied for? And also----- ?-- As part of the application, the landholder is to supply a PVNP, which is a property vegetation management plan-----

10 BENCH: A what?-- A PVNP.

10

PVNP?-- That's a part of the application requirement. To me, it looks like there's an RE map and a satellite image provided with the application.

15 MR WILSON: And if you can just leave them open out. Now, can you tell the court why the application was refused?

20 MR SHERIDAN: I object to it. As I said before, this deemed refused permit - I just can't see how it's relevant to the issue and the reason why that was refused-----

20

25 BENCH: It will be on the file, won't it? So there's no need to ask that question if you're going to tender the file and Mr Sheridan doesn't have any objections. Don't go through the file, I will just read it.

MR WILSON: Okay. Well, I will tender that file, your Honour.

30 BENCH: Thank you. That will be admitted in evidence and marked Exhibit 3.

30

35 ADMITTED AND MARKED "EXHIBIT 3"

40 BENCH: Do you need the witness to keep it there?

40

MR WILSON: No, your Honour. I have no further questions.

45 BENCH: Okay. Have you got any questions, Mr Sheridan, that would require her to keep that there?

MR SHERIDAN: Yes, please.

BENCH: Okay.

50

50

CROSS-EXAMINATION:

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5 MR SHERIDAN: Now, which - you called the document there, an  
application for a file. Could you hold that up, please, so I  
can identify it? What was the date of that? Now, the date of  
that application was the 13th of October 2001; that's right,  
isn't it?-- Correct.

10 10

Now, I think it was Exhibit 1, your Honour.

BENCH: Yes.

15 MR SHERIDAN: The title search. Could the witness be shown  
Exhibit 1, please?

BENCH: Okay. I notice it's only for what happened in 2005,  
so it's irrelevant.

20 20

MR SHERIDAN: Yes, your Honour, that's what I'm getting to.

Now that title search, what's the date on that  
document?-- Well, the date this was created this - on here,  
this marking?

25

Yes?-- 31st of-----

BENCH: No, on the title deed, not on my marking?-- Okay. So  
the date this was created was the 15th of April 2005.

30 30

MR SHERIDAN: And the date of that application, again?-- 13th  
of October 2001.

35 Now, does that file contain any document as to the title -  
what name the title was held in at the time of the  
application, or just at that time?-- Just on that application,  
it really doesn't have a lot in plan description in the  
original application. It just has the - like, the lease  
40 number. It's a free-holding lease, but I will just look  
through other correspondence and - there is other  
correspondence on here that relates to Lot 8, MGL33.

40

45 I'm just looking for a document on that file that might  
indicate what name the property was held in at the time of the  
application, because that Exhibit 1 obviously doesn't?-- No, I  
can't see a title search on here for the date of the  
application.

50 Sorry, my friend has provided me with an historical title of  
the property.

50

BENCH: And why wasn't that tendered?

55 MR SHERIDAN: Could the witness be shown this document,  
please, your Honour?



BENCH: Surely you're going to get your instructor to take it up to her.

1

MR SHERIDAN: Could you just have a look at the last page of that document that I provided to you? On the right-hand side, the last entry there on the stamp. Could you tell me what the date inside that stamp is?-- The 16th of June 1986.

5

Could you read the names that are listed?-- Ronald Knights, Richard Tudor Knights and Maureen Knight.

10

10

Yes, thank you. I tender that document, your Honour.

BENCH: That will be admitted in evidence and marked Exhibit 4.

15

ADMITTED AND MARKED "EXHIBIT 4"

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20

MR SHERIDAN: So there's nothing on that file that indicates that at the time of this application - what the ownership of this property was?-- No, there's not a title search on the file.

25

If I could just take you down to the front page of that form 1 development application - can you find that for me?-- Yes, it's on form A, yes.

30

30

The IDAS, form A. Down to part 4, Applicant Details, "Clearly identify who is making the application. The application need not be the owner of the land." Is that - can you confirm that's what it says in your copy there?-- That's correct.

35

Thank you, your Honour, nothing further.

MR WILSON: I have no further questions, your Honour.

40

40

BENCH: Thank you. Just leave your file there, thanks. Thank you.

45

WITNESS EXCUSED

BENCH: Yes, thanks, Mr Wilson.

50

50

MR WILSON: Thank you, your Honour. The next - the next witness I will call will be Daryl Baumgartner, spelled B-A-U-M-G-A-R-T-N-E-R.

55

DARYL JOHN BAUMGARTNER, SWORN AND EXAMINED:

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5 MR WILSON: Could you just tell the court your full name,  
please?-- Daryl John Baumgartner.

And whereabouts do you work?-- I currently work at Natural  
Resources and Water at Ipswich.

10 10

Okay, and how long have you been in the  
Department?-- Approximately six years.

15 Do you hold any formal qualifications?-- I hold a degree in  
Applied Science in Protected Area Management and a diploma in  
Applied Science in Horticulture.

20 Now, could you tell - tell the court how you come to be  
involved in this matter of Mr Knights?-- Mr Knights lodged an  
application for operational works, which was the clearing of  
native vegetation.

20

I will just ask you to slow down?-- Pardon?

25 I'm sorry. Yes?-- And I was the assessing officer for that  
particular application.

30 What's your duty as an assessing officer?-- To make sure that  
the application is compliant with the code assessment.

30

35 And the code assessment is what? Just explain it?-- The code  
assessment just requires the applicant comply with state  
planning laws which detail, amongst other things, bio-  
diversity, sustainable production of lands.

40 Okay. So can you tell the court how you - what involvement  
you had in Acme Downs?-- I had contacted Mr Knights to  
organise an inspection of the property and that, I believe,  
was organised for March the 4th. There was-----

40

45 In what year?-- 2003. There was a delay in actually  
inspecting on - on that particular time because a soil auger  
was missing from the vehicle.

Okay?-- So it was actually inspected on March the 5th.

50 All right?-- And I had contacted Mr Knights the day prior to  
both of those events, just to make sure that we were still  
okay.

50

55 Yes. So, what happened then?-- I contacted Mr Knights. An  
agreement was reached that we would do an inspection for  
salinity on, I think it was a Wednesday, March the 5th. I met  
Mr Knights at the property. I arrived, I got my bike ready  
from a bike trailer that we did the inspection on. Mr Knights  
was away for a couple of minutes getting his motorcycle to

join me in that, and after that we went around the property and conducted the assessment.

1

5 What did you find during the assessment? Could you tell us what happened?-- We set off from the actual house and headed southbound through a gate. Mr Knights proceeded a couple of minutes before me and I was able to follow him from a path of dust in the - in the distance, and I actually specified a particular site that I would like to have a look at, which he met me at, and from there, we conducted soil tests, looking at salinity measurements. From that point we discussed some of the findings and then had general conversations about the assessment process and went on our way with that assessment.

10

15 Now, you also had further discussions with Richard Knights in connection with other matters?-- Yes. We discussed - there was an anomaly between the regional ecosystem mapping at that particular point and-----

20 Okay, can you just tell the court what the region ecosystem mapping is?-- Regional ecosystem mapping is a - a map that's produced by the Queensland Herbarium, which designates what's considered to be remnant vegetation in the State of Queensland and non-remnant vegetation. That - that map is used as the basis for determining what is assessable vegetation.

20

25 So what was the anomaly?-- The anomaly was that the Landsat imagery had picked up areas that seemed to be devoid of vegetation when the remnant mapping had clearly indicated that it should have been remnant vegetation.

30

35 So how did the discussion go?-- I don't remember the verbatim discussion, but I - it was one of the issues that I had intended to raise on the property during the inspection. It was just a matter of it didn't quite make sense. I canvassed Mr Knights to see whether he had any idea what happened to it and-----

40 What happened to what? When you say-----?-- The bushland, sorry. The actual remnant vegetation that appeared on the regional ecosystem map, that did not appear on the Landsat image. I asked Mr Knights if he had any idea what happened to that area, which he said had been cleared. I asked him whether he had a permit and he said something along the lines of that he didn't require one. I then said that I accepted that just said that I would need to notify Toowoomba compliance just to clear that up and we - kept on with the assessment.

40

45 And what was the result of your assessment?-- The findings of that assessment was that the application was not fully compliant with the performance requirements of the code, and a recommendation was given to the decision-maker to refuse the application.

50

55 Okay. I've no further questions, your Honour.

CROSS-EXAMINATION:

5

MR SHERIDAN: Thank you, your Honour. Mr Baumgartner, are you an authorised officer for the purpose of the Integrated Planning Act?-- Yes, I am.

10

The Vegetation Management Act?-- Yes.

10

The Land Act?-- Yes.

15

Well, what was the date of your - that you received that delegation?-- I'm not aware. I would - I would imagine it would have been on an appointment of position.

20

On appointment of the position?-- Yes.

20

So you have been an authorised officer under those three Acts since - how long, sorry? I-----

25

BENCH: Did you ask him, was he a delegate under the Integrated Planning Act?

MR SHERIDAN: Authorised officer under the Integrated Planning Act.

30

BENCH: Authorised officer, Integrated Planning Act.

30

MR SHERIDAN: And the Vegetation Management Act and the Land Act.

35

BENCH: You should just need a gazette to be produced, don't you?

40

MR SHERIDAN: No, your Honour. I think the Vegetation Management Act has a deeming provision-----

40

BENCH: I see.

45

MR SHERIDAN: -----in that, as well, that they don't have to prove the delegation - the authority - unless there's evidence - in the absence of evidence to the contrary.

50

So at the time you - so you've been an authorised officer since, you say here, you were employed by the Department since 2000?-- That's correct.

50

Now, you said that part of your position at the time you visited Acme Downs on - which day did - did you attend there on the 5th or the 6th of March 2003, initially?-- I believe it was the 5th.

55

Had you been on the property prior to that?-- From my recollection, I can't recall, sorry.

1

Now, you said that your task at that time was to assess - to make an assessment of whether development was code assessable, is that right?-- Yes.

5

Would you not make an assessment before that, on whether the development was actually assessable development at all?--Whether it was assessable development?

10 Yes?--Once it is----- 10

-----at the outset?--Once it is accepted by the assessment manager, I believe it is accepted as being for development.

15 Assessable development?--Yes.

And at that time, was the areas that Mr - the areas subject to the application, were they - they were obviously - had been deemed by someone superior to you as been assessable development?--Could you repeat that, sorry?

20 20

You said you went out there to have a look at a permit application for assessable development?--Yes.

25 And you said that the decision on whether that development was assessable development or not-----?--Yes.

-----was made by someone superior to you. An assessment manager, did you say?--Yes.

30 30

Who is that person?--That would be Mr Jim Herbert, I would imagine.

Jim Herbert, is he an employee of the Department?--He is.

35

Is he based at Roma?--He is.

Yes. Now you went out there on the 6th of March to perform a salinity inspection, you said?--That is correct.

40 40

Is that correct?--Yes.

During that inspection you noticed that there was an anomaly between a satellite image and a regional ecosystem map?--Well, it was actually picked up prior to that, so that was one of the issues I needed to clarify on the day.

45

It was picked up prior to your inspection?--Yes.

50 50

So your inspection had two roles: one was to make an assessment of salinity for the clearing application?--Yes.

And the other one was to inspect a possible offence against the Integrated Planning Act?--At that particular point, an offence didn't really even enter my mind. It was just, "What has happened here?"

55

60

But you said that there was - had been an anomaly picked up between the satellite image and the regional ecosystem map?--Yes.

1

5 And you saw that when you got there?--Yes. Yes.

And then you asked Mr Knights about it?--Yes.

10 And he told you that he didn't have to have a permit?--Along those lines, yes.

10

And then when you got back to Roma, was it, you reported it to the compliance unit?-- believe that was so, yes.

15 What was the date you reported it to the compliance unit?--I wouldn't be aware, off the top of my head.

But was it shortly after or was it some time after?--I wouldn't be aware, sorry.

20

20

Now-----

BENCH: Why wouldn't you be aware, if you reported it?--It wasn't a matter that was of high importance to me. It was-----

25

MR SHERIDAN: A possible offence under the Integrated Planning Act is not of high importance?--At that particular time, no. My priority and importance was on the assessment application. At that particular time I had no inkling that it wasn't legally cleared.

30

30

But you said there was an anomaly between the satellite image?--Yes.

35

And the regional ecosystem map?--Which could have been explained.

How?--Well, I am not here to promote options. I am just saying, it could have been.

40

40

No, you are here to answer questions. How could it be explained? How could an obvious prima facie case of unlawful clearing - the regional ecosystem map said there should be vegetation?--Yes.

45

And the satellite image said there wasn't?--Yes.

And your observation on the ground has confirmed there wasn't - there weren't?--Yes.

50

50

But when you asked Mr Knights, you said he said he didn't need a permit?--Yes.

55 Now at the time you made-----

BENCH: Well, are you asking another question?

1

MR SHERIDAN: No, your Honour, I'm happy with that. He finished it with, "Yes."

5 BENCH: Okay. Thank you.

MR SHERIDAN: At the time you conducted that inspection, you said you had a regional ecosystem map with you. Can you remember which version it was?--No, I can't, off the top of my head, no.

10

Can the witness be shown this document, please, your Honour?

15 BENCH: Sure.

MR SHERIDAN: Can you identify that document, Mr Baumgartner?--It is a regional ecosystem map, version - this would appear to be a map modification - a certified map modification.

20

20 It was plotted on the 20th of September 2002?--Yes.

It's an updated 1999 regional ecosystem map?--That's what it's titled.

25 Was that the map you used on that day?--To?

For the purposes of your inspection?--It may have been something that was within the file. It wouldn't have been the primary tool, no.

30

Now there's a - it appears to be in the bottom left-hand corner - is that your initial there, "DB"?--It is.

35 And the date, 11th June 2003?--Yes.

And there's the word "old", is there, appearing above it?--Yes.

40 I tender that document, your Honour.

40

BENCH: What is it? What will I call it?

45 MR SHERIDAN: We will call it copy of updated remnant 1999 regional ecosystems.

BENCH: Updated remnant-----

50 MR SHERIDAN: Updated, yes.

50

BENCH: Okay. Do you need the witness to keep that down there with him?

55 MR SHERIDAN: Just for two seconds, your Honour.

BENCH: Now, when it comes up that will be admitted into evidence and marked Exhibit 5.

60

1

MR SHERIDAN: Thank you, your Honour. May the witness be shown this document, please, your Honour?

5 Can you identify the covering letter on this? There's three pages in that document, isn't there, Mr Baumgartner?--Yes.

One departmental letter and two coloured maps?--Yes.

10 Could you identify that letter on the front, dated 9th of October 2002, please?--It's a letter from - it's a letter from the Department to Mr and Mrs Knights indicating that there was an update to a regional ecosystem map. 10

15 It covers two colour copies of regional ecosystem maps?--One is the signed certified copy and the other one is probably the original.

I tender those documents, your Honour.

20 BENCH: And what's that for? 20

MR SHERIDAN: This is a-----

25 BENCH: A letter?

MR SHERIDAN: A letter covering two more maps.

BENCH: Okay. I will get-----

30 MR SHERIDAN: Would you Honour like to----- 30

BENCH: Yes. I would like to get them and have a look at them, thanks. So I will get Exhibit 5 and Exhibit 6.

35 MR SHERIDAN: Do you want to have those Exhibit 6, because there are a number of these maps?

40 BENCH: Well, I think I should mark them as we go, or I'm going to get myself into a confusing state. 40

MR SHERIDAN: Yes, your Honour, otherwise it will be-----

45 BENCH: So Exhibit 5 is marked and so is Exhibit 6.

ADMITTED AND MARKED "EXHIBIT 5"

50 ADMITTED AND MARKED "EXHIBIT 6" 50

ADMITTED AND MARKED "EXHIBIT 6"

55 BENCH: Do you need the witness to get them back?



MR SHERIDAN: No, thank you.

1

MR WILSON: Your Honour, can I just point out, Exhibit 5 and Exhibit 6 are the same map.

5

BENCH: So? Thank you.

MR WILSON: The Exhibit 5 map and the Exhibit 6 - the first one there is the same map.

10

BENCH: Well, we don't know where Mr Sheridan's going. Thank you.

10

MR WILSON: Sorry.

15

MR SHERIDAN: I just want to confirm that the black and white copied one of Mr Baumgartner's is - your Honour has got as exhibit 5.

20

BENCH: Yes.

20

MR SHERIDAN: And Exhibit 6 will be the one that I have just tendered, with two colour copies, covered with the letter of 9 October.

25

BENCH: Yes. Also, we've got the remnant and the updated remnant attached there?

MR SHERIDAN: Yes, your Honour. Could the witness be shown - be given back Exhibit 6, please, your Honour?

30

30

BENCH: Do you want him to have both or just 6?

MR SHERIDAN: No, just the 6, thank you.

35

BENCH: Thanks.

MR SHERIDAN: Now, the first map, which is page 2, now, that is a colour copy of the - the former black and white copy of - with your initial on it?-- Mmm-hmm.

40

40

And the second - the second - what is the plot date of that one, the 20th September 2002, wasn't it?-- Yes.

45

The second map is plotted on the same day - is plotted on the 2nd of August 2002?-- Mmm-hmm.

And that is rendered the 1999 ecosystem; is that correct?-- That's what it's titled, yes.

50

50

Now, this map, the second one, "Rendered 1999, regional ecosystems," is that the regional ecosystem map that you had regard to at the time of your inspection?-- That, I couldn't be certain because we have a separate cartography officer that actually uses this data to highlight the areas that are going to be assessable.

55

BENCH: Sorry? You have a what?-- We have a - a cartographer,  
a GIS officer.

1

5 What is their name?-- At that particular point it would have  
been Linda Hardwick.

10 And what does she do?-- She generates the - well, at that  
particular time, Linda would have generated the satellite  
image with the assessable vegetation.

10

Have you got that with you today?-- That will be on the file.

15 We don't need to worry about them. Mr Sheridan will ask you  
more questions.

MR SHERIDAN: Thank you, your Honour.

20 So these maps, which were sent to the defendant, could you  
just read-----

20

BENCH: I can read, thanks, Mr Sheridan.

25 MR SHERIDAN: Thank you, your Honour. So these maps that were  
sent on the 9th of October 2002, to Maureen, Richard and  
Ronald Knights, these aren't the maps that you undertook the  
assessment of the permit in March 2003? Is that correct?-- I  
would need to check the file.

30 Could the witness be shown this document, please, your Honour?

30

Following the inspection of - following the inspection of  
March 2003, you produced this report on the application for  
the permit? That's a copy of your report?-- Yes.

35 I just want to take you over to page 3 to 7, to the paragraph  
headed, Physical Description?-- Mmm-hmm.

40 Table 1, Regional Ecosystems Summary. Regional Ecosystems  
11.3.28, and then you go down 6.3.14, 6.3.17, 6.4.4 and 6.5.4.  
Now, that table is a summary of the regional ecosystems that  
were existing on Acme Downs at that time you made the  
inspection, wasn't it? Is that what that table  
represents?-- That's - that's what would have been described,  
yes.

40

45 Right. So, even though you can't remember, or locate, which  
map you had at that time, that is the status of the regional  
ecosystems at the time of your inspection in March  
2003?-- That - that data is interpreted from whatever spatial  
50 data covers that particular lot. So that is - that hasn't  
been confirmed on the ground, that is just what is mapped.

50

55 So that - yes. So that - those ecosystems there were what  
were mapped at the time of your inspection in 2003, in March  
2003?-- Yes.

Now, the first one, 11.3.28, you say there, it was currently of concern. So does that mean that was the status of that regional ecosystem at that time?-- Yes.

1

5 And 6.3.14 was not of concern at that time?-- That's what is written.

6.3.17 was not of concern at that time?-- That's what it is described as.

10

6.4.4 was not of concern at that time?-- Mmm-hmm.

10

6.5.4 was not of concern at that time. Is that correct?-- Yes.

15

That was the result of your assessment in March 2003-----?-- Yes.

-----using the available regional ecosystem mapping current at that time?-- That would - that would have been the data that was supplied to me from GIS.

20

20

Is that the status of the regional ecosystems at that time?-- Are you asking me to check now, or are you saying-----

25

No, I am asking you to recall from your inspection and the report. This document you have just been given?-- I - I couldn't remember, honestly. I have probably done dozens, if not possibly a hundred, of these since, so-----

30

30

But at this time, this is a - this is a true copy of the report you provided to the-----?-- That's right. That's right.

35

The department?-- Yes.

So there is no reason to think that that would be anything other than accurate, is there?-- That is correct.

40

40

I tender that document, your Honour.

BENCH: That will be admitted into evidence and marked Exhibit 7.

45

ADMITTED AND MARKED "EXHIBIT 7"

50

50

MR SHERIDAN: You say in your statement that at the time you visited Acme Downs in March 2003 the property was extremely dry?-- Mmm.

55

And you saw stock during that inspection. And this vegetation, that you saw cleared, was it being eaten by stock?-- Not to my-----

1

5 You didn't see any stock eating it?-- No.

Was there anything else there for them to eat?-- I'm not an agronomist but I would have said very, very little.

10 Yes. Now, you visited the property later on, on the 11th of June 2003, didn't you? What was the purpose of that inspection?-- I can't recall.

10

15 Excuse me, your Honour, I will just get some instructions. Nothing further, thank you, your Honour.

BENCH: Thank you. Any re-examination?

20 MR WILSON: Yes, your Honour.

20

RE-EXAMINATION:

25

MR WILSON: Could the witness have Exhibit number 3, please? That's the file.

30 I just want to clarify the report. What sort of - Mr Sheridan said about what vegetation was there and the status of that vegetation. Could you just tell me from that report, your report, what that status of the vegetation was?

30

35 BENCH: At what time?

MR WILSON: At the time he inspected it.

40 BENCH: Well, which inspection?

40

MR WILSON: In March 2003.

45 Did you do a report on - on the type of vegetation on the property?-- Technically, I wouldn't have done a report on the vegetation. I - I would have detailed what was actually described for the property.

50 Okay. And when you say "detailed," was the property - were you referring to the RE map?-- That's correct.

50

Okay. And the RE map in respect of where the clearing was applied for?-- That's correct.

55 Is there an RE map on that particular file?-- There's a few.

Have you got a copy of the permit that was applied for? I'm just trying to find out what the regional ecosystem was in respect of where the permit was applied for?-- Yes.

1

5 MR SHERIDAN: I object, your Honour. This matter did not arise in cross-examination.

BENCH: What - why are you asking this question?

10 MR WILSON: I did, your Honour, because he said there the physical description on his report, and he goes on about the property, "Of concern"-----

10

BENCH: Sorry?

15

MR WILSON: In - I think it was Exhibit 7 - Exhibit 7, Physical Description.

BENCH: What page?

20

MR WILSON: Page 3 of 7.

20

BENCH: Mmm-hmm.

25 MR WILSON: We've got "Physical Description" there.

BENCH: What are you asking?

30 MR WILSON: I'm just asking - asking him what was the ecosystems in respect of what the permit was applied for, because this one here, Physical Description, infers-----

30

BENCH: Well, that will be obvious on the permit application.

35 MR SHERIDAN: Your Honour, that question does not arise out of cross-examination. I did not question him at all about the area that was applied under the permit.

BENCH: You didn't question him at all about?

40

MR WILSON: About the status of the regional ecosystem that was applied and the area that was applied under that permit. I questioned him on the status of the ecosystem of the property and as about - and in respect of his report, physical description, on page 3 of 7.

40

BENCH: Okay, well, you are applying to ask a further question in evidence-in-chief, then, are you, Mr Wilson?

50 MR WILSON: No, I don't think so, your Honour.

50

BENCH: Okay, well, I will hear your response to Mr Sheridan's objection.

55 MR WILSON: Well, your Honour, I had the impression that that question - said that the area under the permit didn't have-----

BENCH: What permit?

MR WILSON: The application for the permit, sorry.

5

BENCH: Well, there's no permit.

MR WILSON: No, I beg your pardon. I meant the-----

10 BENCH: Will you please be careful about the terminology  
you're using here. It's confusing enough for me without you  
using the wrong terms.

10

MR WILSON: I'm sorry, your Honour.

15

BENCH: Well, what question do you say Mr Sheridan asked which  
allows you to ask this question in re-examination, seeing as  
you are not applying to ask it in evidence-in-chief?

20 MR WILSON: Mr Sheridan said, "Can you - can you say what the  
general description of the property was from your running  
through this physical description of the property?" And Mr  
Baumgartner was a bit hesitant there. He wanted to say  
something else. I'm just giving him the opportunity to say  
25 there what the physical description-----

20

BENCH: Sorry, not allowed, thanks. If he is asked the  
question fair and square in cross-examination, and he doesn't  
want to answer it, that doesn't then give you a chance to  
30 clarify anything. And you haven't answered how it arose out  
of cross-examination yet.

30

MR WILSON: That was the question.

35 BENCH: Thank you. Move on to something else, thanks.

MR WILSON: In relation to map 3.2 which is Exhibit 6 - could  
the witness see Exhibit 6, please?

40 BENCH: I think he has got it down there. I am hoping he has,  
because I don't have it here.

40

MR WILSON: From that regional ecosystem map, can you tell the  
court the regional ecosystem summary of the property?

45

BENCH: Well, is that just reading it, because I can read it?

MR WILSON: No, it's coloured.

50 MR SHERIDAN: Sorry, which map is my learned friend referring  
to?

50

BENCH: The one with the letter.

55 MR SHERIDAN: Yes, your Honour, there's two maps attached to  
that.

MR WILSON: The first one.

1

MR SHERIDAN: Thank you.

5 BENCH: The updated or the non-updated?

MR WILSON: The updated one?--So you would like me to go through the REs that are located on the property?

10 Yes, please?--Well, starting from the northern-----

10

BENCH: I can't understand this without a coloured map myself.

15 MR SHERIDAN: Well, this didn't arise in cross-examination either.

BENCH: How did this arise in cross-examination?

20 MR WILSON: The physical description of the regional ecosystem.

20

25 MR SHERIDAN: Your Honour, that was based on Exhibit 7. It was written - the document that was written by this witness. Now what my learned friend is attempting to do is, as your Honour pointed out before, ask further questions in evidence-in-chief about this document, rather than the answer that he gave to the question I posed to him on this document.

30 BENCH: Yes. Well, how does it arise out of cross-examination, Mr Wilson?

30

MR WILSON: Well, I am just giving him the opportunity to describe-----

35 BENCH: No, how does it arise out of cross-examination?

MR WILSON: Because of Mr Sheridan's question of the physical description of the property.

40 BENCH: He was asking about Exhibit 7.

40

MR WILSON: That's right.

45 BENCH: Well, if you want to ask something to clarify the witness's answer in reference to Exhibit 7 you can.

MR WILSON: Okay.

50 BENCH: But that does not allow you to ask additional questions about Exhibit 6, unless you are applying to ask further questions in evidence-in-chief, in which case I will give Mr Sheridan a further opportunity to cross-examine. That is the only fair way.

50

55 MR WILSON: Thank you, your Honour.

Could you just have a look at the Exhibit number 7, which is the report.

1

BENCH: Yes, I will give it to you.

5

MR WILSON: On page 3 there's the physical description?--Yes.

Regional ecosystem summary. Can you just explain to the court exactly what that is?--That's a summary of all the regional ecosystems that would have fallen under the foot print of the application.

10

10

BENCH: Well, when you say, "fallen under the footprint," you just mean that's the ecosystems that were in the land that they applied for the permit for?--That's correct.

15

MR WILSON: Now when was that report written?--The 17th of the 12th 2003.

20

No further questions, your Honour.

20

BENCH: Thank you. Thank you very much, Mr Baumgartner. That's the end of your evidence now. If you just leave all of that stuff there, we will sort it out. Thank you.

25

WITNESS EXCUSED

30

30

BENCH: And your next witness?

MR WILSON: Is John Forcier, your Honour.

35

40

50



JOHN FORCIER, SWORN AND EXAMINED

1

5 MR WILSON: Can you tell the court your full name please?--John Anthony Forcier.

How did you come to be involved in this matter?

10 BENCH: Well, you had better get him to give us what his job is first or some identifying details, like his address, date of birth, place of birth or some other material. 10

MR WILSON: I thought he was going to tell me that, your Honour, but I will ask him. 15

Could I have where you work currently?-- Yeah, I'm currently employed as an investigator with Maritime Safety Queensland. At the time of this, though, I was employed as a regional investigator with the Department of Natural Resources and Mines out of Toowoomba. 20 20

Thank you. And can you tell me how you became involved with it? What happened?--I received information - approximately two years ago I received information as part of several cases we were looking at and the property known as Acme Downs came across my desk and that is how I first became aware of the property. And I - after some homework on the property, I swore out a warrant to visit the place and went out there, and it was the 26th of October 30 30

2004 when I attended the property. I met with a person who identified himself as Mr Knights. I executed the warrant and explained that I was out there to examine the property for possible clearing. The clearing, at that stage, I was only aware of through satellite imagery. Mr Knights declined to talk to me at that stage. 35

When you say "Mr Knights" do you know - do you know Mr Knights?-- Richard Tudor Knights, I knew the name as. I hadn't met him until that point. 40 40

Now, was anyone with you?-- I - I beg your pardon.

45 Was there anyone with you?-- Yes. My manager at the time, Craig Elliott.

Okay?-- Who is also - also an authorised officer. Mr Knights pointed us - pointed out a couple of little areas on the map that I had with me as to where we needed to go. We then travelled out in our car to those areas, to have a look, where I took photographs. I formed an opinion that offences may have occurred, and when we returned back to the homestead I had a short conversation with Mr Knights, which he reiterated that he didn't wish to talk to me, and that any questions be put to him in writing, which is what I subsequently did, and we - we left the property after that. 50 50 55

1

5 Okay. You said you took photographs?-- That's right. I entered everything into a - a notebook. Your Honour, if you like, I can refer to it - the actual photograph numbers and so forth.

10 BENCH: Well, you won't be referring to any notebook unless you get leave, so just stand steady there, thanks?-- Yes, your Honour.

10

Just wait and see what Mr Wilson asks. You might not need it.

MR WILSON: Did you make notes-----

15 BENCH: Don't you make the application, thanks, Mr Wilson. It's for the witness to do that, and you haven't asked him any questions yet that would require reference to a notebook. If Mr Sheridan has a copy of the notebook and he's going to agree to the witness looking at it, then just let me know.

20

20 MR SHERIDAN: I have not seen the notebook, your Honour.

BENCH: Hasn't been disclosed?

25 MR WILSON: Yes, it has been disclosed.

MR SHERIDAN: I don't believe so.

30 MR WILSON: It's in that file; the brief was on there.

30

BENCH: Have you seen all these photos, then?

35 MR WILSON: We have photos, your Honour, and we are just frantically trying to find out whether they're correct ones.

BENCH: Has anyone from your office checked with those other three witnesses - how they're going, Mr Wilson?

40 MR WILSON: Not that I'm aware of, your Honour. Yes, your Honour. The two - the two Knights are going to claim privilege, and the contractor is still getting legal advice.

40

BENCH: He's still getting legal advice?

45 MR WILSON: Yes, your Honour.

BENCH: So are you going to bother calling the Knights?

50 MR WILSON: No, your Honour.

50

BENCH: You're not?

MR WILSON: I don't - I don't think so, at this point.

55 BENCH: Are you going to send them away, then?

60

MR WILSON: I would like to confer with my friend at some point. At lunchtime, perhaps, when I have some time.

1

5 BENCH: Well, are you going to tell them not to come back till - that - to go away and you will give them a ring at lunchtime if you want them?

MR WILSON: Well, I-----

10 BENCH: It's a bit rude - having them sitting outside.

10

MR WILSON: Well, I don't propose to. As soon as I have a chance to have a talk to my friend, then -----

15 BENCH: Well, you're not going to have a chance until 1 o'clock. It's quarter to 12 now.

MR WILSON: Well, if I could have a short adjournment, I could resolve the matter, your Honour.

20 BENCH: I will stand Mr Forcier down, and call them in; they can claim privilege and they can get on their way.

20

MR WILSON: We will let them go, your Honour.

25 BENCH: Thank you.

MR WILSON: What did you do while you were on the property?-- At the property we - we used a GPS device to get ourselves approximate locations of where the satellite indicated that vegetation had - had disappeared, and travelled to those locations and took photographs.

30 30

35 Okay. And can you tell me where those locations were?-- They were - they're GPS points which are a series of numbers, which I - I don't retain in my head; they were written into the notebook.

40 Okay. Have you've got a record of those - of those GPS points?-- Yes, in my notebook.

40

Do you seek leave to-----

45 BENCH: You don't get to make the application, Mr Wilson. I'm not going to allow you to give evidence of GPS unless you've got another witness who's going to come along, who is a GPS expert, and who's going to be able to plot these on some of these other maps, because the GPS reference means absolutely nothing to me, unless it has got minutes and seconds, north and south, that I can then cross-reference it onto the title deed or the map.

50 50

MR WILSON: Yes.

55 BENCH: So are you calling a GPS expert who is going to be able to give that evidence about these GPS positions?

MR WILSON: Did you use the GPS?-- Yes, I did.

1

So you-----

BENCH: You didn't answer my question, Mr Wilson.

5

MR WILSON: Yes, I know that, your Honour.

BENCH: I asked you a question. You rudely ignored me and asked your witness another question. I am not used to that, so I withdraw my - I am not going to ask you any more questions. You run your case the way you please but you do not ask for leave. The witness will ask for leave in the usual way. This witness is an investigator. He doesn't have to be lead along by the hand. If he needs to seek leave he will do that.

10 10

15

MR WILSON: I apologise for offending your, your Honour.  
I-----

BENCH: Don't respond now; you've apologised. But I asked you a question and you did not respond to me.

20 20

MR WILSON: Well-----

BENCH: Thank you.

25

MR WILSON: I was just trying to explain my reasons?-- If I can, perhaps, keep going. The GPS unit that we use spits out a reading in eastings and northings which we can then reference to a map which, at the time, we carried. But merely - once I got to the locations that I presumed were on the imagery that we were looking at, I noticed that there were trees down and vegetation on the ground and took photographs from that point on and then referenced those locations.

30 30

35

Would you have a look at these photographs?

BENCH: A copy for me, thanks.

MR WILSON: I have only got the one copy.

40 40

BENCH: How come?

MR WILSON: That was all I was supplied with.

45

BENCH: Well, you are prosecuting.

MR SHERIDAN: Your Honour, we have a spare copy.

MR WILSON: I have got copies on here.

50 50

BENCH: Well, that is not the same as what they are. So, what is all this whiz-bang equipment you have got here. Does it produce these photographs on a screen so we can all see at the one time?

55

MR WILSON: I will just take those photographs back.

1

BENCH: No, leave them there, that is okay. I just won't have the benefit of looking on. I usually get a copy myself to look on, so I can understand the evidence.

5

MR WILSON: I will just have a look at them in case there is more than one copy.

BENCH: Go on and ask you questions, thanks.

10

MR WILSON: May I look at the photographs?

10

BENCH: Certainly. Go and have a look at them.

15

MR WILSON: Now, did you also prepare a report in respect of photographs that you took?-- Yes, I haven't seen a copy of that report, though, since I wrote it, but it would have been a photo - a short photo essay of - depicting the photographs and then the location with the GPS location underneath.

20

MR SHERIDAN: It has been disclosed, your Honour.

20

BENCH: Are you objecting to the comments on it or objecting to it being produced? Are you requiring them to prove the GPS notations?

25

MR SHERIDAN: I was going to save that for cross-examination, but if - I will object to the document being - well, your Honour, I will object to the document being tendered because, as far as I can see, it's functionally useless and utterly irrelevant, because it doesn't describe the subject land nor is there any way, as your Honour pointed out, that we can - I can actually cross-examine this witness on the location of these photographs.

30

30

35

BENCH: Yes, Mr Wilson, what do you say about that?

MR WILSON: Well, your Honour, the witness has said he had a GPS and he took reference points and placed them on a map. Now, what I understand - the GPS is quite common in use these days.

40

40

BENCH: Well, refer me to a case, thanks, on GPS and its notorious reliability and how I just take judicial notice of the print-out on your client's device, whatever it was. Is it in the Acts Interpretation Act now - GPS, as well as compasses and clocks?

45

50

MR WILSON: No, I don't think so, your Honour.

50

BENCH: Okay, well, can you refer me to a case where someone, who is much more learned than me, will point me in the right direction.

55

MR WILSON: Could I have a short adjournment, your Honour?

60

BENCH: No. I would like you to work out what you are doing, thanks, Mr Wilson.

1

MR WILSON: Well, your Honour-----

5

BENCH: If the witness - you have given in these bundle of photos and now you are talking about a report that doesn't have all the photos in. Which one are you dealing with first?

10 MR WILSON: Well, your Honour, with respect, you're making it very difficult.

10

BENCH: I will ignore that comment, Mr Wilson, because I am just sitting up here waiting for you to get yourself organised and present your evidence. So, I think we had better have a short adjournment because I don't want to be grouchy or grumpy; but I do tell you, I am quite shocked that this case is being conducted in this way, because this has been set down for hearing for months. And I would have thought you would come along with a bundle of photos for me so I can just look on and see the witness. But we have got all this equipment that has been set up here that has not been used. Why aren't they displayed on that screen so everyone can see them? You come along to court today and it has been disorganised from the beginning, so, I will give you a 10 minute adjournment to get yourself organised. Thank you.

20 20

30 THE COURT ADJOURNED

30

35 THE COURT RESUMED

BENCH: Thank you, you may be seated. Yes, Mr Wilson?

40 MR WILSON: Thank you, your Honour. Mr Forcier, when you were there, what else did you do?-- At the location, I took photographs. There would be a total of 26 photographs. Two would be geo-referencing photographs which allow us to ensure that I'm at the correct location, using satellite imagery. It's something that can be seen on the satellite image as well as what I've photographed on the ground. And then I took four sets of eight photographs which are around the compass rose which are basic from north, north-east, east, right the way around the compass. At four separate locations I did that.

40

50 And have you got those photographs?

50

55 MR SHERIDAN: Your Honour, we have been disclosed with three sets of eight and one set of two photographs.

BENCH: Well, what is your application - that they not be allowed to lead evidence with the others or what is it? Are

you applying for an adjournment so you can prepare your case  
or - telling me something that you are upset about is not  
going to-----

1

5 MR SHERIDAN: Yes, sorry, your Honour. The - on the basis of  
the evidence just coming from the witness, the photos that he  
is referring to - 32 photographs - we have only been - we have  
only had 26 disclosed, and we would seek disclosure of the  
other six photographs.

10

10

THE WITNESS: There was - your Honour, there was four sets of  
eight plus two geo-referencing, so a total of 26.

15 BENCH: Well, four eights are 32, the last time I went to  
school?-- I beg your pardon, yes.

That is what Mr Sheridan is saying-----?-- Yeah, sure.

20 -----he has only got three eights are 24 plus two equals 26.  
That there is one location that has not been disclosed to him.  
Is that because it is not relevant, Mr Wilson, and you are not  
going to lead evidence of it?

20

25 MR WILSON: I am not aware, your Honour. I have only had 26  
photographs myself.

30 THE WITNESS: Your Honour, if I may refer to the notebook, it  
will definitively tell me what I photographed at the time - as  
I wrote it at the time.

30

MR SHERIDAN: Your Honour, the witness got the original  
photographs still in front of him.

35 BENCH: Do you want to count if you've got 26 or you have got  
34 there? Don't mix them up?-- No, I just-----

Are they numbered?-- They are.

40 Is it 34 or 26?-- They are not numbered in that way. There is  
26 photographs here.

40

45 So you only must have taken three sets of eight. Three eights  
are 24 plus two is 26?-- Your Honour, it was some time ago. I  
may be referring to the geo-referencing photographs as the  
two-----

50 Okay, well, read - what is the number of your notebook, when  
were the notes taken,  
what are the pages on which this is recalling?-- Open the  
notebook now, or-----

50

55 No, tell me what's the number of your notebook or how do you  
identify the notebook, what - when did you make the notes, and  
on what pages did you write?-- Your Honour, I - I don't have  
the number of the notebook. It's two years since I last  
looked at it and it was only handed-----

Well, you've got it here. Read the number off the front to me?-- It doesn't have a number on the front.

1

5 An unidentified notebook. And when did you take the notes about this day?-- The notes were taken at the time, as I physically took the photographs, on the 26th of October 2004.

10 And you haven't got a copy of this yet, Mr Sheridan? The notes?

10

MR SHERIDAN: We have copies of one and a half pages. Pages 13 and 14, your Honour.

15 BENCH: Okay. So if it's on pages 13 and 14, go right ahead and refer to that and tell us what has happened. Is it on pages 13 and 14?-- On page 13, approximately second third of the page, I've written down two photographs at the site 1. So that would explain it. I've taken two geo-referencing photographs and then I've taken three sets of four.

20 20

Three sets of eight?-- Three sets of eight. I beg your pardon.

Thank you. Yes, Mr Wilson?

25

MR WILSON: Thank you.

Do you have a copy of those photographs with you?-- There's a copy of them here, yes.

30 30

And do you have a copy that you can show the court through the screen?-- Yes, the - it's - it's on the screen. If-----

35 BENCH: Okay. Don't worry?-- Those two photographs there are at the corner posts of the property. The corner posts is something that can generally be identified from a satellite image as being the same location.

40 MR WILSON: Have you got the photographs on - on the desk there, in front of you?-- The photographs here on the desk? I was going to just refer to them from here if it was easier. Then the next location here are site numbers which I numbered one to three or site 1, site 2, 3 and 4 and, your Honour, you will see eight photographs. I mean, the first photograph was taken north-north east. So I turn clockwise and take the photographs from the same position. And that position - I put the GPS unit at my feet so that I know I'm in the right location, then I take those eight photographs, and that there is site 1 - site 2, I beg your pardon.

50 50

55 I will just ask you a question. Where is that site in relation to the boundary?-- That site would be along the fence line. The fence is in the background of a couple of the photographs. So there's those eight photographs there. I travelled to another location where I take another series of eight photographs using the same method.



I will just stop you there for a moment. Where is the boundary in relation to those shots?-- The boundary, once again, is the fence line. We're driving along the fence line of the property, so-----

1

5 So which is Mr Knights' property?-- Where I am, I'm on Mr Knights' property. I couldn't tell you if the property on the other side is his also; I don't think so, though. And then there was the fourth site, where it's the same set of photographs taken, your Honour.

10

15 Okay. Whereabouts are you there?-- If I may refer to that first page, the sites are located - site 1, where I took the geo-referencing photographs, are at the very corner of the property and the photo is of the corner post. So that gives us a reasonably good idea of where we are - that we're in the right location, and then site 2, 3 and 4 are where we've travelled to, to take photographs. At the conclusion of the photographs, I returned to Mr Knights and offered him once again whether he would like to talk to me about them - about the - what I had seen and he declined again. So I left the property.

20

25 No further questions, your Honour.

BENCH: You're not tendering these?

MR WILSON: I beg your pardon. I seek to tender those photos, your Honour.

30

BENCH: What about this map here that you need? What's your objection, Mr Sheridan.

MR SHERIDAN: Relevance, your Honour. There's nothing at all in this document that links it to the defendant's property.

35

BENCH: Say again? Well, that's - that's supposed to be a map of his property.

MR SHERIDAN: It's supposed to be a map of his property?

40

40

BENCH: And that's supposed to be a chart.

45 That's the boundary of the property marked in black, isn't it?-- Yes, your Honour, it's - the boundaries of the property - its real property address is being Lot 8 on MGL33.

50 So you're saying it depends on this document here being proved?

50

MR SHERIDAN: Yes, your Honour.

55 BENCH: Well, I might admit it - I will just mark it "A" for identification because this witness used it, and - but your objection at this stage is, it hasn't been formerly or properly proved. So we need to get some - an expert to tell us how it was plotted. So you're going to produce that and I

will mark it A for identification, and I will admit the photos  
into evidence, the 26 of them, and mark them Exhibit 8. So if  
you can hand me up the A and if the witness can hand me his 26  
photos, I will be right. I think Mr Wilson's going to give  
5 you that and that, which is going to be A. Thank you. 1

10 ADMITTED AND MARKED "EXHIBIT 8" 10

15 MARKED "A" FOR IDENTIFICATION

MR WILSON: Was that the end of your involvement?-- Unless you  
would like me to actually rattle off-----

20 MR SHERIDAN: I thought my learned friend finished his 20  
evidence-in-chief.

MR WILSON: Sorry.

25 BENCH: You did - he did. Okay. Over to you, Mr Sheridan.

30 CROSS-EXAMINATION: 30

MR SHERIDAN: Right. Thank you, your Honour. Now, Mr  
Forcier, at the time of your inspection, which was the 26th of  
35 October 2004, you were an authorised officer under the  
Integrated Planning Act?-- I was - yes, an authorised officer  
under the Vegetation Management Act.

40 Were you an authorised officer under the Integrated Planning 40  
Act?-- The legislation is in the VMA, but the offences occur  
in IPA.

45 Right, so this authorisation that you had here - this  
authorisation is automatic upon beginning work with the  
Department of Natural Resources? Is that how it works, or is  
there a special conference of this delegation or  
authorisation?-- Yes, an authorised officer is appointed after  
satisfying the Director General of the Department that they  
have the skills or otherwise education to use it. 50

50 And as an authorised officer, you are authorised to swear a  
complaint in these matters if needs be?-- I'm not-----

55 To swear a complaint and summons to instigate a  
prosecution?-- Yes.

And you can swear a warrant?-- Yes.

1

Yes. Now, you said that - in your statement, you say that you went to Acme Downs on the 26th of October 2004, as a result of information received. Now what information did you  
5 receive?-- I received a file which the Department creates. I don't know the person that would have originally identified everything. I presume it was probably a department officer that originally attended the property for any number of reasons, and that a report would have been made and then I  
10 would have received a complaint file.

10

That authorised officer would be Mr Baumgartner, wouldn't it?-- I believe that's correct, yes.

15 The complaint of the illegal clearing came from him, didn't it?-- He alleged there was some vegetation missing from the property that he presumed should have been there.

20 And he visited the property on the 5th of March 2003?-- I don't know when he attended.

20

25 When you first met with Mr Knights at the homestead, you drove in off the road, called at the homestead, saw Mr Knights. Did you record that conversation?-- Did I recall-----

Did you record the conversation?-- I don't - do you mean, via - in the notebook or-----

30 Yes. No?-- In a tape recorder?

30

A tape recorder in your pocket?-- I can't recall, whether that-----

35 Isn't that the departmental policy and practice, to covertly record conversations with landholders upon entry to the property?-- It later became policy to record all conversations.

40 Later became?-- Yes, I-----

40

After this date?-- After that date, but I-----

45 Which date? What - when did it become policy?-- There was a departmental policy that came out after people have started to object to the whole recording of conversations out there, but I don't recall when that date was. On the date I visited, I don't recall whether I recorded the conversation or not, given that it was very short.

50 Now, you were with Mr Elliot on that day?-- I was.

50

Did he record the conversation?-- I'm not sure.

55 Did Mr Elliot take part in the conversation?-- Yes, he would have. Yes.

60

Now, prior to going onto Acme Downs, you didn't check the accuracy of the GPS against the known survey form at any time, did you?-- It was checked afterwards, but not on that day. It was checked as part of the - that particular project we were out on went over several days. 1

Yes, but prior to going to Acme Downs on that day, you didn't check the accuracy or reliability of the GPS?-- I can't recall. But it's not in my notebook, so I presume I didn't. 10

But some time after you went there, you did?-- Yes. There may not have been a survey marker available at the location or nearby.

You left the property at about half past 12?-- That sounds about right, yes. 15

The entire inspection, in which you took all these photos in these points, lasted about 2½ hours?-- That would be correct, yes. 20

The photos themselves were taken over a period of about an hour; is that correct?-- I believe the times are on the photographs, superimposed. 25

Now, did you have a regional ecosystem map-----

BENCH: Sorry, where is this time?-- On the front of the photograph. 30

11.57?-- Yes.

24-hour clock?-- It is.

MR SHERIDAN: Had a regional ecosystem map with you at that time?-- Yes. 35

Which version of the regional ecosystem map did you have?-- I can't recall, sitting here. It would have been whatever the current one - or applicable one at that time would have been. 40

Is there a distinction between "current" and "applicable" in this case?-- They're my words. There would be versions, and it would have been the version that was appropriate to the - when the alleged clearing would have occurred. 45

Right. Let me get this straight. So, whichever is the regional ecosystem map which is current at the time of the clearing, that is the map that's used for the purposes of the investigation?-- I'm - once again, I'm not sure on that, because the maps is produced for me by experts. 50

But you wouldn't go and do an investigation using a map that had been produced - a regional ecosystem map that had been produced after the offence period, would you?-- No. No. 55

Now, when you spoke to Mr Knights about the clearing, he told you that it had been done for fodder harvesting, didn't he?-- I can't recall his exact words, but, yes, it was along those lines, yeah.

1

Now, if I can just - the witness can be shown - I think it was document "A" for identification, your Honour. The big one with the - and the photos that were attached to it. I will just draw your attention to this overview map, as you call it. That is, you say, the locations of where these photos were taken?-- Yes.

5

10

10

The other photographs were - the photographs were taken at various points, and you have GPS coordinates there, site 1 through to site 4?-- Yes.

15

Now, what was on the GPS that day? What's the datum that you used?-- I can't recall what those datums were that - the GPS unit is set for one that's appropriate to the region we're in. It has been some years since I worked for the Department in that - doing this kind of work, so I don't recall what the exact - what the datum was at the time.

20

20

Now, these GPS coordinates, site 1 - your Honour, does the witness have the-----

25

BENCH: Yes, he has got all the photos.

You don't want us looking at your private photos there, do you?-- It's actually not my computer, your Honour, and I'm not sure whose photographs they are.

30

30

It looks like a nice snow holiday. Do you want to turn it off?-- I will try to, your Honour. I'm not familiar with the computer. Let's just unplug it.

35

I don't know whether you should do that. You might wreck something. There you go. Thank you?-- Thank you.

40

MR SHERIDAN: If we can just go to the photo at site 1, the first photo, there's two photos there?-- Yes.

40

There's no suggestion that there's any unlawful clearing being undertaken there, at that site?-- At that site it was mainly to get to the corner of the property, so to identify a location that can be geo-referenced with satellite imagery.

45

If we just look at those two, you had the GPS coordinate that is 55J?-- I can-----

50

50

If you have a look at the first photo?-- The first photograph-----

55

Is the coordinates on the back?-- Yeah, 55J.

515767-----?-- That's right.

-----/6865976?-- 6865976, yes.

1

If we just go to this overview map-----?-- Yes.

5 -----there's no grid at all on this map or this picture-----?-- No, this isn't an overview map. It's simply an aid to the photographs.

10 There's no grid on this at all, that enables any scaling off, so we can try and prove, if you like, where those photos were taken, is there?-- Not on this - no, not on this particular one.

10

15 So this, as a map - as an overview map, as to proof of the location of these photos, is functionally useless?-- That one is, but you could use that location to a map that has been set up.

20 But this is the document that has been produced, and this is what you say-----?-- Yes, this one was produced as an aid.

20

25 -----proves the location of these photos?-- No, I'm not saying it proves it. I'm just saying that's where - that's the sites, as a visual reference, to where those photographs were taken.

30 Is this actually the defendant's property - this subject lot? There's no indication there at all, is there?-- At the top: real property-----

30

I mean on this?-- Well, that's a picture.

35 It's a picture with some - site 1, site 2, 3, 4?-- Yeah, and at the top it references what the picture is.

BENCH: Sorry, have I missed something. Did you ask him where he got it?

40 MR SHERIDAN: Not yet, your Honour.

40

BENCH: I thought I might have been so focusing on it, I missed that.

45 MR SHERIDAN: I'm indebted.

50 Where did you get this map - this picture?-- This picture is - this one was produced for me. The imagery, though, is held by the Department, and it is a picture, I presume, of the imagery. But I'm not the expert that creates these.

50

BENCH: I don't think you answered the question, somehow. Where did you get it?-- I didn't create this map, and it was given to me by another officer within the Department.

55 MR SHERIDAN: So when this came back from another officer of the Department, did you check that these - site 1, 2, 3, 4 - were faithful to the GPS coordinates that you recorded in your

notebook and on the photos?-- Well, not on this, because that was never what this was designed to do. I'm satisfied that the photographs were taken in the correct location, according to the GPS, and to my notebook.

1

5

But other than this visual representation on this picture, we have no way of knowing, really, have we?-- Not on this particular one, no.

10 Are there any other particular ones that we are likely to see?-- Well, I - I suspect someone who actually produces these - and it's their profession - will identify the locations against a map.

10

15 Are we going to get disclosure of any of that? Whenever you're ready?-- I'm sorry, I couldn't hear-----

20 Sorry, I was talking to my learned friend. What you're saying now is, because this picture is of no use at all, there is going to be someone else come, who has produced a map that will show where these photos are?-- What I'm saying is, these photographs were taken at a specific location. If someone is - I'm prepared to say - well, I'm saying that this is the location they were taken. An expert can plot that location onto a map.

20

25

And that expert would never have attended this - it won't be Mr Elliott, will it?-- It won't be Mr Elliott.

30 So that expert will produce a map that will attempt to show where these photos were taken when that person was never there?-- Well, the person - a person can - can develop - a cartographer or - or someone appropriately qualified, can produce a map with - with locations on it. And I am saying the locations that these photographs were taken is where I stood to take them.

30

35

40 You said in your evidence-in-chief, when Mr Wilson asked you where the location of the boundary was in one or two of those photos - and you said the boundary was the fence. Is that correct?-- Yes, that is what I said. There was a boundary there.

40

40

45 Did you - sorry? The survey boundary?-- There's a - there's a - there's a boundary there. A fence line, a boundary to the property.

Is the fence on the boundary?-- I presume so.

50 Well, why would you presume that? Did you have a survey plan with you?-- Well, I wouldn't - I don't know why you would put a fence if it wasn't on the boundary, but I didn't ask the owner.

50

55 Fences aren't always on the boundary, though, are they?-- I - probably not. Not always, but most of the time they are.

"Probably not"?-- Well, in my experience, most fences are on boundaries.

1

5 Was this one on the boundary?-- That one is on a boundary, as I understand it, yes.

Where do you gain that understanding?-- Using the mapping that I had at the time, it indicated that that was where I was.

10 You didn't have a survey plan with you at the time, did you?-- I would have had a - what I believe they refer to as a smart map, which is the Department's information plotted onto a map which is - has the cadastral boundaries and so forth.

10

15 The digital cadastral database?-- I believe that is what it is called, yeah.

Nothing further, thanks, your Honour.

20 BENCH: Any re-examination?

20

MR WILSON: Just a couple of things, your Honour.

25 RE-EXAMINATION:

30 MR WILSON: Mr Baumgartner-----?-- Mr Forcier.

30

-----is he involved in prosecutions at all?

35 BENCH: This isn't Mr Baumgartner, sorry.

MR WILSON: No, I am sorry, but he-----

BENCH: That is what you called him.

40 MR WILSON: No, I didn't. I said, "Mr Baumgartner - is he involved in prosecutions?"

40

BENCH: Oh.

45 MR SHERIDAN: Your Honour, that question didn't arise out of cross-examination.

50 MR WILSON: Well, it was implied, your Honour, because it says that Mr Baumgartner was an authorised officer. I just want to clarify who does prosecutions and who doesn't?

50

55 MR SHERIDAN: I think my learned friend is drawing a very long bow, trying to infer an implication I made in a question, which was faithfully repeated by learned friend, that I asked him - this witness - was he an authorised officer. I asked Mr Baumgartner, was he the authorised officer, but not this witness.



1

BENCH: Well, I thought you asked them both.

MR SHERIDAN: I don't think I asked this one a question about  
5 Mr Baumgartner.

BENCH: No, you didn't ask him about Mr Baumgartner, but you  
asked this officer was he authorised.

10 MR SHERIDAN: Yes, I did, your Honour.

10

BENCH: And that is-----

MR SHERIDAN: And I asked Mr Baumgartner was he authorised. I  
15 didn't ask this witness, "Was Mr Baumgartner authorised,"  
because that question would be improper because he can't  
answer it.

BENCH: Whoever is involved in prosecutions, that is  
20 irrelevant to the court's decision, Mr Wilson, unless you show  
me some reason why it is relevant and then I will consider the  
question further.

20

MR WILSON: Well, from my recollection, he did say that Mr  
25 Baumgartner was an authorised officer, to Mr Forcier at one  
stage then, and he had been to the property and seen the trees  
cleared. I just wanted to clarify that Mr Baumgartner is not  
able to prosecute, he's not an investigator.

BENCH: Well, I don't think this witness, with all due respect  
30 to his infinite experience and knowledge - but he won't know  
what Mr Baumgartner's relevant delegations at any one time  
were unless he checked.

30

35 MR WILSON: True-----

BENCH: Did you check?-- No, I didn't, your Honour.

So he can't answer the question.

40

MR WILSON: What I'm trying put it to him is that-----

BENCH: Sorry, this witness doesn't know what Mr Baumgartner  
45 can do. He doesn't - probably doesn't even know what position  
number he held. He didn't - he had scant recollection of Mr  
Baumgartner, anyway.

MR WILSON: That is exactly right, your Honour, but there is a  
50 compliance coordination unit that does all the prosecution  
matters.

50

MR SHERIDAN: Your Honour - well, my learned friend is now  
giving evidence from the bar table.

55 BENCH: Yes. Please, don't give any evidence from the bar  
table.

60

MR WILSON: Well, can I ask my friend the question and then you can rule on it? 1

BENCH: Sorry?

5

MR WILSON: May I ask my - may I ask the witness the question?

BENCH: No, because there is an objection to your question. That is where we are at. And I said, as a preliminary decision, that who is in prosecutions is irrelevant. And I have asked you, why is it relevant, and you have refused to respond to that request. 10

MR WILSON: I thought that I explained to you that it is relevant about - he can prosecute. 15

BENCH: For what reason? Why is it relevant?

MR WILSON: Because my friend here has implied Mr Baumgartner has got the authority to prosecute. 20

BENCH: I didn't hear him ask that question.

MR WILSON: Well, maybe I have misunderstood, but that is what I thought he - was heading down that line. But - well, I will withdraw that question. 25

BENCH: I don't think that Mr Sheridan asked this witness if Mr Baumgartner was an authorised prosecutions officer at all. He only asked this officer about his own ability to prosecute; as he did with Mr Baumgartner. It would be hearsay for this witness to tell us anything about Mr Baumgartner, and you had ample opportunity to ask Mr Baumgartner when he was here, which I think you did. 30

35

MR WILSON: Okay.

BENCH: So, thanks. I disallow your question.

MR WILSON: Okay, thank you, your Honour. I have no further questions, your Honour. 40

BENCH: Can you tell me what the CENRFP mean on a plan?-- No.

Did you look at this plan - I am showing the witness Exhibit 2 - when you went out to take the photos?-- I couldn't tell you if - if it was that plan I - I used or not. 45

Thank you.

50

Any questions arising out of my questions? 50

MR SHERIDAN: No, thank you, your Honour.

BENCH: Mr Wilson?

55

MR WILSON: No, thank you, your Honour.

1

BENCH: Thanks very much for giving evidence today. We do appreciate that. If you can just leave those exhibits there, we will pick them up. Thank you.

5

WITNESS EXCUSED

10

10

BENCH: And your next witness?

MR WILSON: Victor Craig Elliott.

15

VICTOR CRAIG ELLIOTT, SWORN AND EXAMINED:

20

20

MR WILSON: Mr Elliott, can you tell the court your full name, please?-- My full name is Victor Craig Elliott.

25

And what position did you hold at the time of this matter?-- I was the Regional Compliance Manager for the South East Region of the Department of Natural Resources and Mines.

30

30

And how did you come to be involved in the matter?-- My initial involvement was assisting Mr John Forcier with the initial site inspection.

35

So can you tell us what occurred on that day?-- That was on the 26th of October 2004. Mr Forcier and I attended the property, which is south-west of Bollon, and, on entry to the property, approached the homestead and spoke with the defendant.

40

40

Okay. So what happened after you - were you present for the conversation?-- I was. During the conversation I was aware Mr Forcier had a digital recorder recording the conversation and my recollection of the conversation, essentially, was that the defendant declined to give us consent to enter the property. A warrant to enter the property was executed. And he also declined to speak with us further or to accompany us on the inspection.

50

50

Okay. What did you do then?-- We then did an inspection of the southern portion of the property which is down a - along a fence line - a boundary fence on the eastern side of the property, and took a series of photos at four different sites.

55

Could the witness see the photographs of Exhibit number 8, and also the document marked for identification, A? There's a document there - this map or photograph. Can you describe to the court what that is?-- It is titled Site Inspection. It

60

has "A" for identification written on it. It is, essentially, a satellite image of the southern portion of the property and showing four sites that Mr Forcier and I attended.

1

5 Do you know who prepared that document?-- I prepared that document.

How did you prepare that?-- I used a computer software called ArcMap. It is, essentially, a GIO system where specific GPS points or coordinates can be shown on a map. I used software to develop the map and then print it out.

10

15 Talking about GPS, what sort of GPS did you use on that particular day?-- On that particular day it was a Garmin - Garmin Map 76 GPS.

BENCH: Sorry?-- The make of it, your Honour, is Garmin Manufacturer.

20 How do you spell that?-- G-A-R-M-I-N, and the model is a Map 76.

20

25 MR WILSON: Can you tell me anything about the accuracy of that GPS?-- The GPS displays the accuracy on the screen. It can be down to three metres' accuracy. To verify the accuracy with the device, we actually check it against the permanent survey mark. In this case, I understand we - from recollection, we went to a permanent survey mark in Saint George, at the end of the day.

30 30

Do you remember the results of that test?-- I remember I did make notes in my notebook but my independent recollection is that it is - it was reasonably accurate.

35 When you say reasonably accurate, what do you mean by that?-- As in metres - within a few metres.

40 I will take you back to - you finished talking to Mr Knights, and you have gone off on the inspection of the property. How did you locate your way around the property?-- From recollection, we would have had aerial photos or satellite images which would have - gave us a basic outline of what the property looked like. We would have identified, essentially, where we wished to look at suspected cleared areas and then found our way via tracks that we found on the property. So, to identify it exactly, we used the GPS as we moved.

40

Your Honour, perhaps I could set up this machine again.

50 BENCH: Well, what for?

50

MR WILSON: I was just going to go through the photographs again.

55 BENCH: Well, I've seen them twice. It is not going to make them any more interesting.

MR WILSON: Okay.

1

BENCH: They are perfectly interesting the way they are, but  
if you can just have a look at the ones that you have got  
5 there. You don't need to see anything, do you, Mr Sheridan?  
You haven't forgotten them yet, have you?

MR SHERIDAN: No, your Honour, they're etched.

10 BENCH: Or did you want to ask the witness some questions  
about each individual photo? You didn't of the last witness,  
did you - much?

10

MR SHERIDAN: No, your Honour. I will ask him some questions,  
15 but that is-----

BENCH: Later.

MR SHERIDAN: He can answer them from those photos.

20

BENCH: Yes?-- I believe I can, your Honour.

Sorry?-- I believe I could - would be able to answer the  
questions from the photos.

25

So they are the photos?-- Yes, I believe they are, yes.

Thank you. The witness is referring to Exhibit 8.

30 MR WILSON: What are your recollections of the inspection of  
the property?-- The property itself - we found areas that had  
been cleared in the southern portion of the lot. It appeared  
that it had been mechanically cleared; by that I mean, dozers  
- two dozers and a chain or a single dozer had pushed the  
35 timber over.

30

What position was the timber left in?-- Essentially, left on  
the ground. There was no effort to stick rake it. By that, I  
mean push it into heaps; it was left on the ground.

40

Were there any rows at all?-- Not any real, distinguishable  
rows that you could see on the ground. It was, as I said,  
mostly left where it fell.

45 Your Honour, I seek to tender this document here, that is  
marked as "A".

BENCH: Any objection, Mr Sheridan?

50 MR SHERIDAN: Well, this witness has identified that he  
produced this, your Honour.

50

BENCH: Well, I am just - I need to ask a few questions if you  
are not objecting because I don't understand it.

55

Where did you get the satellite image?-- We have a library of  
images. It is, essentially, a key map, if you like, your

Honour, for the whole of state. We can identify exactly what satellite image matches up to what piece of land. And then using a database, essentially, you can identify the lot on plan that we are looking at to make sure that we have the correct satellite image overlaid on it. 1

5 Did you plot the boundary?-- No, there is a digital database which provides those - those boundary lines for the property.

10 What is the digital database?-- It is called the digital cadastral database, DCDB, for short. Essentially, again, it is a set of information that the Department holds. 10

15 So, you got the satellite image out of your library - and did you arrange for it to have this DCDB boundary plotted on it-----?-- Yes.

20 -----or was it already there?-- Essentially, I can do that using the software. It rides----- 20

That is your ArcMap, is it?-- Yeah, that is ArcMap, the GIS software. It, essentially, shows-----

25 Well, where did you get the coordinates for the boundary?-- It is already formed. When a - my understanding of it, your Honour, is when a surveyor surveys a new plan, they will then provide that to the Department who verifies it through our surveyors. They then create it as a digital database which is available for anyone in the Department to use. 30

30 Okay. Just let me look at "A" again then?-- If you like, your Honour-----

35 Well, that is not the whole lot?-- No, that only shows the southern portion of the lot. The second inspection in August-----

40 It is not the same - it is not the whole lot on the plan that has been tendered?-- No, again, the software allows you to cut out a particular section. On the inspection in August that I completed it shows the entire lot. 40

So, you have got no objection, Mr Sheridan?

45 MR SHERIDAN: No, your Honour.

BENCH: Okay. That will be admitted into evidence and marked Exhibit 9.

50 50

ADMITTED AND MARKED "EXHIBIT 9"

55 MR WILSON: You took the photographs. What has happened next?-- On that particular day, we subsequently left the

property. We called down at the homestead again and then left  
the property.

1

5 Did you have any further involvement in this matter?-- I did.  
Mr Forcier left the Department for other employment. I  
subsequently took over the file just to complete the  
investigations. In August 2005, I was aware that Mr Forcier  
had been in contact with Dr Mike Olsen to look at the property  
as well. In August 2005, I re-attended the property with Mr  
10 Olsen - Dr Olsen and performed another site inspection.

10

BENCH: You had better give me back Exhibit 8 so these photos  
don't get mixed up.

15 MR WILSON: Just a minute.

BENCH: Thank you.

20 MR SHERIDAN: Sorry, your Honour. We just - we hadn't seen  
these yet.

20

BENCH: You haven't?

25 MR SHERIDAN: No.

BENCH: So it's prosecution by stealth. Well, it might take  
you a little while to go through them with your client and get  
some instructions, might it not?

30 MR SHERIDAN: Yes, your Honour, it might. Maybe it is an  
appropriate time now, your Honour.

30

35 BENCH: Well, how many more adjournments are we going to have  
to have? Can you please check - over lunch, Mr Wilson, can  
you please check that Mr Sheridan has every document you are  
intending to produce, because this is extending the trial  
unnecessarily, because if these photographs had been supplied  
to the defence, the defence would have known about them and we  
wouldn't need to have an adjournment now.

40

40 MR WILSON: Well, the defence have been supplied with them,  
but they're supplied in a different format.

45 BENCH: What, 96 photos is what you're holding up - 96 photos.

MR WILSON: I only - I only estimated 96, your Honour. I just  
counted the number of pages-----

50 BENCH: Mr Wilson says you've got them all, Mr Sheridan, and  
you don't need an adjournment.

50

55 MR SHERIDAN: Well, just a second, your Honour. These photos  
- well, not the photos - the copies of them were disclosed to  
us in a compact disk which contains a lot more photos than the  
ones we've been disclosed here. The material that has  
disclosed to us possibly includes irrelevant material, and  
over lunch-----

1

BENCH: We'll keep going. I won't lay an adjournment now, because we're going to stop at one, and then we'll be starting again at two, and that will give you an hour to have your lunch and sort out what you're going to do.

MR SHERIDAN: Thank you, your Honour.

BENCH: Thank you. And seeing as the matter is listed for three days, if you need to get instructions overnight I can stand this witness down and go on with another witness, or Mr Wilson can. Yes, Mr Wilson.

10

MR WILSON: So tell us about your inspection with Dr Olsen?-- On that particular day, we attended the homestead again. The defendant's wife was present. I had a conversation with her and executed a warrant to enter the - the property.

Yes?-- And we subsequently attended another northern part of the property on that afternoon and, again, attended a number of sites, took GPS readings of those locations, and took photos of those locations.

20

Yes?-- We then left the property that afternoon, returned to Saint George for the night, and then re-attended the property the following day, on the 16th.

And on the 16th?-- We continued the work we wanted to do on the northern section of the property, again taking GPS readings and photos, and Dr Olsen was taking in the measurements of vegetation. We then moved across Fernlea Road to the southern portion of the property and attended another - a number of sites along the - the southern portion.

30

And how did you navigate around the property?-- Again, using GPS device and maps.

Did you keep any record of where you took the photographs?-- I did. I've made notes at the time in my official notebook.

40

Did you have any further contact with the defendant after this?-- Subsequently, after we've left the property on that day I returned to the office and have made contact with the defendant by a letter - by registered post, rather, indicating the area of interest to the Department in terms of the - the alleged offence, and offered him a - an opportunity to explain the - that clearing.

Did you get a response to that?-- Subsequently got a response via his legal representative declining to make any further comment.

50

I don't think I can ask any more without the exchange of photographs.

55

60



BENCH: You can go to the photographs. You told me Mr - you gave them to Mr Sheridan. He agrees he got them plus others. So he's going to have lunchtime to sort it out.

1

5 MR SHERIDAN: All right.

MR WILSON: Also, this document, too. What can you tell the court, first of all, about the A4 documents?-- The A4 documents, time of the site inspection-----

10

10

BENCH: That's not A4.

MR WILSON: A3. Sorry?-- A - sorry. A3. The document that's titled Site Inspection has an internal reference number relating to this case, and it shows the sites that I attended with Dr Olsen on the 15th and the 16th of August, and again, it's an overlay of a satellite image for the - the full property, with the DCDB property boundaries also shown.

15

20 And what sort of map is this one? What sort of map is it?-- In terms of?

20

The images?-- The image is a satellite image.

25 So if you can just go through the photograph and tell us what you saw and where the location was?-- Okay.

Is this on the computer?-- It is.

30 Would it assist if we run it from the computer, your Honour.

30

BENCH: Well, I repeat, it would have been of much better assistance if you had four copies of the photos; one for you, one for Mr Sheridan, one for me and one for the witness. I don't want to be difficult about it, but that is the way that it is best handled, with them all marked the same, so we can all sit at out spots and see them. Otherwise, if it's on a CD that we can have projected up on the board, then you can admit the CD into evidence. But I don't know how you want to do it. If it is on the computer-----

35

40

MR WILSON: Yes.

BENCH: -----you might be able to burn it onto a disk over lunch and we can all look at it, so everyone can see it, because you've got all that equipment set up, and then you can just tender the CD. Otherwise you can just go on the photos, I don't mind. But, seeing as it is 1 o'clock, if we are just about to start a lengthy process, we may as well have lunch and come back after lunch and start with the photos. Do you both agree?

45

50

50

MR WILSON: Yes, your Honour.

55 MR SHERIDAN: Yes, your Honour.

BENCH: Thank you. Well, however you work out how you want to do it between the two of you or three of you or seven or eight of you, then I am happy. So long as it is - everyone can see what's going on and we can just have the one thing tendered.  
5 Thank you.

1

THE COURT ADJOURNED

10

10

THE COURT RESUMED

15

VICTOR CRAIG ELLIOTT, CONTINUING EXAMINATION:

20

BENCH: Yes, please.

20

MR WILSON: Thank you, your Honour. I seek to - I will just give you this disk?-- Thank you.

25

Could you tell the court what that is, please?-- It is a CD. It is a copy of photos and voice recordings in relation to the inspection in August of 2005.

30

And can you tell us a bit about those photos on there?

30

BENCH: Are you going to show them?

MR WILSON: Yes, okay.

35

BENCH: It would be better if we looked at them.

MR WILSON: I beg your pardon?

40

BENCH: It would be better if we looked at them rather than heard a description of them, wouldn't it?

40

MR WILSON: Okay.

45

BENCH: How many photos are on there?-- There's approximately 90 photos, your Honour.

Okay. Let's have a look at the photos.

50

MR WILSON: Your Honour, did I hand up, before the break, an overview map?

50

BENCH: No. You didn't hand anything up.

55

Have you got your map there with the sites marked on it?-- No, your Honour. I do have a another copy here but perhaps it's best if I looked at the one being admitted.

Do you want to hand one up to me?

1

MR WILSON: I just thought that I - did I-----

5 BENCH: Have you got one for the witness and one for me, so we can look on where the sites are?

MR SHERIDAN: Your Honour, we have got two copies if you want-----

10

BENCH: Okay. Thank you.

10

MR WILSON: I've got one.

15 BENCH: One for the witness? Thanks.

MR WILSON: Thank you, your Honour.

20 If I can just ask you to - in relation to this overview of the map - what can you tell the court about this overview map?-- The overview of the map shows the entire lot; the northern and southern sections and the sites that Dr Olsen and I attended.

20

25 And who created this map?-- I created this map.

And how did you create the map?-- That was created by the ArcMap map software using a digital cadastral database to show the property boundaries and a satellite image.

30

30

And how did you locate those sites?-- Those sites are entered onto the map using the GPS coordinates that I recorded when I was on the property with Dr Olsen.

35 If you could continue with the photos?-- The photos show, unfortunately, another investigation, as well. I will screen through to the-----

MR SHERIDAN: Your Honour, I object.

40

40

BENCH: Are these photos numbered?-- They are. They show a previous investigation I did, approximately a week or so beforehand, as well as this-----

45 Well, why didn't you delete of the disk?-- I wasn't aware that they were on there, the disk, your Honour. It's the - the camera used is - records directly to a disk. So in the course of the investigation, they-----

50 Okay, what numbers? What's the first photo that's relevant to this investigation?-- The first photo is DSC00443,

50

55 How come they aren't - they're not sequential, those numbers?-- I'm not too sure there, your Honour. I would have to refer back to the index I used, which Mr Wilson has.

Okay. You had better highlight that one then or - that photo.

1

MR WILSON: Do you need this for assistance, do you?-- That's, essentially, the index that shows each photo with each site. Thank you. If you look at the photo that is shown on the screen at the moment, it shows a site - site 1, which is on the northern section of the property. So these first eight photos, your Honour, show those from site 1. That's the final photo for site 1. Each - at each site we take eight photos in a clockwise direction, showing each compass point.

10

Are you able to say from that, which ones are Mr Knights' property and which aren't Mr Knights' property?-- The first photo that I showed was directly north and moving through this final would - in a clockwise direction, would be the neighbouring property. This next photo is site 2, which is down on the boundary, the southern boundary of the southern - of the northern lot. So, again, it's taken in a clockwise direction. It is the final photo at that site.

20

Are you able to tell the court which ones are Mr Knights' property and which aren't Mr Knights' property?-- Again, the first photo starts at the north and it goes in a clockwise direction. So the first three photos are of the property, the next three would be of the stock route, I believe, and then it's back - in a clockwise direction, back onto Mr Knights' property. Site 3, same situation; we're on the northern property - northern part of the property again. Eight photos taken in a clockwise direction. This first one's north.

30

Is that Mr Knights' property, the first one?-- It is. And that's the final shot, which will be taken to the north-west.

And whose property is that one?-- Again, near the boundary of Mr Knights' property, so there's - there was a chance in this one - I'm not a hundred per cent certain - there's a chance it is a neighbouring property. But it's right on the boundary. Site 4. Again, starting in a northerly direction, moving in a clockwise direction, site 4 is in the middle of the property near a drainage line, or possibly a creek, I'm not too sure, on the northern part of the property. And that's the last photo for site 4. Site 5 is again on the northern part of the property. Again, a series of eight photos taken in a clockwise direction starting on the north, facing north. And the final property there, as you can see there is retained vegetation in that one. Site 6, it's in a sandy area, sort of in the middle of the northern part of the property. There's only two photos there. I believe - there is no remnant vegetation there.

50

BENCH: So you didn't take eight there?-- No, only two photos there, your Honour.

MR WILSON: Was there any evidence of clearing at that point?-- That spot there, I remember was a sandy, almost a dune, with sort of a wild fire cover on it - wild flower cover on it, sorry. Site 7. Again, it is - we have moved along a fence line on that property. It's towards the middle of the

55

northern block again. There's a series of eight photos here, starting north, moving across to the east, and around the compass points. That is the final photo for site 7. Site 8 is in close proximity to it. And again, it's a series of eight photos. Starting to the north, moving clockwise; that's the final photo for that site, site 8. Site 9, you will see, is on the southern portion of the property. Again, a series of eight photos there.

1

And who's property is that on?-- Again, with - that's on the northern boundary of the southern portion of the property. So the northern shot goes out onto an adjoining property. They're on a fence line for the property boundary. That's a photo of the east, which is Mr Knights' property. And as you scroll through to the - through the points of the compass, again, it moves across Mr Knights' property. That's the final shot for site 9. Site 10 is the next one. We've moved further south on the southern block - of going down the eastern boundary. The first shot is to the north. It swings across to the east, which is here, which is an adjoining property, and comes back to Mr Knights' property again. That's the final shot for site 10. Site 11, we have moved further south down along the boundary. The first shot for site 11. Facing north again. Rotates in a clockwise direction.

10

20

Whose property is that one there?-- Again, it's Mr Knights' property. You are on a property boundary, so the shots to the east show the neighbouring property. The remainder are Mr Knights' property. And the final site is site 12. With this site we are in the south-eastern corner of the property, near the boundaries. This first shot is to the north, which shows Mr Knights' property. You can see the wheel tracks where we had come down the track along the boundary. As we move to the east, we're showing the adjoining property here. We are now coming back into Mr Knights' property. That's the final shot for site 12.

30

BENCH: What else is on the disk? Anything?-- That's not it - here we are. It's separated into its operating folders, your Honour, that shows the-----

40

No other photos there, though?-- The disk-----

Other than beginning ones?-- Disk 1 photos show the photos taken with - by Mr Forcier.

MR WILSON: Your Honour, with the consent of my friend I would seek to tender this document, which is an overview map, together with the photographs that we've just seen, which might make it a bit more difficult.

50

BENCH: Aren't you tendering the CD?

MR WILSON: I am going to tender the CD, as well.

BENCH: Okay. Plus these other documents? You said it was with the consent of your friend, so you shouldn't need to show the witness. Thank you. Could you bring them up, Michele? A bundle of photographs with a map on the front, labelled Site Inspection, is admitted into evidence and marked Exhibit 10. 1

10 ADMITTED AND MARKED "EXHIBIT 10" 10

BENCH: Are you handing up the CD, too?

15 MR WILSON: Yes, your Honour.

BENCH: The CD will be admitted into evidence and marked Exhibit 11.

20 ADMITTED AND MARKED "EXHIBIT 11" 20

25 BENCH: Yes, Mr Wilson.

MR WILSON: Thank you.

30 Did you make any inquiries as in relation permits for this property?-- I had seen on the file that had been prepared for Mr Forcier, that there was an application for a permit, but no actual permit had been issued. 30

35 Now, you're an authorised officer?-- I am, under the Vegetation Management Act.

Now, Do you know how many authorised officers there are in the Department, or who they are?-- In the Department, no, I wouldn't know exactly. For the team in the south-west, yes, I do----- 40

45 In the south-west, perhaps?-- Yes, in the south-west region of the Department, yes.

And who are they?-- Essentially, all the investigators in the compliance team, and then one vegetation management officer is authorised.

50 And in relation to prosecution matters, who deals with those?-- The investigations - the investigators in the compliance unit, compliance team. 50

Okay. And Mr Baumgartner, is he in - where does he work?

55 MR SHERIDAN: I object, your Honour.

BENCH: Yes, on what basis?

1

MR SHERIDAN: It's hearsay. Mr Forcier can't give any  
evidence of the authorisation of Mr Baumgartner. Mr  
5 Baumgartner already has given evidence.

BENCH: All right. Yes, your response?

MR WILSON: I didn't ask about his authorisation, I asked he  
10 worked, your Honour.

10

BENCH: Why? You had him here in person.

MR WILSON: Yes, I know. I just wanted to clarify about the  
15 investigations, that's all - who conducts investigations.

BENCH: You wanted to clarify what?

MR WILSON: Who conducts investigations.

20

BENCH: Why? Why does that matter? I only need to know who  
conducted this investigation. I've heard all about it.

MR WILSON: Well, I just thought it was-----

25

BENCH: I don't need to do a map of the Department.

MR WILSON: No, I'm not trying to suggest you do, your Honour.

30 BENCH: Why on earth would I need to know that?

30

MR WILSON: I just want to - once again, it comes back to who  
is an authorised officer and what their powers are.

35 BENCH: Why? You called evidence from Mr Baumgartner about  
what he did. He wasn't cross-examined he didn't have power to  
do that. You've called this officer. He has told us what  
he's authorised to do. I disallow the question.

40 MR WILSON: Now, I will just take you back to after you've  
taken those photographs with Dr Olsen. What happened  
then?-- After we completed the site inspection?

40

45 Yes?-- Yes. We left the property, subsequently returned to  
the office, and, at a later time, I sent a final letter to the  
defendant asking if he had any further comments or response.

50 Okay. And what resulted from that?-- The defendant's legal  
representative contacted me in writing and advised that there  
was no further response coming.

50

I have no further questions, your Honour.

55 BENCH: Thanks. Yes, please.

CROSS-EXAMINATION:

1

5 MR SHERIDAN: Thank you, your Honour. Mr Elliott, on the 26th of October 2004, you and Officer Forcier went to Acme Downs; that's correct?-- That's correct, as the property is commonly known as.

10 And that was some three years after the first offence period, wasn't it?-- I believe so.

10

And one year after the second offence period?-- I believe so.

15 Now, at that first - at that first meeting at the homestead at Acme Downs, you spoke to Mr Knights?-- That's correct.

And you say in your statement you do not recall the exact details of the conversation?-- That's correct.

20 20

Then you descend into some detail in respect of the conversation?-- I had some recollection of the conversation, but the exact detail, no, I don't.

25 And Mr Forcier taped the conversation?-- I believe he did.

Now, you have been responsible for this investigation and prosecution since that time?-- Up until - until the issue of the complaint summons, yes.

30 30

Until the issuing of it?-- Yes.

35 So, between the time you went to the - the time you went on the first visit, you've been responsible to it, until the 18th of February 2005?-- Well, once Mr Forcier left the Department, then I assumed responsibility for it. Prior to that, I was aware of the investigation, obviously.

40 Now, you've been responsible for gathering the evidence-----?-- Yes.

40

-----in respect of the complaint?-- Yes.

45 You say in your statement that you - when you went back to the - on the second visit with Dr Olsen - that you tape recorded a conversation with Mrs Knights?-- That's correct.

50 And that tape - a copy of that recording has been provided?-- To yourself?

50

Yes?-- Yes.

55 Now, where is the copy of the tape recorded conversation with Mr Forcier?-- I'm not aware of where the location of that recording is, and, as I said, I was of the understanding that he had tape recorded that conversation, but I'm not sure where - if a copy was made, where it is now.



1

But wasn't that your responsibility to gather all the relevant material, as the investigator?-- Yes, to maintain all the evidence I have - I've been provided.

5

Did you make any inquiries with Mr Forcier as to where the copy of that recorded conversation was?-- Yes.

10 What did he say?-- He couldn't recall whether we had recorded the conversation or not.

10

15 But you wrote in your diary that it was on J Forcier's tape, didn't you?-- I can't remember what I noted in my diary, but, as I said, I was of the understanding that the conversation was being recorded as we entered the property.

20 Because isn't the idea of this covert tape recording to protect defendants as well as investigators?-- I wouldn't call it a covert recording, because it might not have been covert in that sense. But the idea is, one, to prevent false complaints, and two, to - if there is evidence to be gathered, that the best record is gathered.

20

25 The second conversation, when you went back with Dr Olsen, was covertly recorded, wasn't it?-- It was. It would have been in my hand or in my pocket - the recording device.

30 If it was in your pocket, she wouldn't have been to see it, would she?-- Well, the microphone would be seen. But, again, I wouldn't expect someone to actually appreciate what that recording device is.

30

35 But you didn't let her know that you were recording her?-- No, I wasn't speaking with the person who I suspected of an offence.

So it's all right to covertly record people in those circumstances?-- Well, it's certainly not against the law.

40 So long as you're partaking in a conversation?-- That's correct.

40

45 Now, the first time you were there, did Mr Forcier tell Mr Knights he was recording him?-- I don't recall.

Did you take part in that conversation?-- Yes, I did.

50 In the first time?-- The first time, I believe I did, yes, in a sense that it would have been more standing back and introducing myself, but Mr Forcier was responsible for the first part.

50

55 But, unfortunately, either that conversation was never recorded, or the recording of the conversation is not available?-- It could be it has been lost or it wasn't recorded.

60

Now, on the first visit, when you went to Acme Downs, you say in your statement that, "I recall during the inspection that - observed a large area of clearing on the property. I also recall seeing regrowth in vegetation in the cleared areas. I observed copper box and Galvanised Burrs as predominant vegetation returning in the area. I also recall that the cleared timber was left in position after the clearing, that is, it has not been stick raked or piled up." Is that an indication to you that it was used for stock fodder?-- No, it's not a direction indication or definite proof that it is.

But if it had been raked up, that would be an indication that the trees had been raked up for pasture?-- Potentially, yes.

How long after was this? Four - three years after?-- I believe it's two to three years, from my memory.

It had never been burnt?-- I do remember one spot when I was there with Mr Olsen that I saw there was a small fire, but not, like, a large fire across the area.

Which spot was that?-- It was down the southern portion of the property. About two-thirds of the way down the eastern fence.

Did you record a photograph of that?-- No, I don't believe I did.

Now, you will recall in your statement - you swear in your statement - that some of the smaller cleared vegetation had foliage on the branches where the root ball retained contact with the soil. Is that an indication that that vegetation was still alive?-- It could have been. I couldn't provide definite proof on it, but as I said, there were some areas where the vegetation, even though it had been pushed or bent, if you like, over, it was still in contact with the soil.

So, some of the vegetation had been bent over but it wasn't dead?-- Yes.

So in areas that you inspected, there was still standing and living vegetation?-- There certainly, because we had been there a couple of years after the clearing. So there certainly - vegetation has regrown in that time.

You went back to Saint George after the inspection, drove to a permanent survey mark and checked the accuracy of GPS?-- That's correct.

But you didn't check it before you went there?-- No.

Now, you say in your statement that Mr - that Dr Michael Olsen was engaged to confirm the regional ecosystem mapping on the property?-- That's correct, yes.

They were his instructions?-- They were some of the instructions. We were looking at that and any potential environmental impacts from any clearing on the property.

1

And Dr Olsen provided a report?-- He did.

Have you seen that report?-- I have seen it, yes.

5

In that report - in the aim of that report, Dr Olsen says that he was to assess the flora of the site, and the impact on alleged illegal clearing on the rendered vegetation, doesn't it? The actual report that he provided on - in August 2005 doesn't mention at all, in any of his instructions, anything about confirming the regional ecosystem mapping on the property, does it?-- Well, what does his report say at that first part you just read, again?

10 10

Well, we will talk about that later. I'm putting that to you. You were with him at the time that you did the inspection. You saw the report that he provided, and now you swear that, part of, at least - of his task was to confirm the regional ecosystem mapping?-- Yes.

15 20

Well, I will put it to you that in his report, that wasn't part of his instructions or the aims of his report at all?-- Well, it is an outcome of his report.

25 It is a - which?-- An outcome of his report.

We're not talking about outcomes of his report. Was this prepared in the nature of the expert's report?-- Yes, I believe so.

30 30

Why would you engage Dr Michael Olsen to confirm the regional ecosystem mapping instead of the Environmental Protection Agency, who are responsible for the maps?-- I don't recall why we went to Dr Olsen, as opposed to herbarium botanists, but that's the person we used, and he has got the similar credentials and qualifications to the herbarium staff.

35 40

And he assessed the vegetation in the same manner, and using the same procedures as the herbarium would?-- I can't answer that. I don't know what procedures are used-----

40 40

Well you commissioned the report?-- Yes, but I'm not an expert in what the herbarium does.

Well, did you give him the instructions on how he was to assess it or what he was to prepare?-- As I said, he was asked to confirm the regional ecosystem, and to look at the-----

45 50

Was that by you?-- No, originally he spoke to - with Mr Forcier.

Did you review those instructions at all before he conducted his inspection?-- I had spoken with Mr Forcier about those instructions.

50 55

Because if he hadn't been given those instructions prior to his inspection in the report, then this report couldn't

possibly give any indication of the regional ecosystems present at the time of his inspection, could he, because he wasn't asked to do that?-- I can't see why, if he is capable of making an assessment of the regional ecosystem mapping - why he couldn't make that assessment.

1

Well, if he wasn't asked to, he would have no reason to. If it wasn't part of his instructions-----?-- Mmm.

-----he had no reason to?-- I'm not sure I can give you this evidence, because I wasn't privy to those original instructions to Dr Olsen.

10

Yes, but you took over from Mr Forcier?-- Yes.

Did you check those instructions again?-- Directly not with Dr Olsen.

Not with Dr Olsen. You just went and did this report with Dr Olsen and you hadn't confirmed the instructions. You hadn't looked at anything that Mr Forcier had given him, you just went out there and whatever happened, happened, and he produced his report, and now you say that he was engaged to confirm the regional ecosystem mapping?-- I wouldn't agree that whatever happened, happened. As I said, my understanding, and the work that was done on the property, to me, showed that the regional ecosystem mapping was being confirmed - was being checked on the ground.

20

From what you saw Dr Olsen doing, you came to the view that what he was doing was checking the regional ecosystem mapping?-- That's - from my understanding of what the work involves, that's what we were looking at. So it involved looking at land zones and species of the vegetation communities. And, again, it's outside my area, but that's the work that was happening on the ground.

30

So you can't be sure, as you have sworn here, that that was what Dr Olsen was instructed to do or - nor was that what he did?-- That is my understanding of what he was doing.

40

So is this statement here - are you swearing that that's what he did, or is this your assumption - is that what he is doing?-- Well, again, it's my understanding of what he did. So, I can't swear that he did confirm it, because it's outside my area.

So when Dr Olsen was taking his measurements, for whatever purpose, and making notes, you took the GPS coordinates of the locations of the site photographs that have just been tendered; is that correct?-- I took them for my records. That's correct.

50

Did Dr Olsen take any notes as to the location of the photographs, in the application of his----- He did. He had his own GPS unit there.

55

60

And did you see any of the notes that Dr Olsen took in regard to the position of those sites?-- No, I didn't - didn't use his notes or adopt his notes, because, as I said, I was taking my own notes for that purpose, and a lot of the things I wouldn't have understood in terms of the species and communities.

1

Now, the photographs that you took don't correspond with the photographs that Dr Olsen reproduced in his report, do they?-- I can't recall with that, whether they're a direct correlation there.

10

Do you recall how Dr Olsen - how he recorded his position on his GPS?-- In terms of?

15

What datum he used, what coordinates he used?-- No, I don't, sorry.

So as to - so these sites here - the document has just been tendered - these site numbers here don't correspond with Dr Olsen's?-- I'm not too sure there, I would say they would be in the same area, but, as I said, he was - he was taking his own recordings there.

20

Yes, but the photographs that you've taken do not correspond with these site photographs and the location that you've produced on this picture?-- Sorry, could you repeat that question?

25

I'm talking about this document - this picture you've got covering the photos, that shows the sites that apparently relate to those photos that you showed in your evidence-in-chief. The question is, are these sites, as listed on this map, the same sites as Dr Olsen has recorded in his report?-- I haven't compared the two - two reports, so I can't say yes or no there.

30

Now, if you could just have a look - your Honour, if the witness could be given that compact disk that was in evidence in Exhibit 11, please. That photograph, where was that taken? Is this on the subject property is it?-- No, it's not, it's west of Thargomindah.

40

40

The Cooper Basin?-- Yes, it is.

45

Right. Just a moment. The next photo - go back to - the larger photo, is that the first one?-- That's the very first one, 274.

Would you go to the second photo, please. That's out in the Cooper, as well?-- Cooper basin, yes.

50

50

Third?-- Same, Cooper Basin.

How can you be sure where those photos are taken?-- Because I remember that particular investigation.

55

Do you have a GPS coordinate of these photos?-- Yes, I would. 1

Is it in this document?-- Not in this document, no.

5 Next photo? Same area?-- It is.

Keep going. That's in the same area?-- Same area again.

10 That's not on the subject property?-- It is not on this property. 10

Next. Not on Mr Knights' property?-- Not on Mr Knights' property.

15 Not on Mr Knights' property?-- Again, not on Mr Knights' property.

Next. Not on Mr Knights' property?-- No, it's not.

20 Next. Not on Mr Knights' property?-- No. 20

Next. Not on Mr Knights' property?-- No, it's not.

Next. It's Kye Station, isn't it?-- Sorry?

25 It's Kye, isn't it?-- No, it's coming back in towards Thargomindah there.

Next?-- Again, it's only coming back into Thargomindah. 30

Next?-- Coming back into Thargomindah, but not on Mr Knights' property. And again, and again. This is the first shot that's on Mr Knights' property. 30

35 So these are the irrelevant photos - the Thargomindah series, let's call them?-- Yes. So up to 288 is - is on a separate - separate issue.

Well, why would they be provided as part of the evidence for this prosecution, then?-- I'm sure I can say it was done by error, in copying the CD across. 40

40

If we could go over to the next photo, please. Now are these in order? Site 1, aren't they?-- Yes. This is site 1.

45

Next. There's uncleared timber there, isn't there? Not uncleared trees?-- I can zoom it up, if you like.

50 If you could give me the whole screen, that would be really good. That's better. Next photo, please. Next? Now, these - the trees on the right there, they haven't been cleared, have they?-- No, obviously not. No, it's - there's a fence line, if I can use the mouse - there is a fence line just here. 50

55

Now is this - is that - is this a piece of Mr Knights' property?-- I would have to check against the reference map. Excuse me a sec while I try and see the-----

1

5 See, what I'm trying to do is sift out the irrelevant photos from this series?-- Yes.

I just want to - this is on Mr Knights' property, is it?-- It is. This photo is at site 1, looking south. So it-----

10

10

Well, that means nothing to me?-- Right.

15 The question is, is it on Mr Knights' property?-- The fence line you see, that I indicated before, shows the fence line, the outer boundary of Mr Knights' property. So to the left is Mr Knights' property.

And to the right?-- Is an adjoining property.

20 Right. Now, go to the next photo, please? Those trees there haven't been cleared, have they?-- No.

20

25 Does that area form part of the polygon that makes up the alleged illegal clearing - unlawful clearing?-- No, it isn't. That's a photo of the adjoining property. So, again, we're taking a series of eight photos, in a clockwise direction.

30 So this one, which is the sixth one [indistinct] this is the neighbour's property again?-- Yes, it is.

30

That's irrelevant. Next one? Is that Mr Knights' property or the adjoining property?-- It's the adjoining property, as we've rotated around-----

35 Next? Is that the adjoining property?-- That's directed to the north-west, and I believe it would be the adjoining property.

40 Site 2, is that Mr Knights' property?-- This shot is to the north, and is of Mr Knights' property.

40

45 How do you know it's Mr Knights' property, though?-- We're using the location of the site, and the fact that's taken to the north.

You're not able to determine where these photos are taken without reference to this plan here, are you?-- No, obviously, there's 90 photos, so I wouldn't even try to have a recollection of that.

50

50

But there is no GPS coordinate embedded in these photos?-- No, our cameras don't have GPS ordinance built-in, no.

55 So the only way that we can be sure where these photos were taken is because of the location that you put on each of these pages, isn't it?-- That's correct.

And we've already had a whole sweep of irrelevant photos, taken out near Thargomindah, that have been included in this evidence, and now we go through them, we find, according to you, a lot of these photos are taken in the neighbouring property?-- Well, one of the things with these photos is not proving the areas that are being cleared; it's showing indication of the landscape. So the two things that can come from that. It does show timber on the ground or trees that have been pulled or pushed. It also shows neighbouring areas where vegetation is retained. It gives an indication of what the vegetation did look like.

The timber on the neighbouring property gives an indication of what the vegetation would look like?-- Well, vegetation communities obviously don't stop at a particular boundary, so it's-----

Well, depending on the management regime of the different properties?-- Yes. I'm not saying it's conclusive, but it does show - an indication-----

Well, it's absolutely irrelevant, isn't it?-- Well, it provides the indication. I said it's not there to prove a particular point.

It's not here to prove anything?-- No, I didn't say that.

Well, I'm putting it to you, it's not, is it, because it can't?-- Well, I'm saying it shows, at that particular point, what the landscape looked like.

Excuse me, your Honour. How do - even the direction of these photos, north, how do we know that that's taken in the north?-- It's my usual practice there - is to start on the north point and work your way - my way around.

Do you have a compass with you or anything?-- Yes, I do.

Right. And was this due north?-- Yes.

From your recollection?-- Yes, I place the compass on the ground near my feet and move around it, taking the photos.

But unfortunately with this, site 1 isn't the same as every - of these pages. There's no way - there's no grid that we can scale, with a scale ruler - are you familiar with that process? Scaling off GPS coordinates-----?-- Mm.

-----on a grid?-- Yes.

And there is no way that we can test this, is there?-- No. It's an indication, as I said.

It's an indication. Next photo, please. Is that Mr Knights' property?-- Yes, it is.



Next?-- That's a photo to the east, so again, it's Mr Knights' property. 1

Mr Knights' property?-- And see - see the - sorry?

5 Is this Mr Knights' property?-- Well, again, it shows the fence line, so the track on the left-hand side of the fence is Mr Knights' property, and adjoining side is, I believe, stock route, a rural road reserve, a reserve. 10

10 Next. Is that Mr Knights' property?-- No, it's the adjoining land.

15 Next. Mr Knights' property?-- The adjoining land.

Next?-- So again, Mr Knights' property is to the right of the fence, and there's adjoining land.

20 So this is Mr Knights' road here, this track we can see?-- The track down the fence line. 20

And there's - no trees have been cleared in that photo frame, have there?-- I don't believe so, no.

25 There appears to be some cleared in the neighbour's property, doesn't there?-- I can see, referring to one just about there - it could be just natural timber falling over, I'm not too sure.

30 How did you determine that the area has been cleared in Mr Knights' property, and it's not just natural timber falling over?-- Well, again, it is - if you're - in some of my observations, I did see scrape marks on some of the vegetation. But, again, it's----- 30

35 Some?-- Some. But certainly I'm not in a position to look at every single tree or every single hectare.

40 Next photo please. Is that Mr Knights' property?-- Yes, it is. That's to the north-west. 40

And that's standing timber there, isn't it?-- It is, in the centre of the picture.

45 That's not regrowth is it?-- I wouldn't describe that as regrowth.

50 Now, this area, does it form part of the polygons that make up the areas and the particulars that would be unlawfully cleared?-- No, I don't believe it does. 50

Beg your pardon?-- I don't believe it does.

55 So, this area hasn't been unlawfully cleared?-- I don't - don't believe so.

But you don't know?-- No. The-----

1

You're familiar with the area that's unlawfully cleared, as has been particularised in the complaint you swore?-- Yes, I am.

5

But you can't tell whether this photo depicts an area that has been allegedly unlawfully cleared?-- I am saying I don't believe it is, so I don't think that's an illegally cleared area.

10

Can you tell or not, definitively, yes or no?-- I'm saying no.

10

No. So, that photo is irrelevant. That photo has got nothing to do with this?-- These photos, as I said before, relate to showing the landscape. It is not a definitive proof of an illegally cleared area.

15

Well, it's not any proof, is it, because we don't know where they are, and we can't tell unless we - unless we take your evidence that he had - he had a compass on the ground and that's the direction of the photo?-- That's the evidence I provided.

20

20

We can't tell where they were. There's no way we can scale off - using these GPS coordinates that you've used - scale off on a that map in the front - picture on the front - to even determine where these photos were taken, is there?-- As I've provided in my evidence I've indicated where they are.

25

Yes. Next, please. There's standing timber there, isn't there?-- Yes, there is.

30

30

Does this area depict an area that is allegedly unlawfully cleared?-- No, it doesn't.

35

So this photo is irrelevant. Next, please. Does this photo depict an area that was allegedly unlawfully cleared?-- Site 3, and, no, it doesn't.

40

All right. So, that one's irrelevant. Next. Does this area comprise part of the particulars?-- No, it doesn't.

40

Next, please. Does this area comprise part of the particulars?-- No, it doesn't.

45

Next, please. This area comprise-----?-- No, it doesn't.

Next, please. Does that Nissan Patrol comprise part of the particulars?-- No, it doesn't.

50

50

Thank you. Next?-- No, it doesn't.

What's the area to the right of this car?-- To the right, we're on site 3, I think, to the west, so the other side of the fence is an adjoining property.

55

60

So, that's the neighbour's property. So, that's irrelevant.  
Next, please. Does that area form part of the  
particulars?-- No, it doesn't.

1

5 Is it on Mr Knights' property?-- The picture is to the north-  
west, so I don't think it is. I'm not - not 100 per cent  
certain there. I was looking at the fact that it's on the  
boundary.

10 Thank you. Next. We're on to site 4. First photo on the  
panel site 4. There should be one photo before that I've got  
- no, I'm sorry, that was the first one of site 4?-- This is  
the second one, sorry.

10

15 Does this area form part of the particulars?-- I would have to  
double check against the map that has been produced by the  
remote sensing team. The exact areas-----

Yes or no or don't know?-- Don't know.

20 Next, please. Does this area form part of the  
particulars?-- I'm not sure I would have to check against the  
map showing the particularised areas.

20

25 Next, please?-- Again, same answer. I would have to check  
against the map.

Next, please?-- The same answer there. I would have to check  
against the map of the particularised areas.

30 Next, please. Same answer?-- Same answer there.

30

Next, please?-- Same answer on this one.

35 Next, please?-- And the same answer on this.

Site 5. Does this area depict an area particularising the  
fence?-- I don't believe so but I would have to check against  
the map showing the particularised areas.

40 Next, please?-- It's the same answer there.

40

Next, please?-- This is a photo to the east and, again, I  
would have to check against the map.

45 Next, please?-- Same answer on that.

Next, please?-- This is a photo to the south and, again, I  
would have to check against - actually I could say there that  
it wouldn't, if it's a photo to the south.

50

50

I'm sorry, it would or-----?-- It would not-----

It would not?-- -----if it's a photo to the south.

55 Next, please?-- Again, no.

Next?-- It's a photo to the west, and I don't believe it is.

1

Next?-- Photo to the north-west, and I don't believe it is.

5 Now, the last - now, site 6?-- Site 6 doesn't relate to the areas as it's - I don't believe it had remnant vegetation on it.

10 Next photo. Is that an old fence post?-- That's an old fence post, I think.

10

Has it been unlawfully cleared?-- I believe - I'm not sure whether it's an old fence post or not but it's not in the unlawfully cleared area.

15

Site 7. Does that form part of the particulars?-- Quite possibly, but I would have to check against the particularised map. It's a photo to the north.

20 Next, please?-- I - my recollection is to the - past that small screen of trees that have been left is in the particularised areas. Again, I would have to check against the map.

20

25 But from this photo, we can see a large motor car and a man standing next to a fence line and next to that fence line, standing timber?-- Yes, and behind that there's actual regrowth.

30 We can't see what's behind that, can we?-- I can see it on my screen. You can see that's the-----

30

But has the standing timber?-- There's a row of - row of timber here.

35

Yes?-- There is regrowth vegetation behind there and where the pointer is at the moment, there is fallen timber that I can see.

40 Can we see - has a bulldozer chain gone around that?-- No. Obviously not.

40

45 Now, does this standing line of timber form part of the particulars of the unlawful clearing?-- No, I don't believe - no, it wouldn't. It's not cleared.

50 So, you've only particularised the offence insofar as trees that have been knocked over. Is that right?-- The area relates to the regional ecosystem that has been cleared, so it relates back to the regional ecosystem mapping. So when I've received maps back from the remote sensing team, that then provides the areas that have been illegally cleared.

50

55 Within those polygons, isn't it possible that there's actually standing timber within the polygons?-- It's quite possible. I'm not expert in that area.

Well, you've inspected it?-- We're talking about - not talking about individual trees. We're talking about ecosystems, though.

1

5 Yes. We're talking about clearing trees, though, aren't we?-- Well, it's clearing a regional ecosystem.

Yes. Clearing trees?-- Well, trees make up part of the ecosystem.

10

10

Yes, I understand that, Mr Elliott, but the question is, in the polygons that are depicted on the image that you got and you assessed, on the basis that you swore this complaints, as to the areas that have been cleared, have they been cleared or not?-- The information I have given is that they were cleared and that those areas are were then calculated for me.

15

Right. Now, so, this - where the car is, is that Mr Olsen's property?-- Mr Knights', yes.

20

20

Knights?-- Yes.

Sorry. Next photo, please. Is that Mr Olsen - does this form part of the particulars, sorry?-- I would have to check against the map to show exactly where those particularised areas are against these areas, these locations.

25

Check against the map?-- The map produced by the remote sensing team.

30

30

Next, please. Does this area form part of-----?-- That's a photo to the south east from that site and I would have to check against the map.

35

Next photo, please. Same question. Does this form part of the area?-- It's the same answer. It's to the south, so I don't believe it would. I would have to double check.

40

Don't believe it would?-- I would have to double check against the map.

40

Next photo, please?-- It's the same answer there.

45

Next photo?-- It's a photo to the west.

So-----?-- Yes. Again, shows that fence line that we saw in those earlier photos-----

50

Yes?-- -----in another direction.

50

And I would have to check against the map.

Next photo, please. Is that Mr Knights' property?-- It is. It is now pointing to the north-west across that fence.

55

Does this form part of the particulars?-- I would have to check against the map produced.

1

Thank you. Site 8. Does this area form part - first, is it Mr Knights' property?-- It is Mr Knights' property. It's a photo to the north from site 8.

5

Does that form part of the particulars?-- I believe it would, but again, I would have to check-----

You're not sure?-- I would have to confirm it against a map of the particularised areas.

10

Next photo. I won't even ask about that one. The next photo?-- As I take a series of eight photos, I can't hide a vehicle in it. So again, it's photo - that one to the east.

15

Does that form part of the particulars - that area?-- I don't believe so, but I would have to check against the map of particularised areas.

Next photo, please. Does that form part of the particulars?-- Photo to the south-east, and I would have to check against the map.

20

Next photo, please?-- Same answer there. It's going to the south, so I would have to check against the particularised-----

25

Next photo, please. Same answer?-- Same answer.

Next photo, please. Same answer?-- Same answer. That's pointing to the west.

30

30

Next photo, please. Same answer?-- Same answer. That's to the north-west showing where we had come from.

35

Site 9 is this photo?-- This photo is to the-----

Does this photo-----?-- Sorry?

Does this photo depict an area that forms part of the particulars of alleged unlawful clearing?-- No, this photo is to the north, so it shows across the fence.

40

40

The boundary. So it's not his property?-- No.

45

Next. Same answer?-- Same answer there. It shows - starts to show the track that runs along the fence there.

Next. Does this area form part-----?-- This photo is to the east. I believe it is, but I would have to confirm it against a map.

50

50

So you can't be sure?-- I would have to confirm it against a map.

55

Next. Same answer?-- Same answer. To the south-east.

60

Next. Same answer?-- It's to the south. I would have to check against the particularised map.

1

Next?-- To the south-west, and it would be the same answer.

5

So all this site, the same answer, is it? Is that correct?-- Except for, obviously, the photos showing to the north, which show the adjoining land.

Right. So these photos are either not Mr Knights' property, or you can't tell whether they form part of the alleged offence-----?-- My recollection is, it's very close to it, but, as I said, for accuracy, I would have to check against the particularised map.

10

Next photo. Same answer?-- Yes. Same answer there.

15

Next photo. Same answer?-- Well, this photo's to the north-west, so it would be showing the adjoining land.

20

The adjoining property. Site 10. Does this photo form part of----- ?-- This photo is to the north, and I believe it is in the particularised areas.

20

Next photo. Is this area particularised?-- This photo's to the north-east, and, yeah, I would have to check against the map - exactly.

25

Thank you. Next photo to the east. Same answer?-- Yes.

30

Next photo to south-east. Same answer?-- I would have to check against the map.

30

Is that remnant vegetation in the background, is it?-- Yes. I was just looking at that, and I believe it is in the background. That's why I would have to check against the particularised map.

35

Next?-- This photo's to the south, and again you see remnant vegetation in the background and cleared timber at the foreground. I would have to check-----

40

Can you tell how long that that timber has been on the ground?-- I wouldn't. I would be guessing and wouldn't be able to give a clear answer - exact answer on that.

45

Many years, though, isn't it?-- Again-----

It's dry isn't it?-- It's dry, but-----

50

No leaves?-- The ones in the foreground, I can't see any leaves on them.

50

But you don't know whether that's in or out of the particulars - that photograph?-- This photo is to the south. No, I would have to check against the particularised map.

55

Is there standing remnant vegetation in the background?-- In the background, I believe so, but-----

1

Next. Same answer?-- Same answer there.

5

Standing vegetation in the left background?-- Yes, so as we're moving in a clockwise direction, we picked up the vegetation that was retained in the background.

10 Yes. Next?-- Photo to the west. I would have to check against the particularised map to show the exact areas.

10

15 Next, please?-- Photo to the north-west. It's likely, but again, for accuracy, I would have to check against the particularised map.

Site 11. Is that Mr Knights' property?-- It is. Photo to the north.

20 That doesn't form the particularised area, does it?-- I'm not too sure. I would have to check, but I can see in-----

20

25 Next?-- That photo's to the north-east, and I would have to check against the particularised areas on the map.

Next. Same answer?-- It's a photo to the east. In the background, there would be the neighbouring property.

30 Next?-- If I show you the pointer, there's a fence post there, I think - is the boundary.

30

35 Same answer. It's the neighbour's property, isn't it?-- Neighbour's property in the background. Foreground - immediate foreground is Mr Knights' property.

Next, please?-- I would have to check against the particularised areas.

40 Thanks, yes, Next. Same answer?-- Same answer. And obviously you can see the retained area in the background.

40

Next, please. Same answer?-- I would have to check against it to be 100 per cent accurate.

45 Thank you. Next. Same answer?-- It's to the north-west, and to be 100 per cent accurate, I would have to check.

50 Site 12. Does this photo depict an area particularised in the offence?-- Potentially, I would have to check against-----

50

Potentially? Can you swear, yes or no?-- I couldn't swear definitely without checking the particularised areas.

55 Next?-- That photo's to the north. This photo's to the north-east, and it would be-----

Random vegetation, isn't it?-- -----the neighbouring property.



1

Neighbouring property. Next. Neighbouring property?-- Photo to the east, neighbouring property.

5 Next. Neighbouring property?-- Yes, I think it is.

Next?-- That photo's to the south. It shows the track running down the eastern fence, and on the right hand side-----

10 10

Remnant vegetation, isn't it?-- Well, again, I would have to check against the map, but it shows retained timber. It's on Mr Knights' property.

15 Next. There's no clearing there, is there?-- No, I don't believe so.

Next. Does that picture depict an area that forms part of the particulars?-- It's highly likely, but, again, I would have to check against the thing. I can't swear definitely yes or no.

20 20

Next?-- This photo's to the north-west from site 12, and I would have to check against the particularised map.

25 Thank you. Now, slide 90 - how many photos?-- I believe it's 90 photos, I think.

Ninety photos, plus the ones of the Cooper basin, Thargomindah: 96 photos?-- I'm not sure of the number.

30 30

Now, our of the total amount of photos that were tendered under this picture, there are six that are relevant?-- Well, the relevant-----

35 Six are relevant; isn't that right?-- I wouldn't agree with that. They are relevant for different purposes, where they show, as I said before, the landscape, and it's not a case of-----

40 They show the landscape of Thargomindah; they show the landscape of the next door neighbour's property. Those that show possible timber clearing, you can't swear whether they are in the particularised areas?--No, not without checking those - those maps.

45 40

Not without having a map that is useful enough for us to work out where you were?--The map indicates where I was on the property.

50 You, as the complainant, who swore this complaint and the particulars, cannot, without reference to another document, give any evidence as to the location of those photos?--As the complainant, I was provided with another set of maps which indicated a change of vegetation with clearing on it.

55 50

Excuse me, your Honour. Would you agree that the majority of those photos, which are actually on Mr Knights' property, show

standing timber in them?--I think it's a - it's a fair mix of standing timber and timber on the ground.

1

5 That wasn't the question. Would you agree that all the photos - all the relevant photos - show areas of standing timber? That one right there, for instance?--Yes, it shows what I would call regrowth.

10 No, in the foreground, the smaller timber, is that what you would call regrowth?--I will use the mouse. If you get back to, say, the middle of photo-----

10

Yes?-- -----you can see some vegetation coming back there.

15 And you term that regrowth?--That's what I would term as regrowth.

Now, the vegetation in the back of the photo, in the distance?--Showing the taller timber?

20 20

Yes?--Well-----

25 That's not regrowth, is it?--No, it's mature timber; whether it's remnant or not, I'm not in a position to - to say.

It hasn't been cleared, has it?--No, obviously not; it's standing timber but whether it's remnant or not, I'm not in a position to say.

30 So the - would you describe this pattern of apparently cleared at some stage in the past and apparently not cleared at the same time, at least, a mosaic pattern all through this property?--No, I wouldn't describe it as a mosaic, as in terms of small areas cleared, small areas left. There's some areas that have been broad-scale cleared, if you like, if you want to use that term.

30

40 In this photograph here, though, depicts an area that - a small area that some has been cleared and some hasn't, doesn't it?--It does show some - some timber that has been left, yes.

40

45 Excuse me, your Honour. Isn't it your job to know, though, the difference between a remnant and non-remnant vegetation?--No, it's the sort of position I would expect a - a botanist or a - a vegetation management officer to know.

50 But you determine remnant and non-remnant by a regional ecosystem map, don't you?--I don't determine what's remnant and non-remnant.

50

No, with reference to the regional ecosystem map, that's how you determine in the field, isn't it?--Yes, via a location, yes. That's correct.

55 In a location; then you determine, from that position, what the map determines is remnant and non-remnant; isn't that how it works?--Well, the map - if you like, the regional ecosystem

map is overlaid against what is done by a remote sensing team to determine those exact areas, so the overlay then determines what happens there.

1

5 But isn't the classification of the vegetation as per the regional ecosystem map?--That's correct.

Could the witness be shown this document, please, your Honour?

10 Can you describe that map?--The title shows that as Remnant 1999 Regional Ecosystems Lot on Plan 8 MGL33. It shows the - the subject property.

10

15 The subject property. That map was plotted 28th of May 2002?--That's the date on it.

20 From that plotted, wouldn't you agree that, if that map was plotted at that time, that would indicate that it was current at that time?--If that's the correct version. As I said, I'm not sure where the source - this map has come from. If that's the correct version of mapping.

20

25 Well, it has "Queensland Government" in the bottom left-hand corner?--Yes, I know but I haven't created it or seen it being created, so I'm - I'm presuming-----

I tender that document, your Honour.

30 BENCH: Well, now, that will be admitted in evidence and marked Exhibit number 12.

30

35 ADMITTED AND MARKED "EXHIBIT 12"

40 MR SHERIDAN: Can the witness be shown this document, please, your Honour?

40

BENCH: So what will I describe this as?

MR SHERIDAN: That-----

45 BENCH: Remnant-----

MR SHERIDAN: Remnant 1999 plotted 28 May 2002. There are quite a number of these, your Honour.

50 BENCH: Okay. So that one's Exhibit 12. How many have you got?

50

MR SHERIDAN: Seven in total.

55 BENCH: Well, can't you show them all to the witness at once?

MR SHERIDAN: They're all different, your Honour.

1

BENCH: Yes, well, he can't note their difference, can't he?

5 MR SHERIDAN: Yes, I just don't want get - I don't want get a confusion about - because I intend to cross-examine people in order with these.

10 BENCH: Right. So this is a technical area that just requires a lot of labelling, so you're going to show the next one now?

10

MR SHERIDAN: Yes, your Honour. And I would like that - I think it might be better if we could keep them separate because I can see-----

15 BENCH: Okay, yes. I just was trying to save a lot of writing but it's not going to work. Did you give me another lot of-----

20 MR SHERIDAN: A small amount of time spent on writing, your Honour, might be saving confusion in the next day and a half.

20

BENCH: Did you give me more than one lot? You did. I must have lost them. They have probably been eaten. Thank you. So you got seven?

25 MR SHERIDAN: Yes, your Honour.

BENCH: Okay, away you go.

30 MR SHERIDAN: Now, that document, Mr Elliott?--It's titled Updated Remnant 1999 Regional Ecosystems for the subject property, and this one - I'm not sure if the previous one had it, but this one has the signature of the - of Andrew Lavington, delegate of the chief executive.

30

35 What's the plot date on that one?--28 May 2002.

Thank you, I tender that document, your Honour.

40 BENCH: That will be admitted into evidence and marked Exhibit 13.

40

45 ADMITTED AND MARKED "EXHIBIT 13"

50 MR SHERIDAN: Could the witness be shown this document please, your Honour? Can you identify that document Mr Elliott?--Updated Remnant 1999 Regional Ecosystems for the subject property; plotted date is the 13th of November 2002.

50

55 Thank you, your Honour. I tender that document.

BENCH: That will be admitted into evidence and marked Exhibit 14.

60

1

5 ADMITTED AND MARKED "EXHIBIT 14"

MR SHERIDAN: Thank you, your Honour. Can the witness be shown this document? Can you identify that document please Mr Elliott?--It's titled Updated Remnant 1999 Regional Ecosystems for the subject property. It's plotted 28th of May 2002. It's - do you want me to describe it further?

10

15 No, thank you. I tender that document.

BENCH: That will be admitted into evidence and marked Exhibit 15.

20

20 ADMITTED AND MARKED "EXHIBIT 15"

25 MR SHERIDAN: Could the witness have this document, please, your Honour? Can you describe that document or identify that document please Mr Elliott?--It's titled Acme Downs Regional Ecosystems Status.

30 I don't think that document has actually the plot date on it, but there is a date underneath the scale bar. Produced by?--Produced by Natural Resources and Mines, Charleville, in brackets, 2002. And it has the data sources.

30

35 Thank you. I tender that document, your Honour.

BENCH: That will be admitted into evidence and marked Exhibit 16.

40

40 ADMITTED AND MARKED "EXHIBIT 16"

45 MR SHERIDAN: Excuse me, your Honour. That last - the Charleville - under the scale bar, produced by Natural Resources and Mines, Charleville, 2001 or 2002? There is a scale bar down the right hand side, your Honour?-- There's a scale bar down the right-hand side.

50

BENCH: Produced by Natural Resources and Mines, Charleville, 2001.

55 MR SHERIDAN: One. Thank you. Can the witness be shown this document, please, your Honour?--It's titled EPA Regional Ecosystems, in brackets, version four, and NR and M DCDB.

60

1

Does that have a map date on the right-hand panel, half way down, in bold?--It has the DCDB - DCDB-----

5 I'm sorry - down below that, map date?--Map date it has as 17 June 2004.

I tender that document, your Honour.

10 BENCH: That will be admitted into evidence and marked Exhibit 17. 10

15 ADMITTED AND MARKED "EXHIBIT 17"

MR SHERIDAN: Could the witness be shown this document, please, your Honour?--It's titled 2001 Regional Ecosystem Map and 2005 Satellite Image. 20

Now, down at the very bottom on the right-hand side - no, sorry. The disclaimer: State of Queensland Department of Environmental Protection Agency 1999. Down the bottom, please. "This is a copy of the certified" - can you read that for the record, please?-- It says, "This is a copy of the certified regional ecosystem map defined by the map extent for the purposes of the Vegetation Management Act 1999." 25 30

30

I tender that document, your Honour.

MR WILSON: Could I take a moment to consider that document, your Honour?

35 BENCH: Sure.

MR SHERIDAN: Which one do you want?

40 MR WILSON: The last one; just 2001. I just want to see the produced date. It has got, "produced by AgForward Services Proprietary Limited." 40

MR SHERIDAN: If the witness could be shown that when your Honour has completed it. 45

BENCH: I haven't got it back here yet. I thought they were looking at it.

50 MR SHERIDAN: I'm sorry, it's still there. 50

Now, that last document - that document that you have, which is-----?-- No, it's the satellite image produced by AgForward. 55

Which one have you got there?-- 2001 Regional Ecosystem map and 2005 Satellite Image.

60

1

Excuse me, your Honour, while I just confer with my friend.  
Excuse me, your Honour. I've had a discussion with my learned  
friend about that document and this document, which I asked  
5 the witness to be shown, and, by consent, the previous  
document and the document I've just given the witness be  
marked for identification, please.

10 BENCH: Well, you want - have you seen them before?-- I've  
never seen these copies before.

10

Okay. I will just mark "B" for identification.

15 MR SHERIDAN: "B" for identification.

BENCH: "B" and "C"?

MR SHERIDAN: "B" and "C", thank you.

20 BENCH: Thank you. Thank you. Which one was the first one?  
The purply coloured one, was it? The satellite one?-- Yes,  
your Honour, it was.

20

25 MR SHERIDAN: They're all in order.

BENCH: So that's B?

30 MARKED "B" FOR IDENTIFICATION

30

35 BENCH: And the 2001 Ecosystem map with the bright colours is  
C.

40 MARKED "C" FOR IDENTIFICATION

40

45 MR SHERIDAN: Thank you, your Honour. Now, could the witness  
be shown Exhibits 12 to 17 inclusive, please?

BENCH: All right.

50 MR SHERIDAN: I have a clip for your Honour, if you want to  
clip them together.

50

BENCH: No. You wanted them all separate; you're having them  
separate. 12, 13, 14, 15, 16 and 17. That's what you wanted  
to have a look at?

55 MR SHERIDAN: Yes, thank you, your Honour.

BENCH: Thank you. It's all going to him right this minute.

60

1

MR SHERIDAN: Now, Mr Elliott, if you could arrange those maps there in Exhibit order - your Honour will have written numbers on it. If you start at 12, have them in Exhibit order, so we  
5 don't get out of whack?-- Yes.

Now, the first map, Exhibit 12, are you looking at that?-- Yes.

10 Remnant 1999, plotted 28 May 2002?-- Yes.

10

That 28 May 2002 falls between the two offence periods; is that correct?-- I believe so.

15 Yes. Now, you can interpret regional ecosystem maps?-- As in identifying remnant areas as opposed to non-remnant?

Yes?-- Yes.

20 Yes. Good. Now, that first map, Remnant 1999, Regional Ecosystems, Exhibit 12 - the white areas depicted on the subject lot, they are non-remnant vegetation; is that  
right?-- This is the correct map for the time, yes.

20

25 Yes. Yes?-- White is non-remnant.

Yes. I just want to get the colours right. White areas on the subject lot are non-remnant. That's correct?-- Yes.

30 Clearing of those areas on the subject map is not assessable development?-- That's correct.

30

Okay. Now, the-----

35 BENCH: Can you just go back - say that again? The white areas on map - what's the map?-- It's Exhibit 12.

MR SHERIDAN: The white areas on the map on Exhibit 12.

40 BENCH: White areas on 12.

40

MR SHERIDAN: Clearing of vegetation in the areas marked white is not assessable development.

45 BENCH: Mmm-hmm.

MR SHERIDAN: That's correct, isn't it, Mr Elliott?-- That's correct. Non - it would be a non-remnant area.

50 Yes. It's a non-remnant area. Now, the light brown areas - sorry, your Honour, we haven't got any more copies of these.

50

BENCH: That's okay. I will listen on.

55 MR SHERIDAN: Yes. All right. Excuse me, your Honour. Yes. Your Honour, Exhibit 6, from memory, which you should still have up there - Exhibit 5, sorry.

60



1

BENCH: Exhibit 5, the one that has got no colour on it.

5 MR SHERIDAN: Exhibit 6, you will have, has a letter for a colour.

BENCH: Yes. I've got that one.

10 MR SHERIDAN: Exhibit 6. It's a different date and it's a different map, but-----

10

BENCH: It will give me the general idea-----

15 MR SHERIDAN: Yes, your Honour, with the colours - otherwise-----

BENCH: -----without confusing me totally.

20 MR SHERIDAN: Yes.

20

BENCH: All right. Okay.

25 MR SHERIDAN: I'm trying to avoid that, your Honour. It is - I'm trying to make it as logical and straightforward as possible.

30 So - okay, the white areas - we've been through that. Now, the light brown areas at the bottom in the southern block - central - that is a remnant of concern regional ecosystem; is that right?-- That light brown area would be, yes.

30

35 Yes. They've termed that sub-dominant; is that correct?-- It's one of the terms there. Dominant, sub-dominant.

Dominant, sub-dominant?-- Yes. Yes.

40 Okay. So the two - the pinks, if you will, the maroon and the light pink, are rendered endangered regional ecosystems?-- That's correct.

40

The brown and the light brown are remnant of concern regional ecosystems?-- That's correct.

45 The green is remnant not of concern regional ecosystems?-- It's an Aqua-green colour, I guess.

Now - yes, and the one below it, the lighter green?-- Yes?

50 No. There is - none of that appears on that map, is there?-- No. It shouldn't appear this far east.

50

55 Yes, there's no water. Okay. Now if we have a look at these remnant of concern - remnant endangered sub-dominant. They're - on Exhibit 12 the area that's taken up in the south-east corner of the southern block?-- Yes. Yes, that-----

60

The map, your Honour, is broadly similar.

1

BENCH: Mmm-hmm.

5 MR SHERIDAN: Now, those numbers down there, 11.3.28/6.4.4/6.4.1, those are three types of the regional ecosystem in what is known as a mixed polygon, aren't they?-- That's my understanding. Yes, that's right.

10 Right, now the numbers below, 80/15/5, represent the proportion of those ecosystems in that polygon, don't they?-- That's correct.

10

15 So in that - this pink area that we're looking at - 80 per cent of that area is made up of 11.3.28 regional ecosystem?-- That's what's recorded here.

20 Fifteen per cent in 6.4.4 ?-- That's what's recorded here, yes.

20

25 And 6.4.1 makes up 5 per cent-----?-- Yes.

30 -----of that mixed polygon. Now, the only one of those ecosystems in that polygon is the 6.4.1, isn't it?-- Sorry?

35 You're aware which regional ecosystem is endangered and not of concern?-- No. I don't have that sort of knowledge.

40 Okay. If we have a look at the north-east - north-west, sorry, corner of the southern block, do you see where that circle with the cross in it is?-- Yes.

30

45 And we have there 6.3.14/11.3.28?-- Yes, that's there.

50 Underneath, 80/20?-- That's there. Yes.

55 That indicates that 80 per cent of that polygon is 6.3.14, while 20 per cent is 11.3.28?-- Yes. That's is how it's mapped on this map.

40

60 Yes. Can you - can you tell me where the definitions of these regional ecosystems are held?-- The actual individual descriptions as opposed to status?

65 Descriptions, yes?-- There is an EPA database-----

70 That's the REDD, isn't it?-- Yes, that's it.

75 Now, the categorisation of those different ecosystems into "endangered", "of concern" and "not of concern," can you tell me where that is held?-- What, the definition of what is endangered?

50

80 No, not the definitions, but the categorisations of "endangered", "of concern" and "not of concern"?-- I believe it's in the same database, but I'm not - not sure.

It's in the Vegetation Management regulations, isn't it?-- I, again, can't offer that evidence. I'm not sure.

1

5 So, now, that is how we get a sub-dominant regional ecosystem, isn't it?-- Well, again, that's getting outside my area-----

10 No. From this map in the south-east corner again - if we go back down to that pink area down the bottom - the reason that's sub-dominant is that less than 50 per cent of that polygon is made up of an endangered regional ecosystem, isn't it?-- Well, I'm not involved in the mapping, so I don't know the distinctions there or the rules they have used.

10

15 No, but you can interpret these. You use these maps to interpret, on the ground, the status of the regional ecosystem, don't you?-- Not whether its dominant or sub-dominant.

20 No, no. But you use this map - I'm not saying - I'm not suggesting that you make these maps?-- No, no.

20

25 I'm suggesting - I'm putting to you, that you use these maps to determine the status of the regional ecosystem on the ground?-- We determine where vegetation has been mapped as "remnant".

Yeah?-- Yes.

30 For instance, if you stopped in that big white car of yours, down in that bottom corner, and that area had been cleared, you would look at this map and determine, well, 80 per cent of this area is 11.3.28, regional ecosystem, 15 per cent is 6.4.4, and 5 per cent is 6.4.1, wouldn't you?--Yes. That would be a logical conclusion.

30

35 So the fact that it's endangered in this instance only relates to 5 per cent of that polygon, doesn't?-- Well, again, I don't know the different statuses of those regional ecosystems, so I can't-----

40

45 Yes. But if I were to tell you that that was the case - for instance, if I were to say that 6.4.1 is endangered, wouldn't you deduce from looking at that map, that 5 per cent of this mixed polygon was, in fact, the remnant endangered 6.4.1 ecosystem?-- Obviously you're also taking into consideration what the other ecosystems are - but, yes.

50 Yes. And that 80 per cent of it - you're standing in the middle of that pink area, looking at the trees; that's what you determine from this regional ecosystem map?-- Sorry. Could you rephrase that?

50

55 If you're standing in the middle of the pink area, looking at the regional ecosystem map, thinking, "I wonder what all this is about," and you would look at that map, and you would know where you were from your GPS, and you would say, "80 per cent

of this polygon that I'm standing in is made up of 11.3.28 regional ecosystem"?-- Yes.

1

Somewhere in here there's 15 per cent that is 6.4.4.  
5 Somewhere else in here there is 5 per cent that is 6.4.1?-- That shows that those are the percentages of those communities inside that polygon.

10 Yes. Okay, right. Yes, that is what I wanted to get to the bottom of. And the other mixed polygons, where we had the sub-dominant the lighter brown and such, that's the same way they're interpreted, too, isn't it?-- Yes. That's the same-----

10

15 The first number relates to a specific regional ecosystem?-- Yes.

The second number relates to another?-- Yes.

20 And the number underneath - for instance, up where that circle with the cross is, 80/20, denotes there is 80 per cent of the first regional ecosystem number and 20 per cent of the second?---It shows that's the percentage inside those polygons.

20

25 Okay. Now, if you could have a look at Exhibit 13 - and I think this one is almost exactly the same as the one that your Honour is looking at?-- Okay. And this is a certified-----

30 This is the certified copy, isn't it?-- Yes.

30

Plotted on the same day - Exhibit 13, 28th of May 2002?-- Yes. That's the date that's on it.

35 Now, this is the updated Remnant 1999 Regional Ecosystem. Plotted on the same day: 28th of May 2002, which is midway between the offence period. There is a significant difference between these two, isn't there?-- Yes, there is.

40 Why is it, in Remnant 1999, the vast majority of the southern block was - I'm sorry - a large area of the southern block was white - now with this map, almost the entire area of white has gone to "sub-dominant of concern", hasn't it?-- That's what is shown on this map.

40

45 And a large area, that was white in the northern block, and has gone to "sub-dominant remnant", and "sub-dominant of concern"?-- Yeah. There was no real changes in that northern block.

50 And if we go then to Exhibit 14, which is plotted on the 13th of November 2002, which is the - about the midpoint of the offence period for count two, there are changes in that map as well, aren't there, between that Exhibit 13 and 14?-- Yes.  
55 There are differences again.

50

For instance, in the middle of the southern block, there is an area of 11.2.28A-----?-- 11.3, I think.

1

Sorry, yes, you're right; 11.3 - which has gone from "not of concern" in Exhibit 12 on the 28th of May remnant, to "sub-dominant of concern" in Exhibit 13. And now it's "dominant of concern" in Exhibit 14, isn't it?-- Sorry. I see - I have picked up one section that goes from-----

5

Two dark-brown, irregular polygons virtually in the centre of that southern block?-- Exhibit 14 has the two-----

10 10

11.3.28A?-- Yes. In Exhibit 13 the areas - one of them looks "of concern", the other one is shown as "endangered".

15

Yes?-- And then in Exhibit 12, it looks like the same, "endangered" and "of concern".

Okay. Now, if we go over to Exhibit 15, which was also plotted on the 28th of May 2002, it has line work and the regional ecosystem numbers. That's all I want to know about that?-- Okay.

20 20

If we go over to Exhibit 16, which is the Charleville 2001 map - so this map actually pre-dates Exhibits 12 onwards?-- It shows the regional ecosystems as version 3. I don't think the other maps say which versions they're-----

25

No?-- They're plotted on.

30 30

So then, this one in the south-east corner of the southern block, the regional ecosystems are 11.3.28, 6.4.4 and 6.4.1?-- Yes.

But there are no percentages ascribed, are there?-- No. There are no percentages shown on this map.

35

No. But it does describe the ecosystem as "dominant/sub-dominant", "dominant/sub-dominant," doesn't it?-- It does, in the key on the right.

40 40

Yes, and "not of concern". It also has a grey area, doesn't it - "cleared" - the area depicted in grey-----?-- Yes, the area-----

45

-----is cleared?-- Yes.

It also has a light-blue area scattered through both subject blocks, that is denotes as being "disturbed"?-- That's shown there.

50 50

Yes. Now, do you understand "cleared" to be non-remnant?-- I would have to check with the author of the map to see what their intention was in showing it that way.

55

That's what you would assume, wouldn't you?-- If I match it up  
against the certified copies, then it seems to have some  
correlation to the non-remnant areas.

1

5 Now, the "disturbed" - have you seen that before, the term  
"disturbed," on a regional ecosystem map?-- Not like this, no.  
Not that I ever recall seeing it.

10 Yes?-- It's not part of the regional ecosystem mapping, I  
don't believe.

10

15 Yes. But this was produced by the Department of Natural  
Resources and Mines at Charleville in 2001 which is - well,  
the offence period in the first count is the 5th of October  
2006 - September 2001. So from that, wouldn't you say that  
this map was current during the first offence period?-- I  
wouldn't commit to saying that because I'm not sure who  
designed this map or where it's - where it came from or-----

20 No, I'm not asking you to do that. I'm asking you, from the  
date that appears on the map produced by the Department of  
Natural Resources and Mines, Charleville, 2001 - if that date  
be correct, as it appears on that map?-- It's at some stage  
during 2001.

20

25 Some stage during 2001? Now which regional ecosystem map did  
you use at the time of your inspection?-- I don't recall -  
see, I wasn't in a position where I could actually confirm any  
regional ecosystem mapping, and I'm not in a position where I  
30 can confirm that the species are what the communities are  
shown as.

30

35 But you - you're not in a position to, and you have had to an  
inspection?-- Well, I'm certainly not a - not a botanist.

No, I haven't suggested you are a botanist. But you have  
sworn this complaint on the basis of your inspection and  
analysis of the vegetation in the clearing on your inspection  
on that day?-- That's right. So I rely on expert advice in  
40 terms of where clearing has occurred and the mapping.

40

45 That's understandable, I suppose, Mr Elliott, when you look at  
the utility, for these purposes, of these photographs and  
their locations. You would have to rely on someone else,  
wouldn't you?-- Well, certainly it's - it's very wise,  
obviously, to if you're not sure of something, to check and  
make sure you have been given the right advice.

50 So if you have a look at the span of both offence periods -  
5th of October 2000 and 19th of August 2003 - I'm sorry, your  
Honour. Could your Honour - there are two documents that are  
marked "A" and "B" for identification.

50

55 BENCH: Yes.

MR SHERIDAN: Do you have them, Mr Elliott, or are  
they-----?-- No, I haven't got them.

1

BENCH: I have-----

5 MR SHERIDAN: Excuse me, your Honour. Could the witness be shown this document? Thank you, Mr Elliott. I'm sorry, it's getting rather confused up there. If you have a look at the document that I just handed to you, that's a regional ecosystem map of the subject property?-- It's titled 2003 Regional Ecosystem Map.

10

10 The date of that map?-- It has a date of 27 October '06

Yes?-- And even a time.

15 I tender that map, your Honour.

MR WILSON: Could I just have a look at that? I haven't seen it.

20 MR SHERIDAN: Sorry, your Honour. I've got three copies of that somewhere in the stacks behind me and I will - if my learned friend would have a look at it before I tender it.

20

MR WILSON: Thank you.

25

BENCH: Do you need access to the photos any more?

MR SHERIDAN: No, thank you, your Honour. I'm finished with those.

30

30

BENCH: Thank you. That is admitted into evidence and marked Exhibit 18.

35

ADMITTED AND MARKED "EXHIBIT 18"

40 MR SHERIDAN: If you just have a look at the map marked "B" for identification, that's dated 5th of September 2005?-- Yes, it has that date on it.

40

45 Yes. And that's another version of the regional ecosystem map which appears to be a copy of the certified regional ecosystem map defined by the map extent for the purposes of the Vegetation Management Act 1999?-- It has that comment, but it doesn't actually refer to a version of the mapping that I can see.

50

50

They don't refer to it?-- I can't see a version in the text on the right.

55 Copyright State of Queensland. Department of Environmental Protection Agency 1999?-- Okay. There is that date. But in terms of a version of the mapping, I'm not sure what they have

60

relied on here. I'm sure we could match it up against one of the other versions here.

1

5 If you go down to the third paragraph of the bar down the side?-- Yes.

10 "The positional accuracy of RE data maps to scale." Next sentence, "The extent of the regional ecosystem as of 2001"?-- Okay. There is a date then.

10

Yes. So this map, from your knowledge of regional ecosystem maps, depicts the extent of regional remnant - regional ecosystems as of 2001?-- At some point in 2001, yes.

15 Okay. And it was printed in 2005. So this map, then, printed in - printed on 5th of September 2005, but accurate as at 2001. Is that correct? Is that what you understand from that map?-- I guess, yes, that's what we could conclude from it, but-----

20 20

If you have a look at the document C for identification?-- Yes.

25 If you have a look down where we just reading before in the middle - towards the end of the third paragraph, "The extent of remnant regional ecosystem as of 2001"?-- It has that same comment there.

30 Yes. Printed in 2005. If you just have a look at the bottom - the south-east corner of the southern block that we were looking at before in that version, the pink area there on that map is endangered sub-dominant?-- Yes.

30

35 And the regional ecosystems listed there are 6.5.3, 6.3.25 and 6.4.1. Is that right?-- That's the listing there.

40 Underneath, 50/30/20. Is that, from your knowledge of RE maps, the percentages of those regional ecosystems represented in that sub-dominant polygon?-- It's what's shown on this map, but, obviously I can't verify the accuracy of the map.

40

No, but that's what this map shows?-- Yes, that's what this map shows.

45 And that was as at 2001. So that, again, is some time during the offence period of count one, or just outside it?-- Again, at some stage in 2001.

50 Yes. The offence period in 2001, 5 October 2006, September 2001. Count two is 24 August 2002, so this map is dated 2001. So all we can assume - that it may be relevant towards the end of the first offence period and, perhaps, it is not relevant at all between those two. Unless there was something that replaced this prior to the 24th of August 2002. Is that the way they work?-- Well, essentially, it can be replaced.

50

55



Yes?-- With the version of the mappings. But, as I said, I  
can't verify the accuracy of it, so whether-----

1

5 I'm not asking you to. I'm just asking you to confirm with  
what I'm seeing from the Exhibit, or the document marked C for  
ID, that you have. So, from any of these documents that you  
have before you, can you tell which is the relevant RE map for  
the offence period in count one, being 5th October 2006,  
10 September 2001?-- If I was trying to determine that, I would  
use data sources. Not from the maps you've provided me. I  
would have to get further information.

10

15 These are publicly available regional ecosystem maps, aren't  
they?-- I believe they are, but as I said, a number of them  
are certified.

Isn't - the regional ecosystems are defined by what appears on  
a certified map, aren't they?-- That's correct.

20 So, from what appears on a certified map, which of these maps  
is relevant for the offence period in count one?-- What was  
the offence dates again, sorry.

20

25 Sorry. 5th October 2000 and 6 September 2001?-- It's  
difficult for me to say when the - I'm not sure about these  
plotted dates, if that is the dates that refer to the regional  
ecosystem map at the time.

30 Well, isn't it true, though, if a map was plotted - if a  
certified map was plotted on the 28th of May 2002, it would be  
valid on that day at least, wouldn't it?-- You would presume  
so, but, obviously, we have to speak to the author of the maps  
to make sure that that's what the case is.

30

35 But a landholder can't be expected to go and speak to the  
author of the map to determine its validity, can he?-- If  
they're relying on the map, I would suggest that it would  
be-----

40 Can't they rely on the map, or is this map not  
reliable?-- Well, as I said, I don't know whether it's  
reliable or not, but if they are obtaining information from  
the Department or from another service, then, obviously, they  
need to be sure that they can rely on that information.

40

45 Is it the case, if one was the owner of the subject lot, and  
one went into the Department of Natural Resources and Mines  
and obtained a certified map, such as Exhibit 13, on the 28th  
of May 2002 - shouldn't one be able to assume that that was  
50 the status of the regional ecosystems as at that day?-- If a  
person was told that was the status at the day, yes.

50

55 What, are you implying, if you weren't told that,  
that-----?-- Well, if-----

I mean what's the value of a certified map?-- Well, the  
certified map - if it says that this the mapping today, on

1  
this particular date, then obviously it shows what the mapping is.

5 Yes. So, this map, we can assume, because it was signed by someone?-- Andrew Livingston.

10 Andrew Livingston - and plotted on the 28th of May 2002 - that that would be the current regional ecosystems status as at that date - at that - at that date?-- Yeah. I can only-----

10 You would be entitled to rely upon it?-- I can only assume that's - that's correct.

15 You would be entitled to rely upon it?-- Well, again, it seems to be there could be a conversation there or there could be other information that has been provided. I don't know. If this is the case, that this map was provided, and said on this day this is the mapping, I believe it would be safe to assume.

20 I - I see where you - you're a bit reticent, Mr Elliott, but is it not the case, if all things being equal - let me put it that way - all things being equal, a landholder who wanted to clear vegetation and who went in to the Department of Natural Resources and Mines and asked for a remnant - a regional ecosystem map, and were given these documents, would not he be  
25 entitled to rely upon them?-- If that's the - the question they asked and that's what they were told, yes.

30 Yes. I want to clear some land on my property and my property is lot - my property is-----?-- 8MGL33.

-----Acme Downs, and the person who gave me the map came out with this, you would be entitled to rely on it-----?-- Yes.

35 -----because if you went and cleared, then it's not possible for these map changes to come back and bite you retrospectively, is it?-- No, of course not. It's the time of the query, the time of the activity; it's the mapping that would be in place at that time.

40 Yes. Good. That's why it's vitally important that we know which map was valid during the offence periods, isn't it?-- Yes, it is.

45 Yes. And at this stage we don't, do we?-- That's not evidence I can provide here based on - on these maps.

50 Well, you swore the complaint, Mr Elliott?-- Yes, and I relied on evidence of other people.

55 I understand that. Which one? We've got about 12 regional ecosystem maps up there. They span from 2001, which is - maybe some time within the first period, till 2006, which is the last Exhibit you got, which is miles past it. My question is which map was current at the time; which map was used to calculate the areas allegedly unlawfully cleared?-- I can't answer that question.

1

Why did you swear a complaint, then, if you don't know?-- Because I relied on a separate map; I didn't rely on any of these maps. I relied on the evidence of the remote sensing team to develop that actual map which I can rely on.

Why couldn't you rely on any of these? They're the official maps, aren't they?-- Well, they are official maps but-----

10 They're certified maps?-- Yes.

10

See, that's the problem we get. This is what the landholder gets and then when you come to prosecute, there's some other dark secret, whatever, data base that someone else has got. Whoever we ask, "Which one did you use," the answer it just consistent, "Someone else has got it. The remote sensing team has got it. EPA has got it. Someone else has got it." We get one set of data that the person goes and tries to do the right thing on and avoid prosecution, and then when things go wrong years later, we get maps that are produced from somewhere else, with a different set of data, and every person I get in that box and try and find out where it is or what it is or which map they relied on at the time of inspection, you get the same answer. It makes it almost impossible, doesn't it, to work out what was the status of the regional ecosystem during the offence period. Was it not remnant? Was it remnant of concern sub-dominant? Was it endangered sub-dominant? Was it not of concern? Was it cleared? Was it disturbed? There's just a whole suite of variation. That is the difficulty we have trying to determine that what was what at the time, isn't it?-- Well, as I said, using these maps - these aren't maps I relied on to swear the complaint summons. I'm assuming that, in the brief, there is the maps coming to be produced.

20

30

35 We get back to my question again: which map did you rely on?-- These maps produced but I - and I don't believe they're admitted into evidence yet - that show those areas.

40 As at the offence periods? So, if we get a map produced here in evidence at some stage in the future that shows anything but the relevant maps at the time of the offence period, it can't be relied on, can it?-- I'm sorry could you-----

40

45 If we got a map that's produced here some time within the next two days and someone said, "Yeah, this is the map that was valid at the time," if it doesn't match up with any of these publicly available maps that were available to the landholder, then the landholder's being prosecuted on something completely foreign to this, isn't he?-- I see - see what you're saying but-----

50

55 Thank God for that. Sorry. Excuse me, your Honour?-- If I can continue? Essentially, if these maps were - came from the Department, they are the certified maps for that particular time, then that's what they can rely on.

60

But you say that even - if we have a look at Exhibit 13 which  
you say - and Exhibit 14, which you said was signed by Andrew  
Livingston, certified - Exhibits 13 and 14 - plot date 28 May  
'02, 13 November '02, the 13 November is right in the middle  
of the offence period for the second count. Surely this must  
be the map you relied on to particularise that charge?-- I  
can't say whether that is - is the map. As I said, there's  
a-----

Well, it's a certified copy, Mr Elliott?-- So, it should be  
the accurate RE mapping for the property.

Was this mapping the mapping you relied on when you  
particularised the charge?-- I don't know.

You have averred - do you understand the nature of averment?

BENCH: How many times do you want him to say, he doesn't  
know, Mr Sheridan? You're not going to-----

MR SHERIDAN: Sorry, your Honour.

BENCH: You're not going to get - you're not going to get  
anything else

MR SHERIDAN: Very frustrated.

BENCH: He doesn't know what he used.

MR SHERIDAN: Apparently. Okay. Nothing further, your  
Honour. Thank you, Mr Elliott.

BENCH: Wait a minute

MR SHERIDAN: Sorry, your Honour.

BENCH: What has happened with our man who was doing the  
clearing? Is he giving evidence?

MR WILSON: Yes, we hope to call him, your Honour.

BENCH: I'm sorry?

MR WILSON: I was hoping to call him today, so you can get  
away.

BENCH: Okay. Is he going to give evidence, is he?

MR WILSON: Yes.

BENCH: And you're not bothering to call the other two?

MR WILSON: No, they have gone. They have chosen to-----

BENCH: Now, you're not calling Glynn Knights or Geoffrey  
Knights?

MR WILSON: They've gone home, your Honour. They've chosen to exercise their-----

1

BENCH: Okay. But you're not calling them?

5

MR WILSON: No.

MR SHERIDAN: Thank you, your Honour. In closing, could the witness be shown this document, please?

10

BENCH: I'm sure he would love to see another document.

10

MR SHERIDAN: I aim to get all this paper from here up to there by the end of the week, your Honour.

15

BENCH: It's not the end of the week.

MR SHERIDAN: By Thursday.

BENCH: By - by Thursday mid-morning, so you can make submissions.

20

20

MR SHERIDAN: Can you identify that document, please, Mr Elliott?-- It appears they're a photocopy of a page from my notebook.

25

Now, that's - we're interested in, half way down there, the - it's page 89?-- Yes.

Is that right?-- Yes.

30

30

So, from the third - the top of page 89 is that, "12.45 at homestead"? Does that relate to the first - is that what that reads, "12.45 at homestead"?-- Yes.

35

Does that relate to the first visit at the Knights' property?-- I believe it would, yes.

Does it then say, "Spoke to Knights"?-- Yes. On JF tape.

40

40

On JF tape?-- Yes.

I tender that document.

BENCH: Thank you. That will be admitted into evidence and marked Exhibit 19.

45

ADMITTED AND MARKED "EXHIBIT 19"

50

50

MR SHERIDAN: Thank you, your Honour. I have nothing further.

55

BENCH: Thank you. Yes, please, Mr Wilson. How long are you going to be?

1

MR WILSON: Ten minutes, perhaps - 15.

5 BENCH: Sorry. If you have to stand down, don't discuss your  
evidence, because if we're going to get the other man who has  
given his evidence about land clearing, we can't afford 10  
minutes of re-examination now, so you won't be able to discuss  
the case.

10 If we get finished with the land clearer by 4.30, I will call  
you back in. If you wouldn't mind waiting  
outside?-- Certainly, your Honour.

10

15 WITNESS EXCUSED

20 BENCH: Could you call your witness, please, about the land  
clearing.

20

MR WILSON: Mr Nathan Gray.

25

30

40

50

60

NATHAN KIM GRAY, SWORN AND EXAMINED:

1

5 MR WILSON: Could you tell the court your full name,  
please?-- Nathan Kim Gray.

And whereabouts do you live?-- Carter Parade in Bollon. Lot  
13.

10 10

Okay. And what's your occupation?-- Earth-moving  
contractor/grazier.

Okay. So how did you come to be involved in this matter?

15

BENCH: That's not a proper question, thanks. This person is  
not a lawyer; they don't know about the rules of evidence.

MR WILSON: Okay.

20 20

BENCH: We're relying on you to ask them proper questions.

MR WILSON: Okay.

25 So how long have you lived in the Bollon district?-- Since  
1976.

Okay. And how long have you known Mr Knights?-- Would have  
started to get to know him from about 1980, when I was  
involved with his kids at school around the same time.

30 30

Okay. What age were you then?-- Seven or eight years old.

Okay. And what - what sort of work do you do?

35

BENCH: Earth moving contractor/grazier, the man told us.

MR WILSON: Yes. I had forgotten.

40 40

Now you cleared some land on Acme Downs?

BENCH: Excuse me. Why do you think you're allowed to ask  
leading questions? Or have you got an arrangement with your  
friend?

45

MR SHERIDAN: There's no arrangement, your Honour, I was just  
about to spring.

BENCH: No leading, thanks.

50 50

MR WILSON: Okay. I was just trying to move some things.

BENCH: No, well, no leading.

55 THE WITNESS: I don't have to stand, do I?

BENCH: No, you're right. You only have to pay attention.

1

MR WILSON: Okay. Have you cleared any property on Mr Knights' property, Acme Downs?-- Yes, I-----

5 BENCH: Okay, well, as I said before, if you're worried that  
your answer may incriminate you in an offence under any of a  
myriad of legislation about land clearing, not just the  
legislation that we know about here today, but it could be any  
10 legislation, you're not forced to answer. You're not here to  
give evidence against yourself. I warn you that anything you  
do say, it is - you have taken an oath and it can be used to  
prosecute you. So you're not obliged to incriminate yourself  
and if you wish to claim privilege, you can. And I am not  
15 able to give you legal advice about what the law is or what  
you could be prosecuted under so - as I explained that to you  
before. So you've been asked a question: did you clear some  
property for someone called Knights? Not specified who the  
Knights is, but some person called Knights, and you can answer  
20 how you please?-- We have been involved in some fodder  
harvesting on the property and have done contract work for Mr  
Knights. 20

MR WILSON: Do you recall when you did that contract  
work?-- Some time in - not exactly, no.

25 Okay?-- Sometime from '01 till somewhere in '03, as far as I  
know.

30 So in '01 can you be - how much work did you do then?-- It's  
going back a bit too far to answer your question reasonably. 30

Can you estimate how many hectares you cleared?

35 BENCH: Well, I think you had better be careful with the use  
of the word "cleared," because the witness said he had been  
involved in some fodder harvesting, so that's what he said he  
did. So unless you want to clarify that with him, can you  
please use his terms, which are "fodder harvesting"?

40 MR WILSON: He used "fodder harvesting" and another term, your  
Honour, which I just can't quite recollect. He didn't----- 40

BENCH: He said, "We have been involved in fodder harvesting  
on the property. We have done some work for Mr Knights."  
45 That is what I wrote down. I didn't write him down using the  
word "cleared" at all.

MR WILSON: Okay. My apologies.

50 BENCH: If you did, I'm wrong so - that's what I wrote down.  
Is that reasonably accurate?-- Yes. 50

MR WILSON: So describe the work that you did, how you  
actually did it? What sort of machinery did you use?-- I need  
55 a bit of time to answer this question. Just - just say the  
question again, please?

60



Doing this sort of work, what sort of machinery did you use?-- Bulldozers, yeah.

1

5 Okay. So if we go back to the first occasion in 2001, what sort of bulldozers did you use?-- Wheeled machines.

BENCH: Sorry?-- Wheel dozers, as such. Yes.

10 Wheel dozers?-- Yes.

10

MR WILSON: Okay. How many were involved?-- Machines?

Yeah, wheel dozers?-- Two.

15 Two? And how did they operate?-- With two machines in a chain.

Okay. And what did you do with the dozers and the chain?-- We pulled some country, under instructions from Mr Knights.

20

When you say "Mr Knights," which Mr Knights?-- Richard Knights.

25 How did he give you those instructions?-- It's going back a fair while but, basically, verbally. Face to face.

And was he present when you were doing the working with the dozers and the chain?-- Yes.

30 Obviously he - was he - whereabouts was he? What was he doing?-- It's going back a bit too far for me answer that question accurately.

30

35 So were you paid for this work that you did?-- Yes.

Can you recall how much?-- No.

Can you recall how long you worked?--No, not really.

40 Do you recall whether you charged him for the work?--Yes, I don't remember that he never paid us to do the work.

40

45 BENCH: Sorry?--He did pay us to do the work. I don't remember that he - he never paid.

MR WILSON: Can you tell the court what numbers appear on the top of that invoice, please?--The actual invoice number?

50 Yes?--7-6.

50

Okay, so can you tell - what's that - how much is that invoice for?--\$6864.

55 Okay. And who's that - who's that invoice statement made out to and what - could you just describe the document?--It's made out to Richard Knights.

On a date?--10th of the 1st '01.

1

And from?--EN, NK and RM Gray.

5 Okay. And-----?-- PO Box 14, Bollon.

Okay. Are you one of those - is it a company or business name?--It's just a partnership.

10 And what does it say the - that's for?--Regrowth pulling.

10

How many hours?--Thirteen hours.

15 Now, do you know where - do you know where you did that work?  
Can you describe on a map where you did it?--Somewhere on Mr Knights' property north of the Fernlea Road.

Your Honour, I just seek to tender those documents.

20 BENCH: North of what?

20

MR WILSON: Fernlea Road?--Fernlea Road which divides the property in two.

25 BENCH: Have you got these documents, Mr Sheridan?

MR SHERIDAN: I've got document number 76. Which other ones are there?

30 MR WILSON: I've only got him to 76 at the moment.

30

MR SHERIDAN: Sorry, there's only one document up there, I think, isn't there?

35 BENCH: Okay, so invoice 76 is Exhibited into evidence and marked Exhibit 20.

40 ADMITTED AND MARKED "EXHIBIT 20"

40

45 BENCH: So, this is the best we've got; something that's ripped out of a book?

MR WILSON: I have got a better one, your Honour.

50 BENCH: Sorry?

50

MR WILSON: I have got a better one. Perhaps I could - Perhaps-----

55 BENCH: I will hand you back that "raggedy" old copy and have a look at what you have got there.

MR WILSON: Was that invoice - was that Exhibit 20, your Honour?

1

BENCH: No, well, you took it back. Is that the same thing?

5

MR WILSON: Is that the same document?--Yes.

BENCH: Thank you. That - what's before the witness now be admitted into evidence and marked Exhibit 20, if I can get it up here. Thank you. Yes, thanks.

10

10

MR WILSON: I'm just looking for another good document.

I will just show you another document.

15

MR SHERIDAN: I object to that document, your Honour.

BENCH: On what basis?

20

MR SHERIDAN: Relevance. The document that has been disclosed to me, invoice number 56, has a date of 14th of October 2003; the offence date for count two is the 24th of August 2002 to the 19th of August 2003. This invoice is two months outside the offence period.

20

25

BENCH: Yes, Mr Wilson?

MR WILSON: Your Honour, when that work is done you normally send out the invoice later, to pay for it. And the defendant might be able to explain what it's for.

30

30

BENCH: Not if you're a good business person, you don't leave it two months before you get paid, because you've got to pay your fuel bill. Anyway, so, what, these invoices - you don't give them when you do the work?--I don't wish to answer that question because it was too long ago.

35

So you don't know when? Okay, well, what's your submission now, Mr Wilson?

40

40

MR WILSON: Well, I haven't sought to tender those.

BENCH: Okay, okay.

MR WILSON: I just sought those questions about it.

45

Now, I've just shown you that invoice number 56. Who is that made out to?--RTM GA and GI Knights.

50

Okay. And what was that for?--Fodder harvesting.

50

Okay. When you say fodder harvesting, what do you mean?--Feeding livestock with - with two bulldozers.

55

Okay. So you had two bulldozers then, did you?--Yes.

And what sort of bulldozers? Trackdozers,  
wheeldozer?--Trackdozers.

1

5 And how - how were they used?--Used for feeding livestock,  
with a chain hook between them.

Okay. And many hours did you do that for?-- Sixty hours.

10 Do you recall when you did that?-- Somewhere with - inside,  
roughly, a month or two before the invoice.

10

15 Now, this 60 hours, how long a period was that spread over?  
From when you start and when you finished?-- It's going back a  
while. It may be a month to six weeks. I don't remember.  
It's three or four years ago. Three years ago.

So a month to six weeks. Who was with you?-- My brother, Bob.

20 He drove the other dozer, did he?-- Well, -----

20

BENCH: Excuse me.

MR WILSON: Sorry.

25 BENCH: Well, I did ask you not to lead.

MR WILSON: Sorry.

30 BENCH: Mr Sheridan hasn't objected yet.

30

MR SHERIDAN: I'm in a difficult position; he has had his own  
legal advice, I assume.

35 BENCH: No, I meant about the leading.

MR SHERIDAN: Yes, your Honour.

BENCH: Thank you.

40 MR SHERIDAN: I object. He is leading the witness.

40

BENCH: Thank you.

45 MR WILSON: What did you brother Bob do?

50 BENCH: Look, if you're going to take some risks with yourself  
about your evidence, I think you had better think carefully  
about giving some evidence against your brother. Look, I  
gave you a warning before about you can claim privilege, but  
you're being asked questions to give direct evidence under  
oath about your brother. So, if you're going to give evidence  
against him, then you need to think carefully about that.

50

55 MR WILSON: I will withdraw the question, your Honour.

BENCH: I can hardly see why it was necessary, Mr Wilson.

MR WILSON: I wouldn't think it took us anywhere,  
particularly, your Honour.

1

5 BENCH: Well, you must have a strange relationship with your  
brother - is all I can say.

MR WILSON: So you said there was two dozers and a chain. How  
did you work that?

10 MR SHERIDAN: Your Honour, I understand perfectly the warning  
you've given the witness on a couple of occasions, but perhaps  
it might be opportune to actually tell the witness what he's  
meant to say if he wishes to exercise his privilege.

10

15 BENCH: Well, I told him that. He just says - he has already  
done it once, so he knows perfectly well what to do. He said,  
"I don't wish to answer that, I wish to claim privilege."

MR SHERIDAN: Very well. Thank you, your Honour.

20 20

BENCH: Yes, Mr Wilson.

MR WILSON: So, this is the second occasion, 2003; you said  
there were two trackdozers and a chain. How did they  
25 operate?-- I don't wish to answer the question. There were  
two tractors with a chain.

30 Okay. So how many - there was 60 hours. How many hectares do  
you clear per hour with that set up?-- Roughly - it can vary  
depending on the timber. With this particular case, I don't  
really know, but roughly 35 acres - 25 to 35 acres an hour.

30

Any idea how many hectares were cleared?-- No.

35 Would it be over 100?

BENCH: He said no.

MR WILSON: I was just trying to assist.

40 40

BENCH: You're leading.

MR WILSON: Now, in relation to this - what you call fodder  
45 feeding - who did you take instructions from?-- Richard  
Knights.

And how did you come to be employed?-- Through word of mouth  
and local knowledge.

50 Okay. Who asked you to do the work?-- Richard Knights.

50

Were you paid for the work?-- Yes.

How much was the payment?-- Total amount on the invoice.

55 50

Which is?-- \$27,720.

Okay. And do you recall how that was paid?-- It's going back a long time, but it would have been by cheque.

1

Okay. And this invoice 56 is for?-- Fodder harvesting.

5

I just seek to tender that document - invoice 56.

MR SHERIDAN: I object, your Honour. It still hasn't been established whether-----

10

BENCH: I thought your defence was fodder harvesting. Am I wrong?

10

MR SHERIDAN: We haven't-----

15

BENCH: So you are objecting. You don't want it to go in that this man described it-----

MR SHERIDAN: Well, it's outside the offence period, your Honour. Even if that were our defence - this evidence - in my submission, it doesn't do us any use, because it has apparently occurred outside the offence period.

20

20

BENCH: I had better have a look at the document. Can I have a look at that please, Michele? Yes, I will hear your submissions about why it's relevant Mr Wilson, as it's well outside the six-week period that the witness has told us about. Mr Grey said it would have been a month or six weeks before the date of invoice he did that work. So it's well outside the offence period.

25

30

30

MR WILSON: Well, I asked him how much he had been paid for the work - he was paid for the work. He said 27,720, which is the amount on the invoice. He said it was - he said he did 60 hours. He said it was for fodder harvesting.

35

BENCH: Yes, I know. I said to you, how is it relevant when it relates to work done outside the offence period.

40

MR WILSON: But he said that this invoice was sent out after he had done the work - a couple of months later.

40

BENCH: Not a couple of months. He said four to six weeks. He said he did not have a clear recollection, but it was most probably the work was done between four and six weeks before the invoice went out. So, in the face of that evidence, how is this invoice relevant?

45

MR WILSON: Maybe I could ask him some more questions about it, your Honour.

50

50

BENCH: No, you asked to tender it, and I'm asking you on what basis, and you're not going to get to cross-examine your own witness.

55

MR WILSON: No, I know that, your Honour.

BENCH: So what sort of questions could you possibly ask now, at this stage, that would make it relevant?

1

5 MR WILSON: Well, as a matter of inference, the amounts that he paid is the same as on the invoice for the clearing, he said.

10 BENCH: Well, the amount is irrelevant. The thing that - the objection is the date of the invoice, Mr Wilson. The objection is: this is not relevant because the work was done at a time after the offence period.

10

15 MR WILSON: And the witness said that he sent the invoice out after - after he had done the clearing. The latest date in the offence clearing is the 19th of August 2003. This is dated 14th of October-----

BENCH: More than two months after.

20 MR WILSON: September, October, which is-----

20

BENCH: Two months.

25 MR WILSON: 19th of August, 19th of September - just under two months. 19th of October. It's under two months, your Honour.

30 BENCH: The witness said, "One month or six weeks earlier, I don't remember." That is outside the offence period. If I go back one month to six week before the 14th of October, it is outside the offence period.

30

MR WILSON: Well, perhaps it could be marked as-----

35 BENCH: Well, I'm going to - I hear your objection, Mr Sheridan. I note your objection. We could be here till midnight arguing about this. It has no weight. It has no weight to the offence period. I am admitting it into evidence but it is of no use.

40 MR SHERIDAN: Thank you, your Honour.

40

BENCH: It is admitted into evidence and marked Exhibit 21.

45 ADMITTED AND MARKED "EXHIBIT 21"

50 MR WILSON: Thank you, your Honour. Could you tell the court how you carried out the fodder feeding?

50

55 BENCH: He already did: two tractors, a chain. He did not wish to answer another question about it. You don't get him to - you're not going to just badger him, Mr Wilson, by asking him the same question again. Mr Gray rightly said to you he

1  
didn't want to answer it. So I'm here, I've got to protect  
Mr Gray from being overborne.

5 MR WILSON: I'm not trying to "overborne" him.

BENCH: Well, don't ask him the same question after he has  
told you he doesn't want to answer it, thanks.

10 MR WILSON: What fodder did the cattle eat?

10 BENCH: Did you see any cattle eat?-- There were sheep there,  
as well.

15 Sheep?-- And cattle.

Sorry?-- There was sheep and cattle.

Sheep and cattle.

20 MR WILSON: And how did - and what did you see?

MR SHERIDAN: That's leading again, your Honour.

25 MR WILSON: No, "what did you see" is okay.

MR SHERIDAN: Yes, your Honour. I withdraw that objection.

30 BENCH: If you can remember?-- It's going back a while but  
there would have been quite a few bits of edible scrub in  
there. If you could produce a list that I could look through,  
I could read them out to you. Mulga, wilga; a few others.

35 What did you last say? A few others?-- There would be a few  
others; I can't name them, off the top of my head.

MR WILSON: I have no further questions, your Honour.

BENCH: Thank you. Any cross-examination?

40  
CROSS-EXAMINATION:

45 MR SHERIDAN: Now, Mr Gray, you said you undertook fodder  
harvesting in the northern block somewhere; is that  
correct?-- Could I have both invoices, please?

50 BENCH: Sure. Just be careful you don't give Exhibit 21  
weight now, Mr Sheridan. I'm not trying to teach you how to  
suck eggs.

55 MR SHERIDAN: I'm happy to be taught, your Honour. Now you  
said you cleared regrowth; is that correct?-- On the northern  
side of the property.



By regrowth, do you mean trees that had been pulled before?-- Well, in the country we pulled on, the northern side of the property had been pulled before.

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5 Nothing further, your Honour.

MR WILSON: I have no further questions, your Honour.

BENCH: I will just check.

10

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MR SHERIDAN: Sorry, your Honour.

BENCH: Mr Sheridan, do you want to ask something else?

15 MR SHERIDAN: I'm just getting some more, as I hit the seat.

BENCH: Just checking with Mr Sheridan.

MR SHERIDAN: No, your Honour, thank you.

20

20

BENCH: No one has got any-----?-- Before we get our wires crossed, '03 invoice is on the southern side of the property.

'03 is the southern? And '01 is the northern?-- Yes.

25

Thanks, Mr Gray. I'm sorry you were delayed all day; that wasn't my intention. I did want you to get some advice if you needed it, so I'm sorry you've been kept here all day. Thank you for waiting and giving your evidence?-- Thank you.

30

30

And you're free to go now. Just leave your invoices there.

35

WITNESS EXCUSED

BENCH: We might call that other witness back, seeing as there's only going to be 10 minutes in re-examination, and finish that off. Thank you. So, any indication from your side whether you're going to be calling evidence?

40

40

MR SHERIDAN: The indication from this side is not, your Honour.

45

BENCH: So we're about half-way there. With this last witness. Five out of ten. Hop on back down, thanks, Mr Elliott.

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VICTOR CRAIG ELLIOTT, RECALLED:

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5 BENCH: The oath you took earlier will apply with equal force  
and Mr Wilson has about 10 minutes of re-examination, so you  
should be out of here by five?-- Thank you , your Honour.

10 Thank you. Yes, Mr Wilson?

10

RE-EXAMINATION:

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MR WILSON: Could the witness see Exhibits 12, 13, 14, 15, 16,  
17?

20 BENCH: "B" and "C" and 18 as well?

20

MR WILSON: Yes, please. Just before we got to that -  
Dr Olsen, when he was employed, what was he employed to  
do?-- In terms of the contract, to attend at the property and  
25 do assessment of the property.

Yes. I will just ask you to look at the southern property, as  
it appears in the Exhibits - 12, 13, 14 - in the south-east  
side. That's in Exhibits 12, 13, 14, 15, 16, 17, and "B" and  
30 "C." Also 18 - except leave out 18 for the moment. Is there  
anything consistent about-----?-- Well, the ones that show the  
actual regional ecosystems status, each one shows it as  
endangered in that - that corner.

30

35 Then on Exhibit 18, what does that corner show as? What's the  
- I'm sorry, the one on the bottom, there?-- I'm sorry.

Yes. Which one is that up to? That's Exhibit-----?-- Exhibit  
40 18. It's more fragmented, shows areas of endangered regional  
ecosystems on that one and other areas of non-remnant  
vegetation.

40

So can you explain why that has changed on that one? Do you  
know?-- I would say there has been some sort of re-mapping of  
45 the area but it's not area that - something I have been  
involved in.

Okay. When you say "re-mapping", why would they re-map  
it?-- It could be for-----

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MR SHERIDAN: Your Honour, these questions didn't arise in  
cross-examination, I believe.

BENCH: Half of that sounded like it was more like conjecture.  
He can only guess why someone would remap.

55

MR WILSON: Well, he mentioned it.

60

MR SHERIDAN: Well, your Honour, I cross-examined him at length about these maps and his answer to all most every question was that, "I don't how they make them. It's nothing to do with me. I've got no expertise in that area." And now he seems to be drawing expertise from him on that very subject. If he had something to say about it, I wish he would have said it to me an hour ago.

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BENCH: Yes, Mr Wilson, are you trying to support your question? Are you conceding defeat and moving on to something else?

10

MR WILSON: No, well, I thought that he mentioned re-mapping. I just wondered whether he could extrapolate on what he meant. I asked him-----

BENCH: He doesn't know about mapping.

MR WILSON: Well, he said re-map.

BENCH: Do you know about re-mapping now. Have you just - when you stood outside did some bolt of lightning come down and give you some further insight or what's happening here?--No, your Honour, essentially, I can see it's - it's something - there's a different version of mapping and-----

They got more data from somewhere?--Potentially. There could be a number of reasons. It's just conjecture; you wouldn't know?--I don't know the process that has initiated it or who initiated it.

MR WILSON: In the bottom left-hand corner of the - which is the south-east of the top block in maps - Exhibits 12, 13, 14, 15, 16, what can you say about that? I haven't got all those other maps?--In those maps, that's of the northern portion of the property-----

MR SHERIDAN: Excuse me, your Honour, I don't believe this question arose out of cross-examination, either. I didn't cross-examine this witness on the south-east corner of the northern block. I cross-examined him about the south-east corner of the southern block in every map. But as for the northern block, I did not direct one question towards it.

MR WILSON: I was just trying to clarify my friend's-----

MR SHERIDAN: Your Honour, the process of re-examination is not to clarify anything that I've said. It's to bring to the witness questions that arose in cross-examination.

MR WILSON: Well, the question that arose was my friend was pointing out the changes in the map. I'm just trying to show that there are some things that didn't change.

BENCH: Well, you know what? You can spend 15 minutes trying to convince Mr Elliot about that, and it might give you a nice warm feeling, but the documents do speak for themselves, and,

really, you should be convincing me of that, because I have  
got a pair of eyes and a brain, and I have the Exhibits here.  
So it will not take a great deal of scientific know-how to be  
able to look at them and go, "Oh, look, that's the same in  
that area." So do we need to do this, Mr Wilson? 1

MR WILSON: Well, look, your Honour, if you are prepared to  
have - compare them all, I'm quite happy to leave it as it is.

BENCH: Well, that's what there up here for me to do. I would  
prefer not to. I would prefer to be probably having a simple  
case, but I - there all up here so I have to look at them now. 10

MR WILSON: Well, I am just trying to draw it to your  
attention. That's all your Honour. 15

BENCH: Well, you're not; you're asking - you're cross-  
examining Mr Elliot, who has already said he is not -  
expertise in the mapping area and he relied upon someone else  
to give him the information. So you're just going to make it  
harder for him. He's looking a bit pale already. 20

MR WILSON: Well, Mr Sheridan had-----

BENCH: Okay. I'm just saying to, you don't have to convince  
Mr Elliot. If it's just comparing the maps, you can do that  
in submissions and I will look at them. 25

MR WILSON: Okay. 30

Are you able to - you gave evidence about all those sites in  
that - I don't know what the Exhibit number is - my copy is  
actually up there but I think it's the map. I think it's  
Exhibit 12, Remnant Plotted - no. Exhibit 10. Exhibit 10. 35

BENCH: Exhibit 10.

MR WILSON: Just hang on to that for a minute. And my friend  
spoke to you about the number of those sites and where they -  
and where they were. By comparing those maps, are you able to  
clarify that evidence about whether those sites were in a  
cleared area or not?--In terms of the subject of the charge? 40

In terms of the RE mapping - in terms of the RE mapping?--In  
terms of the RE mapping, it can be compared against the -  
these versions. 45

Yes?--And shown where the - the sites are.

Okay?--An indication. 50

So when you look at those there, could you describe - you've  
actually got my copy up there. Could I get that back,  
actually? 55

BENCH: What? No, that's Exhibit 10 now.

MR WILSON: Yes, but underneath that is my copy.

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THE WITNESS: As in, one of these?

5 MR WILSON: And also the-----

BENCH: Well, anything over there, that has not got an Exhibit marking on it, I'm happy for you to have, so long as it's not Mr Sheridan's.

10 10

MR WILSON: Do you mind if I go and get it? And also the ones underneath it, the photos; they're not part of Exhibits, either, I don't think.

15 So, by using this site map, are you able to then say what the location of the REs are on this site that - where you took the photographs?-- Depending on which version of the mapping we have - have in front of me?

20 Okay. Well, if we look at sites 9 - or, sorry, 10, 11 and 12, just down-----?--Ten, 11, 12, down the eastern boundary----- 20

Boundary on the southern block?-- -----on the southern block, yes. Using Exhibits 12, 13, 14-----

25 Yes?-- Site 10 appears to be close to the location of-----

BENCH: Are you only doing this visually while your sitting up there?-- This - in answer to that question, yes, your Honour.

30 30

I disallow the question. If this is a matter of - matter of looking at the four different visual images and seeing, by using your eye, where it was, I'm not going to be swayed by what Mr Elliot says. I am going to look at it myself.

35 MR WILSON: Okay. Sorry, your Honour.

BENCH: But, Mr Elliot, no one came in here with a map, with the GPS coordinates on it plotted and marked, so - and they're not - the GPS plots are not put on to one of these maps, so I don't intend Mr Elliot to do it now just visually, because that is - I can do it as reliably as Mr Elliot, I think.

40 MR WILSON: Okay. Well, I leave it to you, your Honour. 40

45 BENCH: Thank you.

MR WILSON: I have no further questions.

50 BENCH: Thank you. Thanks, Mr Elliot. That's the end of a long day. Just leave all those Exhibits up there, make sure you don't have any others. 50

55 WITNESS EXCUSED

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BENCH: Now, I take it you're here in Dalby now, Mr Sheridan,  
so-----

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MR SHERIDAN: No, your Honour, we're - Dalby's full in; we're  
in Toowoomba. We're driving back and forth each day but we  
can get up earlier. We can get here at whatever time your  
Honour wishes to start.

10

BENCH: Well, I wanted to start on time this morning, because  
I don't want this to go longer than it has to, so I wanted to  
start at nine in the morning.

10

15 MR SHERIDAN: Yes, your Honour.

BENCH: Any chance everyone can accommodate that - nine?

20 MR WILSON: Yes, your Honour, I will be here.

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BENCH: Fantastic. Well, we will adjourn till nine, and  
hopefully we will get all the evidence finished tomorrow.

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THE COURT ADJOURNED

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