

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 01/11/06

..DAY 2

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THE COURT RESUMED

5 BENCH: We should start, anyway, because we're about to hear
a new witness, it will be evidence-in-chief, and you should
have a statement about it, shouldn't you?

10 MR SHERIDAN: We've got a certificate, your Honour.

BENCH: I beg your pardon?

MR SHERIDAN: We've got a certificate.

15 BENCH: Okay, Mr Wilson, are you ready to call your next
witness?

MR WILSON: Yes, your Honour. Just before I do, I seek to
tender some documents.

20 BENCH: And is that with consent, is it? By consent?

MR SHERIDAN: No, it isn't, your Honour.

25 BENCH: Are they certificates?

MR WILSON: Beg your pardon?

BENCH: What documents are you seeking to tender?

30 MR WILSON: I was seeking to tender two certified regional
ecosystem maps.

BENCH: Well, you will have to be more specific than that.

35 MR WILSON: Yes, I will. Your Honour, by virtue of section 67
of the Vegetation Management Act, a certificate purporting to
be signed by the Chief Executive stating any of the following
40 matters is evidence of the matter. And it has got there, "A
regional ecosystem map"; and on this regional ecosystem map,
at the top, it says, "I, Adrian Jefferis, have duly"-----

BENCH: Have you had a look at it?

45 MR SHERIDAN: These maps were shown to me about five to nine.
I've been disclosed no copies of them, and I'll make further
submissions on them if it need go any further, your Honour.

50 BENCH: Well, just hand it up then, and I will have a look at
it. What's-----

MR WILSON: I've also got a certificate in respect of 51 of
the Evidence Act, as well. I've got a folder. Your Honour,
this is to keep them in, if you - they're going into evidence.
55 The certificate is at the top - the top left-hand corner, and
the certificate under section 51 of the Evidence Act is on the
back.

BENCH: Well, it has got version 3 on it. It doesn't say what date it is.

5 MR WILSON: There's a date at the bottom.

BENCH: 2001?

10 MR WILSON: That's the copyright date. It's also dated-----

BENCH: Well, when is version 3 in effect?

MR WILSON: It has got the bottom - as at - on the bottom-----

15 BENCH: As at when? I can't see it. What does it say? As at what?

MR WILSON: Could I just borrow that back?

20 BENCH: It's your document. Don't you know when it is?

MR WILSON: Yes, well, I just can't recall the date at the bottom. If I could put a highlighter pen on it-----

25 BENCH: I will hand them back to you. Hand them back.

MR WILSON: 14th September 2000.

BENCH: What was the date?

30 MR SHERIDAN: 14th September 2000.

BENCH: What, so it changed in the middle of the offence period? Ordinarily, that - I would have thought an offence
35 would be - if there was a change in the zoning or the classification during an offence period, the offence would be divided into two.

40 MR WILSON: The-----

BENCH: So - but,, anyway, you are seeking to tender these documents that have been certified?

45 MR WILSON: Yes, your Honour.

BENCH: Thank you. Yes, Mr Sheridan?

MR SHERIDAN: Yes, your Honour. As I explained at the outset, these documents were shown to me about five to nine. I have
50 received no copies, so I can't make complete submissions on them, because we have never seen them before. But, in my submission, those maps that have been handed to the court are unlawful, and I embrace the-----

55 BENCH: Unlawful?

MR SHERIDAN: Yes, your Honour. This is a prosecution under the Integrated Planning Act. I can hand up a copy of the relevant sections from the Integrated Planning Act as of - as the Act [indistinct] the 16th of October 2003. A regional ecosystem map is defined in the schedule - I have that - the relevant sections of that schedule there. I have the definition of a regional ecosystem map as at - the Vegetation Management Act as at - as enforced at the 21st of May 2004. Now, I apologise for that, but I wasn't prepared to - I didn't know this was happening. These are relevant sections of the Integrated Planning Act, which, in schedule 8, defines - for the definitions of - schedule 8 is the definitions.

BENCH: Well, can you - instead of saying that, can you tell me what's the problem?

MR SHERIDAN: The problem is a regional ecosystem map, under the Integrated Planning Act, says that - means a regional ecosystem map as defined under the Vegetation Management Act; the section of Vegetation Management Act, which is the schedule, which defines a regional ecosystem map, says: one - subsection (1), "A regional ecosystem map means a map, (a) certified by the chief executive as the regional ecosystem map for a particular area" - which this one purports to be - and (b) maintained-----

BENCH: Certified?

MR SHERIDAN: Yes.

BENCH: By whom?

MR SHERIDAN: The chief executive as the regional ecosystem map for a particular area, which my friend submitted it has been.

BENCH: Yes.

MR SHERIDAN: And (b)-----

BENCH: And?

MR SHERIDAN: And - yes, "(b) maintained by the Department for the purpose of showing for the area (i) remnant endangered regional ecosystems, and (ii) remnant of concern regional ecosystems, and (iii)-----"

BENCH: Wait a minute. Remnant endangered, remnant of concern-----

MR SHERIDAN: Regional ecosystems.

BENCH: Yes.

MR SHERIDAN: And, "(iii) remnant not of concern regional ecosystems, and (iv) numbers that reference regional ecosystems." Now, not having the benefit of a copy but-----

BENCH: Here you go.

5 MR SHERIDAN: Now, if your Honour has a look at the bottom left-hand corner of that - those two maps, your Honour will see that the endangered regional ecosystem is divided into dominant and sub-dominant.

10 BENCH: Yes.

10 MR SHERIDAN: And from my brief look at it, so are the "of concern" regional ecosystems divided dominant and sub-dominant. As such, in my submission, neither of those maps are known to law, because the definition of a regional
15 ecosystem map in the Vegetation Management Act is quite clear; that sub-dominant categories are not recognised by the Act, and in my submission, those maps are unknown to law, unlawful, and therefore irrelevant for these purposes.

20 BENCH: Thank you. Yes, Mr Wilson.

MR WILSON: Yes, your Honour. The Act does not talk about dominant and sub-dominant, but it doesn't stop them being
25 endangered. They're just a categorisation of the vegetation. Whether it is sub-dominant or dominant is of no effect. It's still endangered or of concern or not of concern. It's just a subspecies of endangered, or a subspecies of not of concern. For instance, if the shrubs there - the vegetation and shrub type - and it's endangered, then they call that a sub-
30 dominant, whereas if they've got-----

BENCH: Are you giving evidence from the bar table now?

35 MR WILSON: Yes, well, it's - I'm just trying to explain it.

MR SHERIDAN: Well-----

BENCH: Well, you cannot.

40 MR WILSON: Okay.

BENCH: You cannot explain it by giving evidence. You can call that evidence from a witness who can be cross-examined if
45 you want, but you can't give that evidence, or Mr Sheridan has a right to cross-examine you, and then we'll be in a mess.

MR WILSON: Yes. Sorry, your Honour.

BENCH: So-----

50 MR WILSON: Yes.

BENCH: -----all you can - there is - all you can do is point
55 me to legislation or something on the map, or a case, but you can't tell me what other witnesses are going to say.

MR WILSON: I agree. I agree.

BENCH: So where on Earth in this does it say what you're saying?

5 MR WILSON: Well, it has got dominant and sub-dominant in relation to each of the categories, which I say are just different species of the same category.

BENCH: It doesn't say that, though.

10 MR WILSON: Well, it says endangered.

BENCH: Well, it doesn't say they're different - that they're a dominant-----

15 MR WILSON: No.

BENCH: -----species or a sub-dominant species.

20 MR WILSON: But it has got two types of endangered there, according to whether it's dominant or sub-dominant, but it doesn't stop it being endangered. The map says it's endangered. Mr Sheridan is trying to make a fine distinction to say that it says sub-dominant or dominant, therefore it's
25 not - it doesn't come within the purpose of the Act. But even in respect of that matter, I would submit those maps don't add anything new; they're just an official map, and they're also admissible under section 52 of the Evidence Act - was it 51 or
30 52? There's a certification on the back.

BENCH: Well, does the making of words in bold print mean that what follows below them are within a category?

MR WILSON: Well, I-----

35 BENCH: Because it has got "remnant endangered regional ecosystem" in bold print, and underneath that it has got a pink block for dominant, a pale pink block for sub-dominant. So then it has got "other vegetation and topographical
40 features" in bold; it doesn't have "remnant of concern regional ecosystem" in bold, and it has "remnant not of concern regional ecosystem" - it has got a colour ascribed to it. So it's - at this stage, I haven't formed a concluded
45 opinion about it, but it's poorly drawn, whoever drew it, because it doesn't say that both pinks are indicative of remnant endangered regional ecosystem - the orangey-brown and the creamy colours sub-dominant remnant of concern regional ecosystem is not set out properly.

50 Because it also shows plantation forest, which - that shouldn't be there. It also shows dams or reservoirs. It also - well, that might just be superfluous, but it's not - like, I don't have "remnant endangered regional ecosystem" in
55 bold, and then something following that, then "remnant of concern regional ecosystem" in bold and then something following that, then "remnant not of concern regional ecosystem" in bold and something following that. So it's not

a consistent setting out, so it's open to interpretation. Yes. Well, Mr Sheridan, I hear your objection. I think I need to read some case law about interpreting maps. I don't know whether you know any?

5

MR SHERIDAN: There is a decision of - and I have a copy of it here somewhere, your Honour, but again, I apologise for not being prepared while this was somewhat surprising-----

10 BENCH: No, you don't have to apologise. You only saw them this morning.

MR SHERIDAN: There's a case of Robin QC DCJ in the Planning and Environment Court, where the definition of a regional ecosystem map provided - related from the statute to your Honour is stated by Judge Robin. I have that case behind me in stacks.

20 BENCH: Yes, well, I'm going to admit them into evidence, because - at this stage, but I'm open to hear submissions about how they should be interpreted.

MR SHERIDAN: Thank you, your Honour.

25 BENCH: So version-----

MR SHERIDAN: Excuse me, your Honour.

BENCH: Yes.

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MR SHERIDAN: My learned friend made reference to a certificate.

BENCH: Yes.

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MR SHERIDAN: I've not seen that either. Excuse me, your Honour.

BENCH: Amendment 14. Is that the certificate?

40

MR SHERIDAN: What's that?

BENCH: Amendment 14 of version 3. I will hand that down.

45 MR SHERIDAN: Thank you, your Honour. Sorry, your Honour. I've no idea what this is.

BENCH: Pardon?

50 MR SHERIDAN: I've no idea what this is meant to represent. Those two versions that were just handed up-----

BENCH: You've got version 3 and version 2.1.

55 MR WILSON: Your Honour, the one there is identical to Exhibit 13.

BENCH: What does that mean? It's not, because you're tendering it. If it was identical, you wouldn't be tendering another document.

5 MR WILSON: I think-----

MR SHERIDAN: Your Honour, the certificate on the back, which is, "I certify that this certified amendment to the regional ecosystem map, volume RE8341, version 3, was the current
10 certified regional ecosystem map for the date of 23 May 2003 to the 19th of August 2003" - which appears - those dates are certainly not the first - certainly not the first count, but it appears to be midway between - midway in the second count to the end of the offence being on the second count.
15 your Honour. That's the way I feel.

BENCH: Well-----

MR SHERIDAN: I object on the face of-----

20 BENCH: -----you haven't got a copy of that yet?

MR SHERIDAN: No.

25 BENCH: Have you got a copy for Mr Sheridan?

MR WILSON: No, your Honour. They were just sent to me from Brisbane. I just - I brought-----

30 BENCH: Well, why didn't you photocopy it before you came in here?

MR WILSON: Because I've got no colour photocopier, and particularly for those big ones, your Honour.

35 BENCH: What, so Mr Sheridan is supposed to represent his client in a three-day trial without access to the material that the Crown gives him day 2?

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

BENCH: Is that what you're suggesting?

MR WILSON: No, I was aiming to put this in to assist the
45 court, because it had the grid references and the-----

BENCH: Well, it's not going to assist me if I have to delay the trial and waste the rest of the two days, to allow Mr Sheridan to get a copy from somewhere if you don't have the
50 facilities to give it to him.

MR WILSON: Well-----

BENCH: Surely, if you could get one of each of these, you
55 could have got two. Surely in Brisbane, they have a big photocopier.

MR WILSON: Well, perhaps they do, your Honour, but I wasn't - I had to try and organise it the best I could.

5 BENCH: You've had months to organise it, Mr Wilson. Your Department knew that this has been listed for hearing for months. It didn't just happen overnight. So why on Earth should I admit documents into evidence if you cannot get a copy for Mr Sheridan and give them to him at a reasonable time? Any why should I admit into evidence a document that 10 purports to be a certificate on a document which has got in bold red letters "For Government Use Only"? That's what's on version 3.

15 MR WILSON: Well, I withdraw them, your Honour.

BENCH: Well, I'm just suggesting to you it's not - it shouldn't be trial by ambush, Mr Wilson.

20 MR WILSON: I'm not trying to do that.

BENCH: So there has been months when Mr Sheridan could have looked at these and familiarised himself with them.

25 MR WILSON: Yes, your Honour. I might have had the opportunity to cross-examine the witnesses who have already been called on the basis of that, if I knew that the prosecution intended to rely on it.

30 BENCH: Well, I think I should allow them to be admitted into evidence seeing as they've been tendered, and we'll recall the witnesses from tomorrow, if you've got questions you want to ask. Anyway, really you weren't objecting to these. You were objecting to that certificate. Is that correct?

35 MR SHERIDAN: Well, I was objecting to those-----

BENCH: On the basis of a question of law.

40 MR SHERIDAN: Yes, your Honour, on the basis of non-disclosure.

BENCH: Non-disclosure and a question of law.

45 MR SHERIDAN: Yes, your Honour.

BENCH: And what were you objecting to that other one for?

50 MR SHERIDAN: Disclosure and the certificate, which seems to have been signed yesterday, and which seems to try and place this map within part of the offence period of the second offence. Sorry, I'm at a bit of a loss, because I've just seen it as your Honour passed it to me.

55 BENCH: Well, we've just wasted 20 minutes on this. If you're going to withdraw them, it's a waste of 20 minutes, and I'm going to make a note of that because if we go beyond three days and it's because of wasted time, there will be an

appropriate costs order made. I'll just hand these back if you're withdrawing them. I don't understand why you've gone to all the trouble to get them if you're now going to withdraw them. Yes, are you ready to proceed with something else?

5

MR WILSON: Yes, your Honour, I will call the next witness, Jeremy Anderson.

10

JEREMY ROBERT ANDERSON, SWORN AND EXAMINED:

15 MR WILSON: Could you tell the court your full name, please?-- Jeremy Robert Anderson.

And whereabouts do you work?-- I'm employed by the Department of Natural Resources and Water as a scientist with the remote sensing team.

20

What sort of qualifications do you hold?-- I've got a bachelor of science in plant sciences from UQ. I've got an honours degree in plant pathology from the same university. And I've got a masters degree from the University of Queensland in geographical sciences.

25

Have you got a resume with you?-- Yes, I do.

30

Have you got copies?-- Yes.

I tender his resume, your Honour.

BENCH: That will be admitted into evidence and marked Exhibit 22, thank you.

35

ADMITTED AND MARKED "EXHIBIT 22"

40

MR WILSON: Now, can you tell the court what you've done in respect of this matter?-- I prepared a couple of certificates which summarise the findings I made in regard to analysis of vegetational clearing on lot 8 on plan MGL 33. I've also created a series of maps which delineate the clearing on both blocks, and I've also created a map of the clearing overlaid on the RE mapping current at the time.

45

Okay. Could I have a look at that certificate, please - two copies?-- Two copies?

Yes, please, with the maps, the maps that are attached. Is there another copy? Now, in relation to that certificate - your Honour, I seek to tender that certificate.

50

55

MR SHERIDAN: I object, your Honour. These certificates which cover the documents and the maps that form the basis apparently of Mr Anderson's expert evidence today, are based, according to the certificate, which was sworn on the 14th of September 2006, on regional ecosystem RE map certified changes version 3.2. That map is not in evidence before the court. In my submission, therefore, any evidence or expert opinion Mr Anderson gives in his evidence today is irrelevant. The basis of his expert evidence is simply not before the court.

MR WILSON: Thank you, your Honour. Section 66B of the Vegetation Management Act provides, "Certificate or report about remotely sensed image" - would it assist if I handed up a copy of that section?

BENCH: I don't know. You tell me. Is it long and hard or can you just tell me about it?

MR SHERIDAN: Your Honour-----

BENCH: Yes.

MR SHERIDAN: -----might I ask that while we have this legal argument that this witness be absented from the court.

BENCH: Would you mind waiting outside. Thank you.

WITNESS STOOD DOWN

MR WILSON: Perhaps I haven't got a copy, your Honour.

BENCH: Can I have a look at what we're arguing about.

MR WILSON: Section 66B-----

BENCH: No, the whatever it is, the certificate.

MR WILSON: The certificate, sorry. Do you want an extract of the section to have a look at?

BENCH: Thank you.

MR WILSON: Section 66B.

BENCH: Did you get a copy of this in September?

MR SHERIDAN: Yes, your Honour.

BENCH: Did you give a notice that you intended to challenge it?

MR SHERIDAN: Yes, your Honour, we have.

BENCH: Your objection is based on the fact that - I'm just trying to clarify it for myself.

MR SHERIDAN: That's fine, your Honour. Please do.

5

BENCH: That the regional ecosystem map is version 3.2.

MR SHERIDAN: No, your Honour. My objection is based - it is not the certificate itself, but as to what the certificate refers. That certificate, that was signed by Mr Anderson in September, shows there, at paragraph beginning - at about paragraph 5, "I have obtained"-----

10

BENCH: Yes.

15

MR SHERIDAN: -----"a certified regional ecosystem, RE map, certified changes 3.2 in relation to."

BENCH: Yes.

20

MR SHERIDAN: He has overlaid that on to this RE map. He has got a-----

BENCH: Sorry. He got the regional ecosystem map.

25

MR SHERIDAN: Yes, version 3.2.

BENCH: Yes.

MR SHERIDAN: And these images and this evidence of this expert brings before the court today, in his stated conclusions, which is - if I go back to that certificate, the section that my friend has handed up, that certificate - the stated conclusions drawn, are drawn on the regional ecosystem map certified changes, version 3.2. That map is not before the court. Therefore, in my submission, any evidence he gives on the basis of that map which is not before the court, is irrelevant, because it's baseless, because that map is not before the court. We have an enormous amount of regional ecosystem maps that are before the court now, none of which are the map that this witness says he based his conclusions on.

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35

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MR WILSON: Your Honour, if I could just correct my friend there. I think Exhibit 14 and Exhibit 17, tendered by my friend, are those maps.

45

BENCH: No, 17 is version 4.

50

MR WILSON: Exhibit 14.

BENCH: Well, I would have thought the prosecution should be tendering something.

MR SHERIDAN: It is, your Honour. Your Honour, when we don't get disclosed this sort of information, we have to make our

55

own arrangements and try and find that we know the case we are to meet, and this is the difficulty that arises.

5 MR WILSON: There's no reason why Mr Anderson can't put these maps in, your Honour.

MR SHERIDAN: Other than the reason that they haven't been disclosed, your Honour.

10 BENCH: Well, isn't it the case that you tendered, to this court, the letter that was sent out to Mr Knights in October 2002? What version are those?

15 MR WILSON: What Exhibit number is that one, your Honour?

MR SHERIDAN: Six.

20 BENCH: Six. That's your case, isn't it? We told him these were the ecosystems.

MR SHERIDAN: Neither of those maps are regional ecosystem maps, version 3.2.

25 BENCH: Aren't they? Well they're both 1999.

MR SHERIDAN: One is updated '99, the other one is rendered '99. Nowhere on either of those maps does it refer to "Regional Ecosystem Map Certified Changes, version 3.2."

30 MR WILSON: Your Honour, in the maps that were disclosed to Mr Sheridan, their certificate - there is a clearing version 3.2 - certified change.

35 BENCH: Sorry, what Exhibit is this?

MR WILSON: This is the one that's in contention now. Attached to that is an overlay. Mr Sheridan has had that for quite some time.

40 MR SHERIDAN: It's not before the court, yet, your Honour. That's what we're arguing about. If I can go back to my argument over the previous two maps that my friend attempted to tender but then withdrew, if we go back to the definition of a regional ecosystem map, a regional ecosystem map means -
45 if your Honour would - I'm going to refer to that map, the JR05, that appears in that bundle.

BENCH: JRA05.

50 MR SHERIDAN: Yes, sorry, your Honour. JRA05.

BENCH: Yes.

55 MR SHERIDAN: If we go down to regional ecosystem map 1(b)(iv). The regional ecosystem map, according to the definition of Vegetation and Management Act, is maintained by the Department for the purpose of showing for the area: (iv)

numbers that reference regional ecosystems. And this document, JRA05, does not show-----

BENCH: Well, it's not a regional ecosystem-----

5

MR SHERIDAN: No, your Honour, it is not; that's my point.

BENCH: -----map. It's a creation by Mr Anderson.

10 MR SHERIDAN: Yes, your Honour.

BENCH: And he needs to disclose his source documents, doesn't he?

15 MR SHERIDAN: Yes, your Honour.

BENCH: Because he has created all these.

MR SHERIDAN: Yes, your Honour.

20

BENCH: So what - okay, so let me just do this step by step. Your objection is about what he has attached are not regional ecosystem maps according-----

25 MR SHERIDAN: My initial objection is that the basis of his evidence - the basis of his findings, according to his certificate, is "Regional Ecosystem Map Certified Changes, version 3.2." That document is not before the court.

30 BENCH: Has it been disclosed to you?

MR SHERIDAN: No, your Honour. Has it?

35 BENCH: No, not Mr Anderson's statement, but the actual certified-----

MR SHERIDAN: Certified regional ecosystem.

40 BENCH: Because those big ones that Mr Wilson was trying to tender before, they weren't 3.2.

MR SHERIDAN: No, your Honour.

45 BENCH: That was 3 and a 2.

MR SHERIDAN: 2.1, I think.

BENCH: 2.1.

50 MR SHERIDAN: In any event - so that's my primary objection. Why I'm on my feet now is because my learned friend attempts to characterise this, JRA05, version 3.2 certified change as a regional ecosystem map.

55 BENCH: Well, it's not a regional ecosystem map.

MR SHERIDAN: Thank you, your Honour.

BENCH: It's a document created by Mr Anderson.

MR SHERIDAN: Yes, your Honour.

5

BENCH: Expressing his opinions.

MR SHERIDAN: It is purported to be a regional ecosystem map, but it doesn't-----

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BENCH: Where does it say that?

MR SHERIDAN: At the top, "Version 3.2, Certified Change".

15

BENCH: No, it's not a regional ecosystem map according to the certificate, it's an overlay of-----

MR SHERIDAN: Yes.

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BENCH: -----that map on a satellite image. We don't even know what 3.2 is.

MR SHERIDAN: No, your Honour, we don't.

25

BENCH: That has not been disclosed by the prosecution to you-----

MR SHERIDAN: It's not in evidence.

30

BENCH: The court, or to you, at this stage.

MR SHERIDAN: No, but I'm just on my feet now to meet my friend - learned friend's submission that JRA05 was a regional ecosystem.

35

BENCH: No.

MR SHERIDAN: Thank you, your Honour.

40

MR WILSON: Your Honour, these maps were sent out to - this certificate was sent to him on the 20th of September 2006.

BENCH: That's good.

45

MR WILSON: He was to give us 28 days notice of the party's intention to adduce relevant information - evidence.

BENCH: He said he did.

50

MR WILSON: He did that on the 4th of October 2006, which is not-----

BENCH: Yes, that's well within the time.

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MR WILSON: -----28 days.

BENCH: You sent it out on the 20th September, he would have had till about the 16th of October to tell you.

MR WILSON: I think it is 28 days before the proceedings.

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BENCH: Well, you have got to send it out a lot earlier, then. It doesn't say that in the one that you handed me up. It says, "must give at least 28 days notice of the party's intention to adduce relevant evidence." Well, they can't. The 28 days doesn't start until you give them a certificate. How can it?

10

MR WILSON: Okay.

15

BENCH: Otherwise you could give it to him on the day of court and say, "Oh, you should have given me 28 days' notice, you were going to adduce evidence." That certificate should have been given to them months before, if you wanted reasonable time to sort this out. That's just common sense.

20

MR WILSON: Yes, I agree. But all this has been disclosed. The 3.2, the overlay, discloses all that, and perhaps Mr Anderson might be able to give in his evidence what 3.2 is.

25

BENCH: Well, whether or not it's relevant is another issue, because if 3.2 was not in existence in 2000, it's not going to have any effect. I've got to look at the date of the charges and see when 3.2 came into effect. Your case will have to answer why it wasn't sent to Mr Knights, as the other documents were sent to him. How is he supposed to know about 3.2 if he hears about it at the court, day 2?

30

Anyway, Mr Sheridan, I'm half with you, half against you. I find JRA05 is not a regional ecosystem map. I find that the legislative framework for the tendering of certificates means that I admit the certificate into evidence and then I'll listen to the evidence that you adduce. That will include your cross-examination of Mr Anderson. As I foreshadowed, 3.2 seems to be an issue, a live issue, and what happens about 3.2, well, the evidence will disclose. So yes, I'm going to admit the certificate. There are two certificates. It clearly does say it's about conclusions which are opinions, and that means that they're subject to cross-examination in the ordinary course.

45

MR SHERIDAN: Is your Honour making a ruling on my submissions that this report is irrelevant?

50

BENCH: It may be irrelevant, because I haven't seen 3.2 yet, and if 3.2 didn't come into effect until after 2003, it would be irrelevant.

MR SHERIDAN: Thank you, your Honour.

55

BENCH: So certificate one, the first certificate in the bundle is admitted into evidence and marked Exhibit 23.

ADMITTED AND MARKED "EXHIBIT 23"

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BENCH: And the second one in the bundle is admitted into evidence and marked Exhibit 24.

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ADMITTED AND MARKED "EXHIBIT 24"

15

BENCH: Now, will we get Mr Anderson back in? Do you want your Vegetation Management Act back?

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MR WILSON: Yes, please, thank you.

BENCH: Now, I also seem to have acquired, somehow, an extra bundle of these documents. I think that's yours, Mr Sheridan. I think I got it off your instructing solicitor.

25

MR SHERIDAN: Yes, your Honour, thank you.

BENCH: That is, this is - yes. Do you want this back on the witness box?

30

MR WILSON: Yes please.

JEREMY ROBERT ANDERSON, RECALLED AND CONTINUING EXMINATION:

35

MR WILSON: I think he has got another copy, your Honour, which might make it more convenient.

40

BENCH: Well, he can give me his copy and I'll give him the originals.

Can you please give me your copy of that stuff and I'll give you those originals?-- The whole lot?

45

Yes, that bundle of stuff there?-- This has got everything except the certificates. I think you've got the certificates.

Well, can someone-----?-- I've got a whole set.

50

With the certificates?-- Yes.

Okay, thanks, I'll have that. I don't need your resume again. I've got that up here still?-- That's in the-----

55

That's okay. I'll give it back to you later.

MR WILSON: Have you got a certificate to work from, Mr Anderson?-- Yes.

5 BENCH: Yes, he's got the original one that has been admitted into evidence.

MR WILSON: Okay. I'll just take you to the first certificate. In relation to the pre-clearing and post-clearing, the 5th of October 2006 to the 6th of September 10 2001, what can you tell the court about - have you got a-----?-- Yes, I've prepared a presentation that details how I got to these figures.

15 BENCH: Has that been disclosed?

MR SHERIDAN: I'm not sure, your Honour. All that has been disclosed-----

20 BENCH: Did you get invited to have a presentation?

MR SHERIDAN: No, your Honour. All that has been disclosed are these JRA03, or what appears in the certificate, JRA02, JRA03, JRA04. That's all that was disclosed under this certificate, hard copy paper mats.

25 BENCH: Okay. Well, we're about to see your presentation. Have you got an expert you're going to call?

30 MR SHERIDAN: No, your Honour, we do not.

BENCH: No. Okay, so you don't wish to - I just wanted to check whether you wanted someone to come and sit in.

35 MR SHERIDAN: No, thank you, your Honour.

BENCH: Thank you.

Okay?-- I've got copies of all the slides, if that helps.

40 They should have been disclosed.

MR SHERIDAN: Is there anything else? Excuse me, your Honour.

45 BENCH: Right, let's have a look at the presentation. Did you want to look at the slides, Mr-----

MR SHERIDAN: Yes, that would be good, your Honour, thank you.

50 MR WILSON: If it's any comfort, it's the first time I've seen it, too, your Honour.

55 BENCH: I beg your pardon? Have you got a copy?

MR WILSON: I've got a copy, thank you.

BENCH: Does your client want a copy to look on, because there are two spare copies down here?

MR SHERIDAN: Yes, your Honour, that would be helpful.

5

BENCH: Anyone else want a copy because we've got two spare copies. The lady in the back, do you want a copy? Can she have a look?

10 MR X?: Would your Honour mind if I-----

BENCH: No, you have been usurped, sorry.

15 Right, here we go?-- Sorry, your Honour, would you like a laser pointer?

Why?-- I don't know.

20 You need it, don't you? You're going to show us things?-- I've got two here.

You might want to give one to Mr Wilson at the bar table. Have you got one done there, as well?

25 MR SHERIDAN: We've got one here at the table, your Honour.

BENCH: Okay. If I need one I'll speak up, but I'm just going to be very quiet and listen and learn a lot?-- This just details the case in my name and the property, Lot 8 on MGL33. 30 This slide shows the subject property, which is the southern block and the northern block. I've broken the clearing up into the two clearing eras, so - and these eras coincide with the certificates. So we've got October 2000 to September '01 in the northern block, and the status of the RE that I 35 determined was cleared. And I've got May 2003 to August 2003, and the RE status of the vegetation that I determined to be cleared in that period. I'll step through each different clearing area. I'll sort of do zoom-ins just to clarify how I determined what I determined. This image behind the cadastre 40 is from October 2000.

Sorry?-- Up in the top left corner of most of the slides I've got the date of the image that was used or the RE version that relates to the slide.

45

So that one is October 2000?

MR WILSON: Are you talking about a satellite image or a-----?-- Yes, the satellite image. Just because this 50 clearing occurred in two different eras, I've prepared a bit of a time line that shows-----

BENCH: So you've interfered with that image?-- No-----

55 You've interfered with 05.10.20 by putting those blue lines on?-- Yes-----

And whitening that out?-- That's just an overlay. I haven't actually interfered with the image. I've just-----

5 Well, where is the original image without the blue and the white on?-- It's coming up. I've got zoomed in areas that - where you can look through the areas that I've delineated.

10 Okay. Thank you?-- So I've prepared a time line which shows the different clearing eras, the published RE versions, and the data from which those versions were derived. So I've got the years down the left-hand side, starting at '97 to 2003, clearing periods, I've got two eras, October 2000 to September '01, and May to August '03. For the first clearing of that - well, three RE versions were current across this time period. 15 2.01, which was published-----

MR SHERIDAN: I object, your Honour. This goes to my initial objection to relevance of this witness's information. None of these versions, 2.13 or 3.2, are before the court in evidence, 20 so the whole basis of his findings based on that are irrelevant because they're based on evidence not before the court.

25 BENCH: Well, that - this is about this witness's conclusions as a scientist. He can't give evidence that 2.1 applied and was relevant. That has to be proved by law. That hasn't been proved by law at this stage.

30 MR SHERIDAN: Yes, your Honour.

BENCH: So I'll allow him to give the evidence, but, of course, I can appreciate your frustration, but I'll allow him to give the evidence and you can cross-examine him about that.

35 MR SHERIDAN: Thank you.

40 THE WITNESS: So, just getting back to the publication dates, 2.1 was published in September 2000, version 3.0 was published in early June 2001, and the certified change which was an amendment to version 3, which was called version 3.2 Certified Change, was published in November 2002. These RE versions were derived from data sets a few years beforehand, so I've just created a slide here that shows the relationship in time of these versions to the data that was used to derive these 45 data sets. As we go to each clearing era, I'll highlight which RE versions and the data that was used to derive those versions prior to that clearing event. The next three slides are just the three versions, the three RE versions that we're talking about and I've sort of shown the whole lot and later 50 on I will do zoom ins and we can have a closer look. So, just to go through the legend quickly, I've got the cadastral boundaries in yellow, the vegetation clearing outlined in blue, the remnant endangered RE in a pinkish colour, the of concern remnant RE in the orange colour, and the not of 55 concern RE in green, and non-remnant vegetation is white. So version 2.1, version 3 and so if I change 3.2 - okay, this slide highlights the first area, area A, the total clearing in

that little area was 112.5 hectares. I'm just going to zoom into that area and provide a break down of each polygon and the remnant status of the vegetation within each of those polygons. In this case, we've got 85 hectares of endangered cleared, 14.2 of concern and 13.4 not of concern, totalling 112.5. The next slide is the same satellite image with the same clearing areas but I've hollowed out the polygon so you can see the vegetation that I mapped. So, as you can see, we've got vegetation within the blue boundary. This is October 2000. And the next load is what we call the post-clearing date, which is September '01. So, as you can see, it clearly changes from green to pink between the two slides.

MR WILSON: Can you just toggle that again?-- Yeah. So, this is the pre-image. That's the post-image. So you can clearly see a change in colour from green to pink which is indicative of vegetation clearing. So, moving on to the next slide. Just going back to the original time line, but highlighted the versions that relate to this particular clearing event; 2.1 was available before October 2000. 3.0 was available sort of during the clearing event, and 3.2 was available after, but it represented an amendment to version 3 which was current during the time. So, what I did was assess the RE status of all those versions within each clearing area and I've taken the lowest remnant status to comprise the charge.

Can you just clarify that again?-- It's probably useful if I step through. I've got a series of slides that show how I worked out which remnant status to work with. So, this is the same area with RE version 2.1. The next slide is RE version 3 and the third slide is certified change 3.2. So, there's a little bit of change through time.

I'll just check. 3.2 though, is after this event?

MR SHERIDAN: I object, he is leading him, your Honour.

MR WILSON: I beg your pardon.

I might as well read the earlier?-- 3.2 was released after the event but it was an amendment to version 3 which was current during the period.

Can you tell the court why that's relevant in this matter?-- It's relevant because it was the RE mapping that was current during the clearing period. So, you've got RE version 2.1, 3.0 and 3.2 and then this last slide shows the - I've called it lowest RE status - and just to clarify that, that's just, if on one of the versions a particular area was endangered, it was subsequently changed to of concern; for example, I've taken the lower RE status in all cases. Okay, moving on to area B which is in the south-western corner of the northern block. The total area of this clearing was 74.2 hectares. It was to provide a remnant status of what was charged. 58 hectares of endangered RE was determined to be cleared. 14.1 of concern originally - 14.1 hectares was determined to be cleared and 2 hectares of not of concern,

remnant not of concern vegetation cleared. The next slide is the same satellite image, just with the clearing areas hollowed out, so that's the 2000 image and that's the 2001 image. So once again, we can see the clear change from green to pink which indicates clearing. I've got the same set up for this area while I step through version 2.1, 3.0 and 3.2 and then a slide that shows the remnant status change, which in all cases was the lowest remnant status current at the time. So, this is 2.1. As you can see, all this clearing was mapped as endangered and in 3.0 it was mapped as endangered also. Certified change 3.2 - an amendment was made which changed the remnant status to of concern, not of concern and endangered. So, to derive the statistics outlined in the certificate, I have used the lowest remnant status to provide the summary stats. So, just to show that that's the RE that I determined. That's the remnant status of the vegetation I determined to be cleared. Okay, moving now to the southern block, which is the subject of the second certificate, so, the second clearing era from May 2003 to August 2003.

20 BENCH: You may as well be seated, Mr Wilson, while we're looking at this.

25 THE WITNESS: So, once again, I've just provided some summary stats on the remnant status that I determined to be cleared within this area within this time period. So, I've got a total of 33½, roughly, hectares of endangered RE, 143.7 of concern RE. Just to provide a pictorial of how it changed through time, that's the pre-image - sorry, that's the pre-image, that's the post-image. So clearly, it changed from green to pink. With the second clearing era, the most current available RE mapping at the time was version 3.2 certified change. So, for this clearing, I only assessed, I only used 3.2 certified change data set to determine the remnant status of the vegetation cleared. So, to show the remnant status of the vegetation as of 3.2 - and once again it's the RE charged. Okay, this is the final area, area D, which is in the south-eastern portion of the southern block. Total clearing of 637.4 hectares. So, zooming in, that's the area that I determined to be cleared. The remnant status breakdown was roughly 567.9 hectares of endangered RE and 70 hectares of of-concern regional eco system. So, this is the pre-image; this is the May 2003 image; and this is the August 2003 image. So, once again, we've got a distinct change in - sorry, distinct change in colour that I determined to be cleared areas. This is the RE mapping showing certified change 3.2 over the area. I think that's the end of my - sorry, this is the charged RE and that's the end of the presentation.

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

BENCH: Are you right to cross examine, or do you want to - are you right?

55 MR SHERIDAN: Well-----

BENCH: Just before you do cross-examine, can I just ask a few questions?

MR SHERIDAN: Yes, your Honour.

5

BENCH: So, the images come from the satellite and a lot of things will affect the image that you get, in terms of atmospherics and other things, I presume, and the shape of the Earth. Do you look at several satellite images before and several satellite images after the period, as well, just to observe changes, and to check as part of your cross-check on your professional opinion about this?-- Yes, we do. We have access to satellite imagery as far back as about 1988, and as far - I think we have, at the moment, late 2005 satellite imagery. So for any case I assess the clearing all through time and then narrow it down for the area of interest.

20 So why do you just bring along two satellite images? Why don't you bring, like, five, so that the court can see that the change remains there?-- In this case I brought four images; two for the first clearing area and two-----

25 I mean in each clearing area. You've got just one before and then one after?-- Yes.

Because you're saying it's clearing, but really it means an absence of vegetation, doesn't it, or a change in vegetation?-- Yes.

30 And there's - well, at the moment we're in a big drought, so that can affect vegetation as well?-- Yes.

35 So what is it - when you're saying clearing, I'm not quite sure about that. I thought all you could do is say there's a change in vegetation, which could have occurred because there was a fire from that - that wasn't lit by anyone purposefully, but a bushfire would change vegetation?-- Yeah. All of this assessment is based on my experience and my knowledge of what changes in the landscape over time, and as I said, I do assess a lot of images.

You haven't brought other satellite images along after the date?-- I do actually have them with me on the computer.

45 But you haven't - that's not part of your presentation?-- No.

50 And for example - so what you do is you look - you get the stuff from the satellite, and then of course if an investigator goes out to that spot and sees a crop growing there, then that's evidence, but really, you need further investigation to see what has changed the vegetation?-- All I can do is say that in my expert opinion, I consider this area to have been cleared.

55 What do you mean by "cleared," though? You mean - by the word "cleared," you mean there has been a significant change in

vegetation?-- I mean that there's been a significant change in woody vegetation.

5 Woody vegetation. Okay. And just so I understand as well, if we look at - compare slide 9 and slide 10?-- Shall I bring it up on the screen?

Well, unless you've got slide 9 and slide 10 there?-- I do.

10 Well, you don't have to bring it up on the screen if you've got them there with you?-- I've got it on my screen. Okay.

15 So slide 9 and slide 10, it's not just the areas that you've highlighted in blue that have gone from green to purple?-- That's right.

20 It's a bigger area has gone from green to purple?-- That's right. The areas that are defined there are areas of remnant vegetation that was cleared.

25 So that's only when you overlay your RE maps. So this is only as good as your RE map information?-- The areas that are clear are all the areas that I've determined to have changed - to have been cleared, and that usually extends beyond the areas mapped as remnant vegetation. The processing we undertake is to intersect these areas with various data sets - for example, the cadastral boundaries, the RE mapping - and that gives us a picture of what was remnant, and, therefore, on freehold land, what could be charged.

30 So when you look at slide 9 and then look at slide 10, there's an area to the left-hand side of that blue mapped area, which has gone from pink to green. So what would explain that?-- Just to clarify, are you talking about down here?

35 No, in that circular bit in the middle-----?-- Here?

40 No, no, no. Down - in this bit here. So that - on slide 9 that is pink, and then on slide 10 it's green. So what's happening there?-- That could be due to a growth flush. Commonly, that kind of brighter, almost fluorescent green is to do with a growth flush.

45 Thank you. Any questions arising out of mine, Mr Wilson?

MR WILSON: No, your Honour.

BENCH: Thank you. You're right now to cross-examine?

50 MR SHERIDAN: No, your Honour. I might take your Honour up on an offer to have-----

BENCH: Have our early morning break now, and then we'll continue on?

55 MR SHERIDAN: Yes, your Honour. I have to have time to look at these-----

BENCH: Okay.

MR SHERIDAN: -----36 slides.

5

BENCH: Thank you. Well, we'll take a short - well, we'll take an adjournment for about 15 minutes.

MR SHERIDAN: Thank you, your Honour.

10

BENCH: Thank you.

15 THE COURT ADJOURNED

THE COURT RESUMED

20

JEREMY ROBERT ANDERSON, CONTINUING:

25

BENCH: Thank you. You may be seated. Yes, Mr Sheridan.

MR SHERIDAN: Thank you, your Honour.

30

BENCH: So were you - sorry, were you tendering this presentation?

MR WILSON: Yes, your Honour.

35

MR SHERIDAN: I object, your Honour, and I made that-----

BENCH: Yes.

40

MR SHERIDAN: -----objection before.

BENCH: I note your objection.

45 MR SHERIDAN: Thank you, your Honour.

BENCH: Thank you. It will be admitted into evidence and marked Exhibit 25.

50

ADMITTED AND MARKED "EXHIBIT 25"

55

MR WILSON: Thank you, your Honour.

BENCH: Just before you start, I'll just swap the copied certificates and documents for the originals. Yes, Mr Sheridan.

5 MR SHERIDAN: Thank you, your Honour.

CROSS-EXAMINATION:

10

MR SHERIDAN: Now, Mr Anderson, just - I'm referring to the maps that were issued out of your first certificate - and that's JRA02, 3, 4 and 5 - they relate to the - what has been described as the northern block, the subject block?-- Yes.

Correct? That was allegedly cleared between the 10th of October 2000 and 6th of September 2001?-- Yes.

20

Does your Honour have a copy of those so your Honour can follow?

BENCH: Sorry? JRA-----

25

MR SHERIDAN: It's JRA02 to 5.

BENCH: Yes, I've got those.

MR SHERIDAN: Now, in all these documents, the areas that are depicted on those documents in the hatched - not hatched - the lined areas, as it's probably going to be called - is your Honour comfortable with that terminology?

35 BENCH: Yes.

MR SHERIDAN: Yes. They are the areas particularised in the charge?-- Yes.

40 They're the areas allegedly unlawfully cleared?-- Yes.

And you say the total of that area in those blocks is 186.7 hectares. Is that correct?-- Yes.

45 And in the bottom left-hand corner of each of those documents, it shows that legend there with the blue lines: "Total cleared areas (not exempt total cleared) 186.7 hectares". That's correct?-- Yes.

50 So have you excluded some areas from these areas that you've calculated under an exemption?-- Yes, I did. I excluded some areas under the non-remnant freehold exemption.

55 The non-remnant freehold exemption. What is that?-- That - VMA stated that for clearing of non-remnant vegetation of freehold, no permit is required. It's not unlawful. I also

excluded a 10 metre buffer in the south-western corner, along the boundary of the property.

On what basis?-- Fence line exemption, fence line maintenance.

5

Is the fence line exemption 10 metres?-- Yes.

Are you certain of that?-- That's what I did.

10 No, that wasn't the question. Are you certain of that, that the exemption is 10 metres?-- From my understanding, yes.

15 Where does that understanding spring from? Your interpretation of the Act, or someone else's?-- From my interpretation of the Act.

No one else told you it was 10 metres?-- Specifically for this case, no.

20 Isn't it 1.5 times the standing vegetation?-- I think that relates to fire breaks.

25 So what reduction in the area in hectares of these polygons was a result - resulted from your exclusion under the statutory exemptions?-- For fence lines?

Yes?-- It was a very small - very small area. Probably less than one hectare.

30 Less than one hectare, probably?-- I can't tell exactly. I don't have the stats for it, but from memory, they were small.

35 Now, in JRA02, the areas under those polygons are green, and you say from JRA02, from the clear clearing, these were areas where vegetation was standing prior to the clearing. Is that correct?-- Yes.

40 And the total area is the area that's inside those polygons?-- Yes.

Within - if you have a look at JRA02, in the area just below the panel where you have 8 MGL33 - can you see where I am?-- Are you talking about just there?

45 Yes, yes. There's an area in that polygon there that appears to be pink and it has got a crossed line on it. Do you have a copy of these documents on that computer that we can look at on that screen?-- I would have to look. I'm not sure.

50 BENCH: Wouldn't they be in this presentation?

MR SHERIDAN: Slide 9. Bring slide 9 up, please. Thanks.

55 BENCH: Do you want to get rid of the jug and the oath card and the Bible so he can put some of his stuff up there? Is that going to help you?-- Yes, it would, thanks.

5 You can put your glass on the other side so you don't knock it over, and you can slide that microphone right along to the end. Does that give you - you can get rid of your oath card, and then you should have enough space to get your maps up there as well.

10 MR SHERIDAN: Now, you say that the areas particularised, the areas that the defendant is charged with clearing unlawfully, are contained within that blue lined polygon?-- Yes.

The green areas represent standing vegetation, and the pink areas on that image represent areas where there are no vegetation?-- Within that polygon, yes.

15 That pink area, right here? There's no vegetation there, is there?-- It is pink, and there probably is just only sparse vegetation there.

20 Only sparse. But it's different to the rest of it, isn't it?-- It is different.

25 And if we go, I think it's slide 10 - based on your opinion that the pink area there, isn't it, the pink area that's - you say, from 9 to 10, it was green, now it's pink, so therefore it has been cleared?-- Yes.

Slide 9, the pink area, it's included in the - if you go to slide 10 - in the pink area-----

30 BENCH: Has it become sort of greeny there, sorry, that same bit, in slide 10?-- Are you talking about this bit?

Yes. If you have a look at slide 10.

35 MR SHERIDAN: So you had included that area, which from slide 9-----

BENCH: Can I just ask-----

40 MR SHERIDAN: Sorry, your Honour, yes.

45 BENCH: It has changed - on your slide presentation, it has changed colour. It's not the same purply colour as the rest, so-----?-- It has. That's probably indicative of soil disturbance, a change in moisture after the trees were cleared. Perhaps there's more evaporation. There are lots of factors that could contribute to-----

50 MR SHERIDAN: You've never been to this area and field-studied it at all, have you - never inspected it?-- No.

55 So the point I'm getting at is that you've calculated the area of unlawful clearing as occurring inside these polygons, yet slide 9, that pink area, appears that there was no vegetation there prior. In slide 10, it's still pink, isn't it? So isn't that area that was pink before, where there was no vegetation - hasn't that been included in the particular -

your total of unlawfully cleared vegetation?-- It has been, and that's because this area was mapped as remnant, and during the creation of these polygons I determined that that little strip there, which encloses the pink area, meant that I should
5 include that bit that you describe as pink.

But from these slides and the colour representations between vegetation and not, doesn't that throw error into your entire calculation?-- Sorry, I really don't know what you mean by
10 that.

Well, simply, this is the pre-clearing. There was no vegetation there. Slide 10 shows that the rest of this polygon was allegedly cleared, but you had included in your
15 area that area there which, from this, you say that the pink tinges means there's no vegetation and the green means there was, that area there has been included in your entire calculation when, in fact, it didn't have any vegetation on it prior to the clearing?-- Well, to create these polygons I
20 assessed, as I-----

Now, hang on, that wasn't the question. Answer the question?-- I am answering the question.

25 All right?-- I assessed a series of images that dated as far back as 1988. I looked at aerial photos and I determined-----

1988 satellite images?-- As far back as - I think in this case, the earliest images were 1990 and the latest was 2005,
30 and I determined that this area was actually treed and this was the first instance of clearing. The pink in this image could have been due to some - to natural factors.

35 So, because you've never been there, you don't know? So anywhere - is that correct? You can't be definitive about that, because you have never been there and physically inspected it?-- Definitive about what?

40 What these changes actually represent. As your Honour asked you before the break, how can you tell that it hasn't been burnt? How can you tell it was, in fact, sparse vegetation, as you told us earlier, or whether, in fact, it had actually been cleared?-- As I was saying earlier, I consulted a range
45 of images, and one of those data sources was a remote - sorry, an aerial photograph which allowed - allowed me to see that there were actually trees-----

BENCH: Have you got that here?-- Yes, it's the JRA4.

50 Have you got the original, without your hatch marks on it?-- No.

Why not?

55 MR SHERIDAN: See, Mr Anderson, in your certificate-----

BENCH: Sorry.

MR SHERIDAN: Sorry, your Honour.

BENCH: Sorry to interrupt. I will try not to interrupt.

5

MR SHERIDAN: That's okay.

10 You say in your certificate, "I have obtained a certified regional ecosystem map," and then you go on to say, "satellite image." There is no mention on the certificate of an aerial photo?-- I think you will find there is. JRA4 post-clearing; series of dates; aerial photography captured-----

15 Yes, that's in 04, but I'm going down here, where you explain, I think, what you've had regard to, when you talk about an RE map and a satellite image. JRA04 is an aerial photograph, and you say you had a look at the RE map; it shows areas cleared, overlaid on the RE map and the satellite image. So that is not an - there is not an aerial photograph been overlaid, 20 somehow, in this document, 04, is there - 02, sorry? You've listed it, and it appears as JRA04, but that certificate doesn't mention that you used it?-- Yeah, the RE mapping only refers to JRA05, and that is overlaid on the satellite image. JRA04 shows post-clearing, shows - shows the clearing overlaid 25 on aerial photographs. That's what the certificate says.

I see. Okay. Now, were you told by someone that these areas were actually cleared - physically cleared? Did you get 30 information from anyone about whether these areas had actually been physically cleared?-- No. I was - I was allocated a case, and my task was to - to map the areas cleared, and determine which areas were potentially unlawful.

35 So you compiled these documents without any information from anyone who had performed any fieldwork; is that correct?-- Yes.

40 So this total area cleared, 186.7, is the result of information from no one who was ever there, and no one who could inform you as to what the situation was on the ground; is that correct?-- Yes. I - as part of my-----

45 Just a sec. That was - so these determinations that you have made here are entirely from remote sense imagery?-- I did - I did also have regard to a field report compiled from a field visit.

I beg your pardon?-- I also had regard to a field report.

50 You just told me that you didn't have regard to - you never had any information from anyone who had been there. Now, there's a field report. Who provided that?-- It was - it's a departmental record.

55 When was that field report - sorry. What is the name of that field report?-- I'm not sure what it's called. It's probably called Field Report Lot 8, MGL33, and a date.

Can you remember when - about what date? Was it dated?-- It was 2005.

5 Can you remember who did it?-- I think it was from - it was John Forcier and Craig Elliott who did the first-----

So you had regard to that field report. Did that field report contain photographs, did it?-- Yes, it did.

10 And you did you have regard to any of those photographs in compilation of this - these documents?-- In order to create these polygons, no. I didn't actually refer to this photograph and say, "Oh, this area looks like it's been
15 cleared because of these photos." I purely used the field report as a reference, just to show me - you know, to give me an idea of the lay of the land, show me whether it was hilly or flat, to show - it was purely a reference document. I didn't use that document to derive any of these clearing
20 polygons, or to derive-----

Well, purely a reference document-----?-- -----stats on areas.

25 So it's purely a reference document-----?-- Ancillary-----
-----and you say it wasn't used?-- Ancillary reference data.

Ancillary reference data. If you go over to JRA03, please, which I think is - is that the one you've got?

30 BENCH: 03?

MR SHERIDAN: Which is slide 10, I think. Yes. 03, that's what I'm going to move to now, your Honour.

35 THE WITNESS: Slide 10?

MR SHERIDAN: Yes, please. I think that represents it.

40 BENCH: And slide 10?

MR SHERIDAN: Yes, thank you, your Honour.

45 This area here appears green after the clearing. Can you determine, definitively, whether that vegetation was actually cleared, or it is still remaining?-- From my interpretation of satellite imagery, I determined that area to be cleared.

50 But you can't say definitively, can you?-- Whether it was cleared?

Yes?-- From my experience and my interpretation of satellite imagery, as well as checking from my superiors and members of the group-----

55

Checking from your superiors; so they've had some input into this?-- All the work produced by the remote sensing team is checked by other members.

5 Well, who are the people that check this in addition to you, because it doesn't - it's - the certificate is under your hand, not someone else's?-- I think you will find on JRA03, we've got a, "Checked by L Lawrence," down the bottom. She - she checked the maps. I also consulted my boss, Bruce
10 Vilovich, to-----

So Mr Vilovich who is sitting at the bar table?-- Yes.

15 And did they suggest any changes to these documents before they were issued?-- It's a collaborative process and it was a long process, and, yes, together, we worked out which areas that, in our combined expert opinion, were cleared.

20 So this certificate, then, is not a result of your conclusion; it's a result of a collaborative effort between several people?-- Yes, but I did sign my name to it, and I am responsible for it.

25 None of these people, who have been involved in this collaborative effort, have ever been on a field inspection, or have ever actually been there to determine whether the areas within these polygons have actually been cleared?-- As far as I know, no.

30 If we go now to - I'm not sure whether this is on the slide - JRA04-----

BENCH: Can I just go back a step? Do you mind if I interrupt?
35

MR SHERIDAN: Not at all, your Honour.

BENCH: When you say you rely upon your experience to determine that that green area is actually cleared, what
40 experience?-- I've carried out, roughly, 15 casework-type jobs within my current position.

45 What does that mean?-- It means assessing vegetation change from satellite imagery on a property scale.

And how do you check that?-- I've checked it - checked the validity of it?

50 How?-- There's a - once again, amongst the group, we put all of our - all of our outputs are checked by other members and if there's a disagreement, then we talk about it and confirm it. In addition, we use - there's a layer which shows what was cleared between different areas. I cross-checked with that, just as a guide. You can also use - each RE version,
55 each subsequent RE version has remnant vegetation cleared previously removed. So, for example, if a patch of remnant that was in version 3 has gone from version 4, you can assume

that that area was deemed to have been cleared and is no longer remnant. So there are a variety of data sources I refer to.

5 Thank you. Yes, Mr Sheridan.

MR SHERIDAN: Thank you, your Honour.

10 So I just want to confirm, these sources that you refer to here on the certificate, there are sources in addition to these sources that you've consulted in the preparation of these documents?-- Yes. I refer to - in a property assessment I try to corroborate as much information as possible from Departmental records. That may include survey plans; that 15 includes assessing all the RE versions through time; all the available aerial photography over the block; all the satellite imagery; as much as I can lay my hand on to try and provide an objective assessment of what was cleared within the time period.

20 But that - but a field inspection of these areas isn't part of it?-- For me, no.

25 Excuse me, your Honour. You say you've participated in 15 casework-type jobs. Is that preparing evidence such as this for prosecutions?-- In some cases, yes.

30 Did any of those casework-type jobs involve field inspection to actually confirm what you determined from remote sensed imagery to what was on the ground?-- The casework - I think I've been involved on three site visits.

But none for this one?-- None for this one.

35 Now, JRA04, which is, you say, the area photographed, I'm not sure that actually appears in the slide there, does it, Mr Anderson? Do you have that, no?-- No, it doesn't.

40 No it doesn't, okay. All right?-- I do have another presentation that does show this.

We won't worry about that for the moment?-- If you would like to, we can go into it.

45 Do that to me after lunch, if you must, but we'll just go for the paper copy. Are we going to get that or not? Is there another presentation coming?

50 MR WILSON: I hope not.

BENCH: I don't think so.

55 MR SHERIDAN: We can't be sure, your Honour. Anyway, JRA04, the aerial photo. Now, there are areas - this is the same polygon, the 186.7?-- Yes.

That's how you've calculated the area unlawfully cleared, and you say those areas under that polygon have been cleared. Is that right?-- Yes.

5 Aren't there areas - the darker areas - I don't know how to describe them. If you have a look on the eastern side, midway down, the brown areas without any of the black blotching, they've been cleared, haven't they?-- Would you mind pointing, roughly, where you-----

10 Sorry, I can use it - yeah, I can, I can use that one to give us a general idea. In there, sort of, on the aerial photo?-- Okay.

15 Suppose the areas that are white there, okay, those areas - if you can somehow transpose that to JRA04 - does your Honour follow these areas I'm asking about? I could give you an idea - here, your Honour, I'm asking about these areas that appear white on that slide.

20 BENCH: So they're inside the property boundary?

MR SHERIDAN: Yes.

25 BENCH: Between the hatched area and the boundary line?

MR SHERIDAN: Yes, your Honour.

BENCH: Thank you.

30 MR SHERIDAN: Those areas there, they've been cleared of vegetation, haven't they?-- I can't say definitively, because I'm not sure of the nature of that regional ecosystem. It could be that it's an open regional ecosystem. It looks like
35 the soil exposed so if there were trees there previously, then, yes, it has been cleared at this point.

Now can we have a look under the areas in your polygon, or if we have a look - these areas here, they've still got
40 vegetation on them, haven't they?-- Yes.

All right. Now, if you just have a look at that area as it appears on the aerial photograph, does the vegetation in this photograph - does that show up as these black dots, black
45 blotches, however we want to describe them?-- Yes.

Now, aren't there areas under the polygon - or if we have a look again on this one, in here - if we have a look on the aerial photo of that same area, the bottom of Italy, if you
50 like, aren't there darker areas, black blotches, underneath that polygon in there?-- Well, there definitely are black blotches but the texture of them is totally different. It's - you can see there's almost a grain to it, which sort of leans from south-west to north-east. There's almost a grain, and
55 the texture is different from the area that you were indicating earlier, that area.

But isn't it possible that is standing vegetation inside that area still?-- Collaborating this aerial photograph with satellite imagery available, I determined that no - I determined that, no, it was cleared.

5

Was there any other of the information that you had regard to, such as the report of Elliott and Forcier, that indicated whether that area was actually cleared on the ground?-- I can't remember where the field sites are. I'm not sure.

10

Right. Now, if we have a look at JRA05, I think that might have been subject - do we have a slide for that one, something that can - try slide number 12, perhaps. I'm just not sure-----?-- This is what was charged.

15

That's what was charged. Could we have - what was the one you flicked up there before?-- That's certified change 3.2.

20

Right. Well, there we go, that's the one I want to talk about. Now, you say that this is the area charged overlaid over certified version 3.2, in the regional ecosystem mapping. Is that right?-- Yes.

25

Now, you - on the bottom of JRA05, you display on this map only three - it's on the side there. The pink, the lemon and the lime are remnant endangered, remnant of concern and remnant not of concern, aren't they?-- On this map, yes.

30

And that's completely different to the way regional ecosystem maps have been produced by the Department, isn't it?-- I'm not sure what you mean.

35

Well, regional ecosystem maps - regional ecosystem map 3.2 is not before the court, but there are a number of others, all of which delineate the regional ecosystems as dominant and sub-dominant, don't they?-- For the endangered and of concern classes?

40

Yes?-- Yes.

45

Well, why then, have you produced this, which you say is based on version 3.2, without the dominant and sub-dominant delineations?-- Because regardless of whether it's dominant or sub-dominant, the remnant status is still endangered or of concern.

Well, it's not, is it?-- The dominant-----

50

The sub-dominant category means that the endangered regional ecosystem in that area - in that polygon - is sub-dominant. That's how it's defined, isn't it?-- If there is any RE type within an RE polygon, that is classified as endangered, that polygon is endangered.

55

Where does that come from? Where's that definition?---As far as I know, it's how the herbarium ascribe the different remnant statuses to-----

5 As far as you know? So you can't tell us where it comes from? That's a guess?-- From my understanding over using RE mapping for the past three or four years, that's my understanding of it.

10 All right. Now, the other problem is that on this RE clearing version 3.2, you haven't included the regional ecosystem category numbers, have you? There's no numbers on there, such as you would see or you do see on all the RE maps?-- To describe the RE types?

Yes?-- No, I haven't included that.

15 Why haven't you included those?-- Because once again, from my understanding of the legislation and how complaints are put together, it doesn't matter what RE type is there, as long as it's mapped as remnant.

20 Where does that understanding come from? Is that from a departmental direction or is that your superiors, or where does that come from?-- It's not a departmental directive; it's just from my understanding of having read legislation and, in consultation with my superiors, talking about it.

25 You see, without those numbers - the regional ecosystem identifiers - we've got no way of knowing from this document what regional ecosystems occur in there, have we?-- From this document, no.

30 And is it the case that some regional ecosystems are classified as endangered, but it's not unlawful to clear them?-- If they're grassland eco systems, yes.

35 Yes, so we can't determine from this pink polygon that you've displayed there, if, in fact, a remnant endangered regional ecosystem, such as 11321, the dicantheum - sorry, the bluegrass or Mitchell grass ecosystem, which is not an offence to clear - whether it makes up any part of that polygon, can we?-- From this slide, no, but part of the process-----

40 No, well, I'm talking about this slide. Hang on. From this document here, JRA05, which is faithfully reproduced, I hope, on this slide 14, we can't make that determination, can we?-- Purely from this, no, but in conjunction with the-----

Well, that's what I'm talking about. That-----

50 MR WILSON: Excuse me, your Honour. Can the witness answer the question? He's cutting him off all the time.

55 BENCH: I think Mr Sheridan has asked him a question and he said, "From this slide you can't determine it," and the witness has said, "No." But if the witness has other information, you will be able to get that from him in re-examination.

MR WILSON: Thank you, your Honour.

5 BENCH: Sorry, can you just wind back a bit? What were those numbers you were saying about the bluegrass and the Mitchell grass? What's their numbers?

10 MR SHERIDAN: Well, it's - I'll have to dig it out of the stats, your Honour. It has come from last week. I think it's 11-----

BENCH: And are they remnant endangered-----

MR SHERIDAN: Yes, your Honour.

15 BENCH: -----sub-dominant? Or what are they? What's bluegrass and Mitchell grass? What does it come under?-- There are hundreds of codes. I'm not sure which one that is.

20 MR SHERIDAN: I can find it here, your Honour.

25 BENCH: Oh, no, don't worry. It doesn't seem that anyone else is interested in it. So your question was about, within one category there can be some ecosystems that you are allowed to clear?

MR SHERIDAN: Yes, your Honour.

30 BENCH: Yes.

MR SHERIDAN: Now, on the legend panel at the bottom of JRA05 below the coloured boxes, which delineate the areas, "Regional ecosystem data shown on this map is provided with the permission of the EPA, version 3.2, certified change, currency 35 21st of November 2002." Accurate at a scale of 1:100,000. But this map is in the scale of 1:30,000. So the accuracy of this line work and, therefore, your calculations, cannot be guaranteed, can it?-- The accuracy of my line work can be 40 guaranteed.

The accuracy of the regional - the EPA regional ecosystem line work cannot be, though, can it?-- It says it's accurate at a scale of 1:100,000.

45 Yes?-- And we used that data.

50 But it says there, "accurate at a scale of 1:100,000," but you adopted that data, apparently - some of it, at least; not all of it - and you've reproduced it at 1:30,000. So you can't, then, when you get some data that's guaranteed accurate at 100,000, reproduce it at 1 to 30 and then guarantee that that data is now accurate as you've reproduced it at 1:30,000, can you, because that's not the accuracy at which you received it?-- The accuracy at 1:100,000 means that one millimetre 55 represent 100 metres on the ground and, in this case, the accuracy of my mapping - how can I explain this? I'm just thinking of the best way to phrase this.

Sorry. Are you finished your answer or are you still thinking?-- I'm just thinking of the best way to phrase my answer.

5

Okay?-- Herbarium matter is accurate at 1:100,000.

Yes?-- That's what they've described their accuracy to. The accuracy of all data sets that exist have certain limitations and the best we can do is to use the best available data to make these property-based assessments.

Given the inherent - I'm not going to say "inaccuracy" - well, inherent inaccuracy - really, inherent unreliability of this sort of data with reference to scale and how it's produced and then how it's depicted, it is not possible for you, then, given all those inherent difficulties with the data that you've used to produce this JRA05, that you can say, definitely, that the cleared areas under that polygon - or on JRA05 - equal 186.7, which seems to be a very, very fine calculation - 186.7 hectares - can you?-- That 186.7 hectares refers to the area that I determined to be cleared and, in that case, we do round to the nearest .1 of a hectare. And once again, this isn't describing the accuracy of the RE mapping; this is describing the area of the - of my clearing areas; not the RE mapping.

But the cleared area comes down to the particulars of the charge, doesn't it? You go then back to say in other documents - you delineate the areas - or on your certificate, I'm sorry?-- The-----

You delineate down to .3, .4, .7; total, 186.7 in your certificate. "I have concluded that the remnant vegetation ecosystems cleared on lot A were made up as follows," and then you go on to define "endangered", "of concern", "not of concern" and then total. So these areas form the total, but then you particularised it. 143 endangered, 28.3 of concern, 15.4 not of concern. They're very specific and very precise figures, aren't they?-- They're accurate to .1 of a hectare.

Point 1 of a hectare?-- The figures that I represent are accurate to .1 of a hectare.

Are you saying that it's possible, using these tools, to be that precise?-- I'm saying that my polygon areas are accurate to .1 of a hectare, but the RE mapping is not a data set that we own and it's not right for us to make any modifications of that RE mapping. We just use it as it's available.

50

Are you familiar with the document Neldner et al?-- No, I'm not.

Methodology for survey and mapping of regional ecosystems and vegetation communities in Queensland?-- No, I'm not.

55

So this accuracy of .1 of a hectare, is this a standard accuracy for this type of work?-- A standard accuracy?

5 Where do you get the .1 from? Is that just as good as you think it is, or is that a standard - are there standards for this sort of information in this presentation?-- Well, the mapping program we use, we're able to map to five decimal places of a metre and for simplification we round it to .1 of a hectare, otherwise we'll have a string of decimal places
10 which-----

So you say this 186.7 is accurate to .1 of a hectare but inherent in that calculation there are areas of regional ecosystems that have been cleared, which has its own accuracy,
15 doesn't it?-- Every data set has its own accuracy.

Yes, but aren't you just adopting - and the inaccuracies in the data sets that you're using, they follow on. You're not correcting them. You take them as you get them, and then you
20 put that into this document which you say has an accuracy of .1 of a hectare when, in fact, it can't, because it doesn't take into account the inherent inaccuracies of the data that you're using to produce that?-- I guess that is fair to say that we take on the inherent inaccuracies of the data sets.
25 Yes, that is correct. Because a lot of those data sets, we don't have ownership of.

Yes, I understand that. The way you've presented these remnant endangered RE, remnant of concern RE and remnant not
30 of concern, in three discrete categories - and you've disregarded the sub-dominant that appears in all the regional ecosystem maps that are before the court - that's done this way, for the purposes of this prosecution, for a specific purpose, isn't it?-- Could you clarify what you mean?
35

Well, there is a reason behind why we look at this slide and we look at this JRA05 RE clearing version 3.2 - there is a specific reason why this document has been produced with just
40 the endangered, of concern and not of concern as opposed to all the RE maps that are before the court, which split the categories to dominant and sub-dominant?-- Yes, this map was made for this prosecution, and, from my understanding, it doesn't matter whether an RE type is sub-dominant or dominant,
45 it's still endangered and the map is used to derive the complaint.

But isn't the reason why this map is produced in this manner for this prosecution, as opposed to the maps, the regional ecosystem maps, that go out with the split, is that - you are
50 well aware that the Act does not recognise the split dominant, sub-dominant regional ecosystem categories. They're just unknown to law, aren't they?---They're just what, sorry?

They're unlawful. The law doesn't recognise them. The
55 Vegetation Management Act doesn't recognise them.

MR WILSON: Your Honour, he's asking the witness a question of law.

5 BENCH: I don't think so. He's asking him does he agree that he has done this in a particular way because of what he says is the law, and your witness is a scientist. He'll be able to say whether he agrees, disagrees, doesn't know.

10 MR WILSON: Okay.

BENCH: Do you remember the question?-- Yes, in this case, from my understanding of the legislation that pertains to vegetation clearing in Queensland at this time, yes, the Act doesn't split sub-dominant or dominant for the endangered or of concern categories.

15 MR SHERIDAN: And hasn't this map then been produced for these purposes, to some way - go some way to satisfying the definition of a regional ecosystem map according to the Act?-- Sorry, could you repeat that?

20 Hasn't this map been produced in this way, for the purposes of this prosecution, to try and fix that problem with the regional ecosystem maps being the dominant, sub-dominant split?-- No.

25 Sorry?-- It hasn't, no.

30 It hasn't. The problem we have with it, you see, is that some areas on the regional ecosystem maps that you haven't had regard to, that are all around the offence periods, list some of these areas as sub-dominant endangered. Do you understand that? And some of those areas that were sub-dominant endangered, the polygon only records an endangered regional ecosystem component of five per cent. Do you understand that?-- I do understand that.

35 So what you've done then, in lumping what has been, even if it's erroneous and unknown to law, a dominant and sub-dominant regional ecosystem - sorry, sub-dominant and dominant endangered regional ecosystem, the sub-dominant being in some instances only five per cent - what you've done now is present that as being not five per cent but 100?-- Without seeing these maps, all I can do is presume that those polygons showed up as pink.

40 Yes?-- Which indicates that it's endangered and I've represented here those areas as pink, which I've got on my map, as endangered.

45 50 But do you understand that - I'm putting it to you that some of the sub-dominant endangered areas that you've now classified as endangered, only contain five per cent of endangered regional ecosystems?-- From memory, yes, some of them do.

So, these pink areas that you've classified as endangered, full stop, without any of the identifiers that appear in all the other maps, has the effect of categorising for these purposes in your calculations, areas that are only five per cent as 100?-- There's no indication of percentage on my map.

No, there isn't, is there?-- No.

There is no indication of the actual regional ecosystem categories?-- Nonetheless, they were mapped as endangered, albeit, sub-dominant on the original maps. All I've done is simplify whether it's dominant or sub-dominant, it's still endangered.

So you've simplified it?-- I haven't modified any data. All I've done is snap those two categories together. It's just a - it's a presentation thing.

It's a presentation thing. It's a bit more than that, Mr Anderson. Just a second.

BENCH: Can I just make a suggestion to you about your map? It's got nothing to do with the case, but that legend there, when I just looked up and looked at it, I thought vegetation clearing must be grey inside a blue. So, it would be better if it just said at the bottom, because vegetation clearing is not actually a colour, is it? It's just the section, whatever colour it is, that's enclosed within the blue?-- Yes.

So, it would be better - I would have thought it would be better to have that at the bottom and not in a square?-- Okay.

That's my suggestion for you?-- Okay, thanks.

MR SHERIDAN: Now, your Honour, with the documents under the certificate - were the two certificates tendered?

BENCH: Yes.

MR SHERIDAN: They were.

BENCH: They were delivered into evidence and marked Exhibit 24 and 23.

MR SHERIDAN: I just want to move on now to the - just while you're on those slides, can we go back to-----

BENCH: Mr Wilson, you're not calling anyone from the herbarium, are you?

MR WILSON: No, your Honour.

BENCH: Okay, so all the stuff that Mr Sheridan is raising about dominant and sub-dominant, can any of your witnesses answer that?

MR WILSON: I think I have one that could, your Honour.

BENCH: And who would that be?

MR WILSON: Dr Olsen.

5

BENCH: Thank you.

MR WILSON: I will have to speak to him about it.

10 BENCH: Yes, thank you. Yes, Mr Sheridan?

MR WILSON: Yes, just one other thing.

BENCH: Yes, what was it, Mr Wilson?

15

MR WILSON: It doesn't matter, your Honour, I'll leave it, sorry.

BENCH: Thank you, yes, Mr Sheridan.

20

MR SHERIDAN: Excuse me, your Honour.

Could we just go back to slide 3, please, Mr Anderson? This here, 05 clearing period, which is the first charge, how do you - how were you made aware that this was the clearing date that was to be particularised?-- When the job was allocated to me, I was asked to assess the period, and I assessed those periods.

25

30 Who was that allocated to you by?-- By my boss, Mr Vilovic.

In that allocation, was there some sort of document that alleged that this was the date when clearing occurred?-- I think in this instance, a series of maps had been created by somebody else for the first hearing mention.

35

A series of maps. Now, can you go back there? Which maps, can you remember?-- They were mud maps, which were prepared for - not mud maps. They were rough maps that were prepared for the hearing mention.

40

Rough maps prepared for the hearing mention?-- Well, rougher.

So they're different to the ones - the maps that were prepared for the hearing mention are different to the ones that are - you produced or were produced for the hearing proper?-- Yes.

45

When were you allocated this job, that alleged clearing on that date - between those dates - was that how it was presented to you, that there was a change in vegetation, or that this change was clearing?-- I don't recall.

50

Because you said before, the changes in vegetation could be to a number of different - for a number of different reasons, didn't you?-- Sorry, say that again?

55

You said before that the change in colours indicated a change in vegetation?-- Within certain bounds, yes.

5 Yes. And the change in vegetation colour can be from a number of different factors, of clearing is which but one. Is that correct?-- Yes.

10 But when you were told to investigate this - this period - you were told that it was a result of clearing?-- I was asked to determine areas of potential unlawful clearing between those dates, which is what I did.

15 And how would you determine, then, whether clearing was unlawful?-- Using - as I mentioned earlier, using departmental data sets - so taking into account tenure, taking into account the remnant status of the vegetation, taking into account whether any permits exist over the property. They would probably be the key things.

20 So you take into account all that information, the tenure and legislation, permits, statutory exemptions?-- I try to, as best as I can.

25 And before all that, you determined that these were the areas that were unlawfully cleared?-- Well, potentially unlawful.

That this development was assessable development under the Integrated Planning Act?-- Yes.

30 And at the time of these alleged offence periods, was it - was the clearing of of-concern and not of concern vegetation assessable development?-- As far as I know, yes.

35 Okay. If we just go to the documents that you provided under the second certificate. Does your Honour have copies of the hard copy?

BENCH: Sorry?

40 MR SHERIDAN: Does your Honour have a hard copy?

BENCH: What am I looking at?

45 MR SHERIDAN: Documents JRA06-----

BENCH: Yes, I've got all that.

MR SHERIDAN: -----through 9.

50 BENCH: I've got all of the JRAs.

MR SHERIDAN: Oh, good.

55 BENCH: How are you going? You right?-- Yes.

You keep looking at the clock, Mr Sheridan. We had a very early morning tea, so it's going to be a long time until

lunchtime. You've got plenty of time to ask - do you need a break?

5 MR SHERIDAN: Can I have a really short one, please, your Honour?

BENCH: Sure, we'll have short break. Thank you.

10 THE COURT ADJOURNED

15 THE COURT RESUMED

20 JEREMY ROBERT ANDERSON, CONTINUING CROSS-EXAMINATION:

BENCH: Thank you. You may be seated. Yes, Mr Sheridan.

25 MR SHERIDAN: Thank you, your Honour. Thanks, Mr Anderson. I now want to move on to the documents that were admitted under the second certificate, which are JRA06 to JRA09. Do we have a slide of that 06, JRA - that pertains to JRA06?

30 BENCH: I don't think so.

MR SHERIDAN: Right. Can you tell me, Mr Anderson, which ones of the slides pertain to that?-- Well, that's probably the best we've got.

35 BENCH: Thirty-one?

MR SHERIDAN: JRA06 has got all the dark, not the - perhaps slide 33?-- 33?

40 That doesn't include all of the areas, though, does it?-- No.

45 That's just the southern portion of - we don't have a slide that includes all that area in JRA06 or just that one?-- No, they're separated.

Just that one. Separated, that - so there's - is there another one like that or not?-- Yes, there's one for the northern portion of the southern block.

50 Okay. Well, just - we'll concentrate on the southern portion now. Thank you for that stop, your Honour. Now, this is the pre-clearing, and the areas under the polygon - from the polygons-----?-- Yes.

55 -----indicate - now that - JRA06 are the areas that have got lines on them?-- Yes.

Are the areas that are subject to the particular?-- Yes.

You say total area cleared 814.7 hectares?-- Yes.

5

Total area of assessable development cleared without a permit is 814.7 hectares; that's right. Okay?-- Yes.

10 And these - there are - there is these little round - I'm interested in these little round areas here. See these little round-----

BENCH: Sorry, can you-----

15 MR SHERIDAN: These little dots, if you like; they're smaller areas. They were areas that hadn't been unlawfully cleared?-- I think they were areas that weren't cleared.

20 Weren't. How did you determine that they weren't cleared?-- Just through assessing the satellite imagery, change in colour and texture and-----

25 So they're not included in the area of the polygons, the 814.7?-- No.

BENCH: How did they get - sorry.

30 MR SHERIDAN: Were there any-----?-- Just to clearly show, I can go back there.

No, just a second?-- The white areas.

35 It's all right, we'll get there. So now these - you also refer to that 814 as non-exempt areas?-- Yes.

The cleared areas non-exempt; did you remove any areas that were exempt?-- As I said earlier, I removed a 10 metre boundary for the fence line.

40 But that there appears to go right up to the boundary, doesn't it?-- It's about - it's exactly 10 metres in.

45 But that's indistinguishable, isn't it? Just-----?-- On the slide, yes, it is.

And it's indistinguishable on the map too, isn't it, JRA06? Are you telling us that there's some gap between the-----?-- Well, there is a gap. It's a 10 metre gap.

50 But you can't see it?-- At this scale, no.

At this scale, 1 to 40,000?-- If we zoomed right in, you can see it.

55 These ones - hang on. I'm not zooming in on the tape. So this one - the other map, JRA02, was a 1 to 30,000; this one, JRA06, is at 1 to 40,000?-- Yes.

Is that correct?-- That's correct.

5 So all these in this series, JRA06 to JRA09, are all at 1 to 40,000, yet the other maps are at 1 to 30,000; that's correct, isn't it?-- That's correct.

10 If we go now to JRA07, which is the post-clearing - might have to help him with the slide, it's represented by that?-- You mean 34?

15 Thirty-four? So these are the areas that are allegedly unlawfully cleared showing the difference between one - see in slide 33 and slide 34, we still can't distinguish from the map or from that slide even, the 10 metre exemption that you applied, can we?-- On this slide, no.

20 And if we go to JRA08, which is the FO which we don't have any slides of, do we? We don't have a slide of that, do we?-- No.

25 We're looking at JRA0A, if you could just turn that - well, can you - yes, get it off the screen somehow, blank it, or something, is that difficult? Thank you, that will be good. The areas on JRA08 that are overlaid on this air photo you say have all been unlawfully cleared?-- Yes.

30 Now, given that all these documents or maps or images or however we like to term them have been prepared based on your interpretation of the satellite imagery, isn't it possible that there are areas in these polygons which on the ground are actually - haven't been cleared?-- According to my interpretation-----

35 No, no, that - hang on, that wasn't the question. The question is this: isn't it possible that there are areas of vegetation under these polygons that you, from your assessment - from your assessment of all these - of the materials that you listed in the certificate and the other materials that you've referred to in your evidence today, all your
40 assessment, the result of it, comes down to these polygons and this area of 814.7 hectares; is that correct?-- Yes, I guess so.

45 Yes. Now, isn't it possible that in reality, out there at Acme Downs, there are still areas of vegetation within these polygons that haven't been cleared, there's still standing vegetation?-- There is a very slight chance, a very small chance, but as I said earlier, all of my interpretation is checked amongst the group.

50 Yes, I understand that. I'm just drawing the distinction between all the - all this remote sense material and what is actually occurring or has occurred or is evident out there; okay? Isn't it possible, though, the field inspection, of
55 someone who is actually walking out on the ground, could identify standing vegetation that you may have not been able

to identify from your remote sensing tools?-- The resolution of the aerial photograph is very fine.

5 Just - no, that was a really specific question, Mr Anderson. Could you answer it, please?-- I guess there is an extremely small chance. Yes, there is a chance.

10 And you said that you had regard to the field report by Mr Elliott - that was conducted by Mr Elliott and Mr Forcier; did you have a look at - I may have already asked this one so I'll stand corrected, your Honour. Did you have regard to the photographs they produced in that inspection?-- Yes. They were in the field report.

15 Didn't those photographs variously indicate standing vegetation in areas?-- I don't recall. Some of them did show trees, some showed both standing trees as well as trees fallen next to it; some showed all cleared, some showed, yes, that there was a range of photographs.

20 Some showed clumps of uncleared vegetation though, didn't they?-- I don't really recall. Probably, yes.

25 And did - excuse me, your Honour. Now, did you have regard to the inspection carried out by Mr Elliott and Dr Olsen - so the only photos we have regard to were those - from Mr Elliott and Forcier?-- Yes.

30 And do you remember that those photographs were taken in a specific location at all points of the compass, eight photos at one spot?-- I really don't recall. I looked at it quickly. I didn't - it wasn't, you know, a core data that I used. I just saw that there was a field report. I looked at it. I didn't analyse it or anything, I just looked at it.

35 I see. So these documents are produced in almost total reliance on the remote sensing tools, with almost no regard to any field inspection?-- These documents?

40 Yes, sorry?-- Yes.

All these documents under-----?-- Yes.

45 Excuse me, your Honour. And you can't remember, or you don't recall, whether those photographs are actually related to any of the areas that are subject to your assessment of it?-- From memory, and, as I said, I don't recall exactly. I remember they skirted the perimeter of - yeah, I would really be guessing, but I-----

50 Yeah. No, don't do that?-- I think there were some points around the borders. I don't really recall.

55 Nothing further, thank you, your Honour.

BENCH: So, does that mean that no one from your department has got the photos that they took out in the field and

compared them with any of the satellite image or aerial photography? No one has done that? So no one has pinpointed the position, the GPS position, where all those photos were taken and then looked at the photos with the aerial map or the satellite navigation image? No one has done that?-- I would be guessing, but I think Reece Stickler was the one who compiled the maps using the field report and the GPS points that he plotted where those-----

5
10 Well, he's not a witness?-- No, he's not, as far as I know.

So there's no - so you didn't - you definitely did not do that?-- No.

15 So, I've just got a couple of other questions, just to clarify a few things. So when you say all of your work is reviewed by everybody else in your team, that's just your internal team?-- Yes.

20 There's no independent peer review from someone at the university?-- No.

When you're talking about vegetation change, you're talking about woody vegetation? Is that what you said to me before?-- Yes.

25
30 So I can't remember the five things that affect vegetation, but it's slope, aspect, climate, soil and something else?-- Water.

So there's quite a lot. They would affect woody growth slower or if it's a tree, then those things are going to have - what's the difference between a tree and grassland, for example?-- Grass is more responsive to environmental changes in all sorts of different ways. Trees, as you know, do change more slowly, so yes. Does that answer your question? I'm not really sure what you-----

35
40 Yes, I was - so some of these regional ecosystems just relate to grasslands though? But you're not talking about that. None of your assessment is about grasslands. It's all about woody vegetation?-- That's right.

45 Okay, thank you. Anything out of mine, Mr Sheridan?

MR SHERIDAN: No, thank you, your Honour.

BENCH: Thank you. Yes, Mr Wilson.

50 MR WILSON: Thank you, your Honour.

BENCH: You haven't got any re-examination?

MR WILSON: I've got a couple of questions.

55 BENCH: Thank you.

RE-EXAMINATION:

5

MR WILSON: I'll just take you to that aerial photograph JRA08. Mr Sheridan asked you a question in relation to the possibility of vegetation being missed, and you said something about the resolution of the aerial photograph. Could you just tell me what you were going to say, please?-- These aerial photographs are what we call high resolution imagery, and that allows us to zoom right in and still maintain - basically it doesn't go fuzzy when you zoom in, so you can clearly see smaller things compared with coarser resolution imagery. So in this case we were able to actually see individual trees pushed over versus crowns of trees which remained standing.

BENCH: Sorry, when you say "pushed over" do you just mean fell?-- Well, we can clearly - I could clearly see what I interpreted to be standing trees and their crowns, and I could also see trees which I could see their trunk and the crown lying at the end of it, so from that I interpreted that they were lying down or probably-----

25

You used the word "pushed". You can't really tell that, you could just tell they were on the ground?-- Yes, but using the-----

You could see them horizontal rather than vertical?-- Yes, but we could also see patterns, long vertical linear - sorry, not vertical. Long linear features which indicates that all the trees were pulled or pushed in the same direction. So from that we could determine that it was most likely mechanical means.

35

Well, can you show - that's not in any of your presentations?-- You can almost - you can see it-----

What are you looking at there?-- The aerial photograph JRA08 in the-----

40

Well, I can't see anything in the hatched area because it has got blue lines all over it?-- Yeah, it's not super-clear on this, but on the screen-----

45

It might be easier if I had one without those blue lines on.

MR WILSON: Could you put it up on the screen, perhaps? It might be more clear?-- It's not in the slide show.

50

BENCH: Okay. So whereabouts are you talking?-- Just roughly through there.

So you're indicating in the south-east quadrant along the north-south boundary line, about a quarter of the way up?-- Yeah. So you can see that there are sort of darker

55

lines cutting almost north-south. It is hard to see with the blue lines overlaid over it.

Thank you.

5

MR WILSON: Is it possible you've got that on ArcMap in your computer, the aerial photograph?

MR SHERIDAN: Your Honour, if he has, I'll be on my feet again immediately.

10

MR WILSON: Well, her Honour said that-----

BENCH: Well, I asked him about it before. You must have a much more charming presentation, Mr Wilson, if he produces it for you.

15

MR WILSON: Well, no, your Honour, I just had instructions that perhaps he may have it there and perhaps he could look to see if he had it?-- I do have it on my computer. The whole case is on my computer, so I have everything on the computer.

20

BENCH: Well, why didn't you tell Mr Sheridan that when he asked you?

25

MR SHERIDAN: Your Honour, it's just another salvo in this creeping barrage of disclosure, your Honour. It has been going on for a day and a half now. Nowhere near the entire amount of material that the prosecution intends to rely on or maybe wishes to rely on or plug gaps in their case or try and prove it has been disclosed to us. Until I get - and the other end of the bar table is suggesting there might be something else. I want to ask that your Honour now, if they attempt to tender it, and this might be-----

30

35

BENCH: Well, we can't - you can't really tender an image on a computer because it hasn't been printed out like this for us all to see. Is that correct?

40

MR WILSON: It could be printed on the printer, your Honour, but the problem with our stuff is it's digital and there's thousands upon thousands of images, I understand.

BENCH: Well, that's why we rely upon all of the experts from your side to print out the useful and relevant material, the most cogent and relevant, and to give it to the other side. And if it's all digital you could have put it all on a disk and just given it to Mr Sheridan's instructing solicitor on a disk.

45

MR WILSON: Well, I suppose we could. I don't know, your Honour. I'm just guided by experts to a large extent.

BENCH: Okay. So are you objecting to the aerial photo being shown or are you not objecting to it?

50

55

MR SHERIDAN: Well, I am objecting, your Honour. We haven't found - my objection might be a bit premature, because there's nothing yet, but if there's an intention to tender it or put it before the court in any way I will be objecting.

5

BENCH: Thank you. Your objection is over-ruled, Mr Sheridan, because if there's an exact image like this without the blue lines on, I think that it would be much more useful. So I would like you to have a look on your computer and see if you can find an aerial photograph for JRA 4 and JRA 8 without the blue lines on that you can print out. Seeing as you've got such a big printer, you'll probably be able to print out three or four copies of each?-- At the moment I can bring up the slide which is the equivalent to slide - I'm not sure which one it is.

10

15

Well, you were referring to JRA08. You said everything was on your computer. Well, I need to have-----?-- One of that which is close.

20

It's not the same date, is it? That's close-----?-- It's the same-----

-----and you can take off - can you take the blue off?-- No, I can't take the blue off, but this one doesn't have the hatching.

25

Well, that's in your slide presentations, so printing that off is not going to be any better help, is it, because that's slide 21. We've already got that one?-- No, this is a different presentation of it.

30

It's a different one?-- Yes.

35

Of the same thing, slide 21?

MR WILSON: Excuse me, your Honour. Is it possible to go to Arc data?

40

BENCH: Sorry?

MR WILSON: Well, I'm just-----

BENCH: I don't answer questions.

45

MR WILSON: I'm sorry, I was just-----

BENCH: Ask Mr Sheridan.

50

MR SHERIDAN: No.

BENCH: So you can print off slide 21 there?-- Yeah, I can.

That's not in your presentation?-- That's correct.

55

Okay. Well, print off slide 21, then. How many slides is in this?-- I'm not sure - 24.

And - well, you might want to have a look at these.

MR SHERIDAN: I might, your Honour.

5

BENCH: There might be something useful.

MR SHERIDAN: I might.

10 BENCH: How come you've got this presentation and we've never
seen it before, Mr Anderson?-- This is just some of the
ancillary data that I used that I thought may be useful. It's
high resolution imagery so you can see smaller things more
clearly.

15

MR SHERIDAN: Your Honour, I object. I think it's getting to
the stage - and I'm going to ask your Honour to rule this
evidence inadmissible because-----

20 BENCH: I overruled your other objection.

MR SHERIDAN: Yes, your Honour.

25 BENCH: I just asked you did you want to look at those? I
wasn't going to look at them. I was going to adjourn while
you looked at them, because I thought you should not be
prevented from a fertile area of cross-examination if you know
this material exists if it has never been shown to you. So if
30 you would like that opportunity - I'll get slide 21 printed
out, because that's what I asked the witness to do. And then
I'll take an adjournment while you look at the 24 slides and
see if there's any areas of cross-examination you want to
continue with.

35 And if you would like to apply for an adjournment and ask for
the prosecution to pay the costs wasted by having to have an
adjournment at this stage, that's your option, but of course
we're all geared up for today and tomorrow. So I just notice
it's 12 o'clock and we've only got through one witness today.
40 So I'm a bit worried about finishing by tomorrow.

MR SHERIDAN: Yes, your Honour, so am I.

45 BENCH: I'm sure your client would rather have a proper
resolution as quickly as possible, however that can be done
properly.

MR SHERIDAN: Yes, your Honour.

50 BENCH: So I'll just get you to print out 21. Can you print
out three or four copies, four?

MR SHERIDAN: So, your Honour, this slide 21-----

55 BENCH: Slide 21 is - it relates to the area shown in JRA08,
not the whole area, but just the southern - south-easterly
quadrant, and it is a slide that has the aerial photo with a

5 blue line around it but without the hatching, because before I said I couldn't understand what the witness was saying about vertical and horizontal lines indicating that trees had been pushed over rather than just haphazardly fallen over, because of the blue hatching.

MR SHERIDAN: Thanks, your Honour. I just wanted - yes, I - this is slide 21.

10 BENCH: But of course there's no one who went out and took any photos of these areas.

MR SHERIDAN: This is slide 21 of another presentation, not the one that was disclosed to me this morning.

15 BENCH: It's another presentation, not this one. This witness has a 24-slide presentation that he - which has high resolution data which may assist your case or not assist your case, I don't know.

20 MR SHERIDAN: Thank you, your Honour.

BENCH: But I'm just going to get a look at this slide 21 now and then I'm going to take an adjournment for five minutes while you have a look at the other 23 slides and if you want to cross-examine, I'm going to allow you to cross-examine further if there's other areas you want to cover.

30 MR SHERIDAN: Thank you, your Honour.

BENCH: One - are the others coming?-- They're on the way.

35 What does "auto photo mosaic" mean?-- It means that there are a series of photos all stitched together so that it's just one photo.

But what does it mean? Is there several photos that have been put together to make this one photo?-- Yes.

40 So this photo is several photos overlaid on top of each other?-- No, they're actually stitched together, matched up so they all fit together.

45 Okay. Well, I'll adjourn for five minutes while you have a look at that. Thank you.

MR SHERIDAN: Thank you, your Honour.

50 THE COURT ADJOURNED

THE COURT RESUMED

5 JEREMY ROBERT ANDERSON, CONTINUING CROSS-EXAMINATION:

10 BENCH: Thank you. You may be seated. Yes, any further questions, Mr Sheridan?

MR SHERIDAN: Your Honour, shortly after your Honour left the court the witness began printing off - I assume it was these, but my learned friend and this other gentleman next to me
15 approached the witness and secured several copies of this slide presentation which apparently were in the possession of the witness in that folder. It's clear to me that this presentation was, not as the witness said, in the computer, but was sitting up there beside the witness box. I'm at a bit
20 of a loss as to what submission I should make on that because I've never seen anything like that before. So if your Honour would note that - but I can make a submission in respect of slide 21, and I now have the whole lot of these.

25 BENCH: Did you want to cross-examine further?

MR SHERIDAN: No, I'm really not in a position to do so just at this short notice, your Honour. We've been hit with a barrage of this all day, and in respect of slide 21, in the
30 short period I've had, the only submission I have is that your Honour reject the evidence, if that's what you call it, pursuant to your Honour's discretion under section 130 of the Evidence Act, on the basis that the admission of this slide, or any of this presentation, would result in unfairness to the
35 accused, in terms that it's more prejudicial than probative.

BENCH: On what basis do you say it's more prejudicial than probative?

40 MR SHERIDAN: Well, on the basis that it has only just been disclosed and we've got no idea - or no idea - no time to determine what it actually means. The witness gave evidence before the break that this image, the high resolution aerial
45 photography would show that underneath these areas were trees that were all knocked down in a pattern that denoted that they had been pushed over by a mechanical means. In my submission, that would be prejudicial to my client's case, and I ask that your Honour exclude it pursuant to section 130.

50 BENCH: Thank you. Yes, Mr Wilson.

MR WILSON: Thank you, your Honour. Your Honour, the first I've seen of them was today, as well, but as far as disclosure-----

55 BENCH: That's no excuse.

MR WILSON: I'm just saying that.

5 BENCH: You're the prosecuting counsel. You have obviously had conferences with your witnesses. You're in a much better position to know. If you didn't know that this existed, you should have known.

10 MR WILSON: I haven't had a conference with the witness, your Honour.

BENCH: Well, you should have.

15 MR WILSON: I know I should have. But that being as it may, in relation to disclosure, we've got no legal obligation under the Criminal Code to disclose. We do make our attempt to disclose. Because we are such a big department and some of the investigations are in Toowoomba, these people are located at Indooroopilly, it's not always easy. We're not hiding - we don't seek to hide anything, your Honour. If I had seen them there, I would have certainly have sought to have them admitted in the evidence-in-chief, because I think they go to help the case, to make things - clarify issues. I don't - the only obligation we've got to disclose is under the barristers' rules of course, and we make every attempt to do that, your Honour, but it's not always easy in a government department.

BENCH: That is rubbish.

30 MR WILSON: Well, that's what I've found, your Honour.

BENCH: That is rubbish, and it's not right. Your client - or you're representing the government department, the Department of Natural Resources, and they're bound to act fairly. They are a government instrumentality with many more resources than has an individual citizen who is brought here, facing criminal charges involving land clearing, that if he's found guilty of, you're going to ask for a severe penalty to be imposed.

40 MR WILSON: That's true.

BENCH: You are therefore bound by all the authorities that say your department has to act fairly. That means, to act fairly. That means, not giving the defence half of your material at the end of September when the trial is listed to take place at the end of October, then come to court and throw them a barrage of other material and say you're not bound to do any better than that.

50 MR WILSON: Well, I can't disclose what I haven't got, your Honour.

55 BENCH: Your department had it. Your department had it, your experts had it. Your expert had prepared an additional slide show. Your - not the first slide show, not the second slide show, were disclosed to Mr Knights. How on Earth is he to prepare his case? He has wasted possibly thousands of dollars

getting his lawyers to prepare on the basis of a set of disclosed documents, and we come along and on day two you produce a lot more. More importantly than that, you produce an expert that says, "Here is a slide that clearly shows not just the vegetation changed, but you can see lines that show it was cleared by mechanical device." That was never disclosed to the defence.

MR WILSON: Your Honour, I don't even know when that presentation was made. It may have been made very recently. It may not have been made months ago. As I said, I hadn't seen it until today, so I can't disclose what I haven't got. I know the Department has to, and we certainly make all attempts to, but there is a great difficulty with digital information and being able to show it all.

BENCH: Well, I would have thought it would be a lot easier, Mr Wilson. As I said, it can all be downloaded onto a CD.

MR WILSON: I'm not-----

BENCH: This witness has looked at lots of pieces of information that the defence are never going to see.

MR WILSON: True. But he has used all that information to draw his conclusions which are in his certificate.

BENCH: Yes. Well, how can the defence properly check his conclusions without access to his primary data - the primary data base he had access to?

MR WILSON: Well, one would assume that, when they challenged the evidence, that they would be calling an expert that would deal with that sort of issue.

BENCH: Come now. Come now, Mr Wilson. So you say that the proper way to prosecute is to just disclose a quarter of your hand, if that, and it's up to the defendant to engage an expert at \$5000 a day for a five-day trial to sit in court? Do you think that's the right way to do a prosecution?

MR WILSON: Not necessarily, your Honour, but-----

BENCH: I don't think so.

MR WILSON: I wasn't suggesting that. I was suggesting-----

BENCH: You were. That's what you were suggesting. That's what has happened in this case.

MR WILSON: Perhaps you may have misinterpreted me. What I meant was that an expert would detail - would liaise with these people to determine-----

BENCH: How could they even get their expert to look at the material if you don't give them the material? I think I'm going to adjourn the trial and make a direction that your -

each of your witnesses disclose, in digital form, every image they used to reach their conclusion, and then order that if this trial goes longer than three days, which it will, that there will be a costs order to rectify the situation. But how
5 on Earth can Mr Knights get an expert to give opinions about conclusions reached by your expert based on material, if you don't disclose the material to him?

MR WILSON: I understand all this material is publicly
10 available. It's not something that-----

BENCH: What, these Landsat images?

MR WILSON: Yes, your Honour. I can check that, but I
15 understand they are. Yes, that's correct, your Honour.

BENCH: Yes, and as your witness says, there's potentially millions of pieces of Landsat imagery. There's Landsat imagery from 1988 to 2006. What, you think that a person in
20 Mr Knights' position, a private citizen, should spend hundreds of thousands of dollars accessing each of those millions of images?

MR WILSON: No, I don't suggest that.
25

BENCH: That is not appropriate, Mr Wilson.

MR WILSON: I don't suggest that, your Honour.

BENCH: The most appropriate thing is that your department had this material, it had it in digital form. It could be provided to Mr Knights' solicitor at very low cost. It should have been provided to him with the complaint, so that they could look at it and if they wanted to get an expert, they
35 could get an expert based on that material. But it seems that the grounds are shifting because someone did some rough mud maps and now they have become other maps.

MR WILSON: Well, your Honour, I think-----
40

BENCH: How can Mr Knights defend himself?

MR WILSON: Your Honour, in fairness I would have to call someone to give evidence about that, but I don't think that it would cost the Department hundreds of thousands of dollars to prepare for every case, or thousands and thousands of dollars. And we would need 10 times the amount of staff we've got to interpret all these satellite imageries, because there would be so much work involved. The standard raises as it goes
50 towards court. At those initial hearings there's a very - there's a high degree of accuracy, but when it comes to court the standard rises again, and we've only got from the hearing mention to the hearing to deal with it.

BENCH: Thank you.
55

MR SHERIDAN: Your Honour, my learned friend didn't, I don't think, address my objection on the basis of unfairness to the defendant. He has attempted to paint the difficulties of a very large department with virtually unlimited resources, and having to deal with these prosecutions. If they have to go to those lengths to prove their case, then so be it. The difficulty we have, as your Honour pointed out, as a private citizen, is trying to meet the case, anyway, and then dealing with, as I've described before, this creeping barrage of disclosure which, despite the fact that the prosecuting counsel might not know about it - that's really a matter for them. And I don't have any submission or case law prepared for the submission I'm about to make, because, as I said earlier, I've never seen anything like this before, but if it's within your power to dismiss this matter now as an abuse of process of the court, I would ask your Honour to consider doing so.

BENCH: Well, do you want to make a submission about me dismissing the complaint as an abuse of process, Mr Wilson?

MR WILSON: Your Honour, even if we were not to present this evidence, we would still have a case. We haven't - the defendant hasn't been disadvantaged because it hasn't gone into evidence.

BENCH: I don't think I even need to hear from Mr Sheridan about that. I am just flabbergasted that you would make such a submission. The defendant is clearly prejudiced by not knowing the case he has to meet, in a highly technical and scientific arena, where your department had access to all of the images, in a digital form, which could have been downloaded and given to him, so he could properly answer the case. So for you to say he is not prejudiced, I find myself floundering to understand where you get that attitude or make that submission.

MR WILSON: Well, your Honour, I would have to hear from some of these people about how hard it is to provide these images when it's done. I don't know those things. And, you know, how the digital imagery is obtained. That's not in evidence.

BENCH: Okay. Would you mind just waiting outside, please?-- Sure.

WITNESS STOOD DOWN

BENCH: Can we just go through - you've got Gavin Rawson from the Department of Natural Resources. Is he actually from Toowoomba or from Brisbane?

MR WILSON: Toowoomba.

BENCH: And what's he going to tell us?

MR WILSON: He's just going to produce some documents he obtained from DPI in relation to drought-----

5

BENCH: Have they been disclosed?

MR SHERIDAN: They were disclosed yesterday morning just before the outset of the trial, your Honour.

10

BENCH: Has he disclosed every document he had?

MR WILSON: Yes. They were obtained by a warrant, your Honour, the week before.

15

BENCH: Okay. We've got Mr Anderson who is here now.

MR WILSON: Yes.

20

BENCH: What's Mr Voller, is he from Toowoomba?

MR WILSON: Yes, I think so. Yes, it says here he's from Toowoomba, your Honour.

25

BENCH: Well, it says Mr Anderson is from Toowoomba and his resume says he's from Brisbane.

MR WILSON: Yes, he's from Indooroopilly. Yes.

30

BENCH: So your list is wrong. I don't know where Mr Voller is from. What's Mr Voller going to tell us?

MR WILSON: That he spoke to the defendant in relation to fodder feeding and he has, probably, some knowledge about fodder feeding.

35

BENCH: Mr Olsen, he's from Brisbane?

MR WILSON: Yes, he's an independent person. He's a-----

40

BENCH: So has all of his source material been disclosed to the defence?

MR WILSON: I believe so. He has done a report.

45

MR SHERIDAN: I have some submissions on that, too, if Mr Olsen actually gets to the court, your Honour. I have - I am very reticent to say we have been disclosed anything any more. We've been disclosed some information, whether that's the totality of the evidence that the witness is going to bring, well, I'm really not in a position to say, and if I had to be pressed on it, I would say, "No," because without doubt, there is to be more coming from this end of the table once he hits the box.

50

BENCH: And what's Mr Biggs going to tell us?

55

MR WILSON: Mr Biggs is a salinity expert who will just talk about the effect of the clearing on the property.

5 MR SHERIDAN: Which is, I might submit, your Honour, completely irrelevant to the matter before the court. The effect of the alleged clearing might be a matter for sentence, but it's certainly not an issue before the court now. The issue before the court is whether we undertook assessable development without a permit.

10 BENCH: Okay, well, I'm just at a loss to work out how to proceed in a fair way to both parties. I have before me one submission - I have before me one submission that the slide 21 be excluded from evidence. So I will just check - Mr
15 Sheridan, would you prefer me to return slide 21, to exclude it from my deliberations, and to say, "The prosecution, so far as this witness is concerned - Jeremy Anderson is concerned - is limited to proceed on the basis of the material that has been provided so far?"

20 MR SHERIDAN: Yes, your Honour. Thank you.

BENCH: Because I can do that, and you can cross-examine him if you've got anything further, and Mr Wilson can re-examine
25 him and we'll continue.

MR SHERIDAN: Mmm.

30 BENCH: I would, if you want me to - I could make an order now that the prosecution not be able to rely on any material that has not been discovered or provided to you till today. But you say you haven't got anything at all from Mr Olsen.

35 MR SHERIDAN: No, your Honour, we do. We have a report that was firstly disclosed to us in the nature of an expert's report. I'll be making submissions on that. Then we have a statement from Dr Olsen which is a bit similar but, in critical ways, different to that report.

40 BENCH: Well, that's for later.

MR SHERIDAN: Yes, your Honour.

45 BENCH: You asked me to dismiss the complaint as an abuse of process. I don't believe it's at that stage yet, but I do believe the court needs to make some order about the material that hasn't been discovered to you. So that's why I was just checking with you.

50 MR SHERIDAN: Yes, your Honour.

55 BENCH: Because, I was going to suggest I could make one of two orders. One is, adjourn the case and request - and make an order that the Department discover everything to you, and then resume the hearing at a later day. Or two, continue on but order that the Department not be allowed to produce any other documents, other than that which they have disclosed to

you, as at today, as at this point in time, which is half-way through day two on a three-day trial.

MR SHERIDAN: Yes, your Honour. The second-----

5

BENCH: Do you have a preference?

MR SHERIDAN: Could we take instructions from the client first, your Honour?

10

BENCH: Well, I'll just finish what I'm going to say-----

MR SHERIDAN: Yes, yes, sorry.

15

BENCH: -----and then allow you to take instructions. Because I thought I could make one or two of those orders.

MR SHERIDAN: Yes.

20

BENCH: Then, I'm just a bit concerned, if we're going to continue on and we don't finish by tomorrow afternoon, I'm available on Friday. I didn't know whether you both were available on Friday, and there's a possibility I could get a court room in Toowoomba on Friday, or in Brisbane on Friday. So if we wanted to continue on with the trial on Friday and finish it, if we don't finish it by tomorrow, we could do that either in Toowoomba or Brisbane, whatever is the most cost effective. Or we could continue here.

25

30

MR SHERIDAN: Yes.

BENCH: But - and I'm quite happy. We did sit till five yesterday. I'm quite happy to sit till five today, as well, but tomorrow I will have to adjourn about three. So that means we've got a reasonably long day today, but a shorter day tomorrow.

35

MR SHERIDAN: Yes, your Honour.

40

BENCH: So that won't be an issue if we do adjourn the case, because if we do adjourn the case, I would be making an order that everything that the Department relies upon should be discovered to you within seven days, and then I would be adjourning the trial to a date after that time.

45

MR SHERIDAN: Yes.

BENCH: That trial could be re-convened here in Dalby. It could be re-convened in Brisbane. I doubt it could be re-convened in Toowoomba, other than Friday. It's just that I know that there's only going to be one Magistrate sitting this Friday, in Toowoomba.

50

MR SHERIDAN: Yes.

55

BENCH: So I'll take a short adjournment while you take instructions.

MR SHERIDAN: Thank you, your Honour.

5

THE COURT ADJOURNED

10

THE COURT RESUMED

BENCH: Yes, Mr Sheridan.

15

MR SHERIDAN: Thank you, your Honour. We have taken some instructions from our client and my instructions are that our preferred option is that your Honour rule that the slide 21 is inadmissible and continue hearing the matter now, but subject to your Honour's ruling that any documents that have not been disclosed, to the defendant, as at the time before the adjournment, be excluded from evidence.

20

BENCH: Thank you. Do you want to make some submissions about that, Mr Wilson?

25

MR WILSON: Yes, your Honour. After talking to some of our experts, they tell me that slide 21 has been, in fact, disclosed. It's just an exploded view of JRA08.

30

BENCH: Yes. Anything further?

MR WILSON: In relation to documents, the matter of the regional ecosystem, version 3.2, is yet to go in.

35

BENCH: Well, we'll have an argument about that at the relevant time. Well, seeing as I've already got slide 21, I return slide 21. I don't admit it into evidence, seeing as you say it's already there. I don't need that, thank you. Could you just take that back to Mr Wilson? Do you have any more cross-examination of Mr Anderson?

40

MR SHERIDAN: Sorry, your Honour. That was a long time ago.

45

BENCH: Do you want to get Mr Anderson back, then, please?

MR SHERIDAN: No, your Honour. Thank you, we don't.

BENCH: So we've just got your re-examination, then.

50

JEREMY ROBERT ANDERSON, CONTINUING RE-EXAMINATION

5 BENCH: Thanks, Mr Anderson. Please have a seat. The oath you took earlier will apply to the evidence you're about to give. Yes, Mr Wilson.

10 MR WILSON: Thank you. Mr Sheridan asked you about field inspections, and why you hadn't done one. Could you tell the court why you hadn't done them?-- Why I haven't done a field inspection? I guess I wasn't instructed to by my superiors.

15 In relation to - Mr Sheridan asked you a question about endangered bluegrass and Mitchell grass, or endangered areas. Are you - can you say whether there's any in that area or not?

20 MR SHERIDAN: I object, your Honour. He's leading him. Do you say there are any in that area?

25 BENCH: I don't think he can ask the question in any other way. Are there any bluegrass or whatever the other grass is?-- I'm not certain. As far as I know, there's no bluegrass, but I'm not certain.

30 MR WILSON: I wonder if you can put up, perhaps, slide 34. Now, Mr Sheridan asked you questions about 10 metres. Could you tell the court how far it is from the corner to the top of that?-- It's roughly 5000 metres from the lower corner to the top of the slide.

35 And across?-- I think the measurement across the base was roughly 4500 metres, I think; 4 and a-half kilometres, roughly.

So it's 4 and a-half kilometres by?-- I think it's about five. I'm not certain, it's, roughly, five.

40 BENCH: That doesn't look to be proportional to me?-- No, I'm not certain - I'm pretty sure of the length that way, and from that way-----

Have you got a ruler down there, Michele? Thanks.

45 MR WILSON: Have you got some way of checking the measurement?-- Not easily, but we could measure up the maps.

50 But you say across - you're very confident it's, what - 4½ kilometres?-- I'm not confident in the vertical, the north-south measurement is, roughly, five kilometres - roughly.

I've no further questions.

55 WITNESS EXCUSED

BENCH: So Mr Rawson would be pretty short, would he-----

MR WILSON: That's right, yes.

5

BENCH: -----in his evidence? Would you be five minutes with him?

MR WILSON: I hope so.

10

BENCH: And how long will you be with him - a while?

MR SHERIDAN: Yes, your Honour.

15

BENCH: Was he who you had in mind for next?

MR WILSON: Yes.

BENCH: Do you want to start him now?

20

MR WILSON: Yes, your Honour. I've just got to find the documents.

BENCH: Thank you. We'll get him brought in, then. I guess I just should say, I didn't make any ruling in relation to your application before, Mr Sheridan.

25

MR SHERIDAN: The strike out?

30

GAVIN DALE RAWSON, SWORN AND EXAMINED:

BENCH: Thank you. Have a seat and make yourself comfortable. So just before you start, I will just make an indication now that I don't - I said, I don't think it is at the stage where I should dismiss because of an abuse of process, and I will make a ruling on each document that is attempted to be tendered, that hasn't been disclosed to you, and I do make an indication that there would have to be some good reason why it should be admitted into evidence if it hasn't been disclosed as at today's date. Thank you. Yes, please, Mr Wilson.

35

40

45

MR SHERIDAN: Thank you, your Honour.

MR WILSON: Thank you.

50

Tell the court your full name please?-- My full name is Gavin Dale Rawson.

And where are you employed?-- I'm a Regional Investigator with the Department of Natural Resources and Water, based at Toowoomba.

55

Can you tell the court how you came to be involved in this matter?-- Yes. I commenced duty with the Department of Natural Resources on the 29th of May 2006, and on the 7th day of June, I was delegated a file to compile a brief of
5 evidence. As a result of this, I obtained several statements, and also, during the course of my investigation, I made inquiries with Jan Turner, who is part of the customer service at the Department of Natural Resources at Toowoomba, where I
10 obtained several certified copies in relation to titles, in relation to Lot 8, MGL33 which pertains to Acme Downs.

Okay. I will just - I won't go through all the details. You had - you've dealt with a warrant in respect of these matters?

15 MR SHERIDAN: I object, your Honour. He's leading.

MR WILSON: I'm just trying to move it through quickly.

20 BENCH: Well, you asked the witness how he got involved, and the word warrant never fell from his lips once.

MR WILSON: Yes, well, I was just trying - you indicated you wanted to move through this quickly, your Honour.

25 BENCH: No. I didn't say that at all. I wasn't, for one minute, suggesting that we don't adhere to the rules of evidence. I did simply ask whether Mr Rawson was going to be quick in his evidence-in-chief so we would do him before
30 lunch, or if we would have lunch now.

MR WILSON: Yes, your Honour.

BENCH: You told me five minutes. I don't mean-----

35 MR WILSON: Okay.

BENCH: -----abandon all other practice; let's race through Mr Rawson. I would just like to hear Mr Rawson's evidence in the ordinary way, thanks.

40 MR WILSON: Okay.

I'll just show you these documents. You've seen these, right?

45 MR SHERIDAN: What are they? I'm not going to - whether I see anything from you. Is this the stuff you gave me yesterday?

MR WILSON: That's correct.

50 MR SHERIDAN: Your Honour, these documents, which were potentially to be tendered, were - in the amount of about 30 pages, were disclosed to the defendant yesterday morning at 10 to nine. I know your Honour has made the ruling that any document that hasn't been disclosed - these documents were
55 disclosed, but just prior to the outset of the trial, yesterday.

MR WILSON: What can you tell the court about those documents?-- Yes, your Honour, on the 19th day of October 2006, at about 1 pm, myself and Craig Elliot, from the Department of Natural Resources and Water, attended Level 5 of 80 Ann Street, Brisbane, where we executed a warrant upon the Department of Primary Industries. Upon arrival at that address, I spoke with Nadine Baldock. I spoke with their legal officer, Eva Ross, and I also spoke with the Drought Relief Assistance Scheme Manager, Roz Maloney, where I executed a warrant. Part - at that time, I seized 69 x A4 pages of documents. These are the documents that I seized, your Honour.

I seek to tender those documents, your Honour.

MR SHERIDAN: I object, your Honour.

BENCH: I will have a look at the documents. Can you just hand the documents?-- Certainly. Sorry.

Yes, what is the nature of your objection, Mr Sheridan?

MR SHERIDAN: These documents were not disclosed until five minutes before the commencement of trial yesterday, your Honour. On that basis, I would ask that your Honour exclude them from evidence.

BENCH: Yes, I'll hear your response, Mr Wilson?

MR WILSON: Yes, your Honour. Those documents were only obtained on the 19th of October. They go to show that the property was in drought, and it goes to show how many cattle and sheep were on the property.

BENCH: Excuse me?

MR WILSON: Sorry.

BENCH: How can this possibly show that the property was in drought?

MR WILSON: Well, with respect, they are drought relief documents. And it says on one of the pages - page 2.

BENCH: Now, there's six bundles of documents, and the last four relate to periods that come from 2005 onwards, so they will have no relevance to the charges whatsoever. So those four bundles that start from September '05 - the objection is upheld, at least in relation to those, at this stage-----

MR SHERIDAN: Thank you, your Honour.

BENCH: -----because they relate to a period way beyond August 2003, so I will return them to the witness. On what basis do you say these documents are admissible?

MR WILSON: Well, they're under the hand of the defendant in this matter. He has signed them.

BENCH: Are you calling a handwriting expert about that?

5

MR WILSON: No, I'm not, your Honour.

BENCH: Well, they could be under anyone's hand.

10 MR WILSON: They could be, but they're-----

BENCH: It's a criminal prosecution. You either need an admission from Mr Knights that they are his documents, or you need to prove they're his documents by some other means. But that - I asked you how do these documents from the DPI become admissible in this court?

15

MR WILSON: Yes, your Honour. Well, under section 51, your Honour - that it's a public document.

20

BENCH: Sorry?

MR WILSON: It's a public document obtained from the Department of Primary Industries.

25

BENCH: How can it be a public document? I can't go and get this document off someone else's drought claim. If it was a public document, you wouldn't need a warrant to get it.

30 MR WILSON: No, true.

BENCH: I would hope.

MR WILSON: I will just see if they aren't accounting records, your Honour.

35

BENCH: Sorry?

MR WILSON: I just want to see - evidence of books of account.

40

BENCH: While you are considering that, I'll take an adjournment for lunch now, so you can think about it over lunch and resume again at 2 o'clock. Thank you.

45 MR WILSON: Thank you, your Honour.

THE COURT ADJOURNED

50

THE COURT RESUMED

5 MR WILSON: Your Honour, I'm seeking to have these documents
admitted under section 93, where, "In any criminal proceedings
where direct oral evidence of fact would be admissible, any
statement contained in a document tendered to establish such
10 fact, shall, subject to this part, be admissible as evidence
of that fact, if the document is or forms part of a record
relating to any trade or business, and made in the course of
that trade or business; from information supplied, whether
directly or indirectly, by persons who had or may reasonably
be supposed to have had personal knowledge of the matters
15 dealt with in the information they supplied." And (b)(iv),
"Cannot reasonably be supposed, having regard to the time
which has elapsed since the person supplied the information to
all the circumstances, to have any recollection of the matters
dealt with in the information the person supplied."

20 BENCH: Well, I think I would be with you if you had an
officer from the DPI here, to say that they were records of
the DPI, but if someone just seizes something on a search
warrant, you can't prove that they're documents kept in the
25 ordinary course of business of the DPI through a witness who
seizes documents under a search warrant, because you need to
have the DPI officer here.

MR WILSON: Yes, your Honour.

30 BENCH: So I might return those to you. I'll mark these as
"D" for identification. See if you can get yourself a DPI
officer by tomorrow.

35 MARKED "D" FOR IDENTIFICATION

40 MR WILSON: Thank you, your Honour.

BENCH: Any more questions?

45 MR WILSON: No, your Honour.

BENCH: Have you got any - I don't suppose you have a cross-
examination, because they are not admitted into evidence yet,
or have you got any questions about the execution of the
50 search warrant?

MR SHERIDAN: No, I don't. Is that the evidence-in-chief?

55 BENCH: Yes. I think so. Mr Wilson sat down; I'm presuming
that's right.

MR WILSON: That's it, your Honour.

CROSS-EXAMINATION:

5

MR SHERIDAN: Mr Rawson, in the statement that you provided,
you say that, on 2.05 pm on Wednesday, 7th June, you
10 telephoned Daryl Baumgartner-----?-- Daryl Baumgartner.

-----at the Vegetation Manager's office, employed by Natural
Resources and Water, "who told me something"?-- Yes, that's
right.

15

What did he tell you?-- I can't recall the exact details of
that conversation. In relation to that, I told him that I was
compiling a report-----

20 I asked you what he told you. Can you remember?-- No, I can't
remember what he told me.

Nothing further, your Honour.

25 BENCH: Thank you. Any re-examination?

MR WILSON: No, your Honour.

30 BENCH: Thank you very much, Mr Rawson. That's the end of
your evidence.

WITNESS EXCUSED

35

BENCH: And the next witness is?

40 MR WILSON: I was going to make it Peter Voller, but I don't
think he's here yet, your Honour. I might call Dr Olsen.
Might I just go and inquire?

BENCH: Thank you.

45

MR WILSON: Thank you. Your Honour, Peter Voller was just -
we have got to call him from across the road.

BENCH: Beg your pardon?

50

MR WILSON: He's across the road. They gone to get him. I
was going to call Dr Olsen, but he has got the last 10
minutes.

55 BENCH: So you've got the other man here, the salinity man?

MR WILSON: He is across the road, too, your Honour, at the D and R office.

BENCH: So I just wait?

5

MR WILSON: I apologise.

No, they're just across at the D and R office, which is just across the road, in the car park.

10

BENCH: Why aren't they here?

MR WILSON: I don't know, your Honour. May I be excused again?

15

BENCH: I will take an adjournment. There are too many delays, though. Thank you.

20

THE COURT ADJOURNED

25

THE COURT RESUMED

30

BENCH: Thank you. You may be seated, and you're calling?

MR WILSON: Peter Voller.

35

PETER JACKSON VOLLER, SWORN AND EXAMINED:

5 MR WILSON: Can you tell the court your full name,
please?-- My name is Peter Jackson Voller.

And whereabouts do you work?-- I work with the Department of
Natural Resources and Water in Dalby - Toowoomba, sorry.

10 Okay. And what's your position there?-- At the moment I'm a
principal project officer and I'm involved with delivery of
financial assistance packages to landholders across
Queensland.

15 Okay. And do you hold any formal qualifications?-- Yeah, I've
got a bachelor's degree in horticultural technology from
Gatton College.

20 Okay. Now, if we just take you back to September
2002?-- Yeah.

What can you tell me that happened around then?-- September
2002, I was in the process of engaging with the community for
25 the development of regional vegetation management plans in
south-western Queensland. I was actively leading a community
consultation process to seek community advice about how we
should or shouldn't modify the Vegetation Management Act
according to the recommendations under the Vegetation
30 Management Act. Part of that process involved quite a lot of
community meetings explaining how the Act worked now and also
what potential changes we could bring about through that
consultation process.

35 Okay. And did you meet Mr Knights through that
process?-- Yes. On a couple of occasions we did meet, yes.

And when you say, "Mr Knights," you mean?-- Richard.

40 Yeah, okay. And do you recall any discussions with Richard
Knights during that period?-- Primarily, there were two that I
can recall, the first being - there was an AgForce meeting at
a property called "Donna Downs," in south-western Queensland
and, I think - pretty sure Richard was at that meeting. We
45 talked about - basically, it was a general introduction to the
Act, to the Vegetation Management Act, explaining how the
different aspects of the Act operated and also just what we
were - how we were progressing with that community
consultation process; what was potentially going to happen as
50 far as the draft vegetation management plan. Part of that
presentation involved discussing how the current Act worked
including things like fodder harvesting exemption and what
opportunities landholders had to use the legislation as it
stood at that time.

55 Okay. Do you remember your conversation about the fodder
harvesting?-- The primary issues in the fodder harvesting was

relating to the fact that landholders had an exemption on freehold land to harvest fodder if they were drought declared. That exemption was what we called "routine management" which allows for that harvesting without control in areas except for
5 endangered regional ecosystems. So they had to be drought declared and they couldn't harvest in endangered ecosystems.

Did you tell anyone that?-- Well, that was in the presentation and in conversations afterwards, as well.
10

Okay. You said there was another meeting?-- Yeah, the second time we meet up would have been at the - we ran some more formal community consultation meetings which were, in fact, public invitation meetings run by the Department. One of
15 those was at Bollon. I can't remember the exact date, off the top of my head, but that meeting was quite a large meeting and, also-----

Have you got a diary note of it, or-----?-- Yeah, I've got a diary note of the date but I haven't got the exact date in the front of my head. But at that meeting, once again, we discussed how the old Act worked, but we were particularly highlighting the potential opportunities for change that the regional vegetation management plans could offer.
20

Are they your diaries?-- Yeah.
25

MR SHERIDAN: I've never seen the diaries, your Honour, unless I've been exposed to particular pages. Have I?
30

MR WILSON: Yeah, you have.

MR SHERIDAN: Could I see which page he intends to show the witness, please, your Honour?
35

BENCH: He's not showing the witness any page. He's - if the witness wants to refer to his notebook, you can have a look at what page he refers to, Mr Sheridan.

Do you want to look at your diary to see what date the meeting was?-- If that's helpful to you, I'm happy to do it. If you're happy to just-----
40

That's not the test, sorry. You were asked the questions, you don't have to worry about being helpful to me?-- I'm pretty sure it was something like the 27th.
45

MR SHERIDAN: It appears the witness has already refreshed his memory, your Honour.
50

BENCH: Or he's in the process of it. As I said, if he's - if he looks at a page, you're entitled to look at the page.

Were there minutes of these meetings kept?-- No, I'm afraid not. They were quite large community meetings and-----
55

So it wasn't a one-on-one conversation you had with Mr Knights?-- Well, we did - I think we had a discussion at smoko where we talked about issues.

5 Okay, so you don't know the date of that large meeting?-- I can find it for you if you want me to take the time to go through the diary, but I haven't got it in the front of my memory at this point in time.

10 MR WILSON: Okay. Now, do you remember, you said you had a discussion with Richard, did you? Yes? And what was the discussion about and what did you-----?-- My understanding of that discussion was to do with fodder harvesting. Once again, it was about - about, once again, checking that the fodder
15 harvesting exemption did apply. I confirmed that. I also confirmed that, if they were going to do fodder harvesting, they should keep good records of what they did. They needed to make sure that they had paddock diaries of the - that they were actually feeding stock, because the fodder harvesting
20 exemption would hinge on the fact that it was being used to feed stock. So the only real criteria for that exemption was to supply fodder for stock in drought conditions only; that was the bald statement in routine management. So the only way you could prove you were fodder harvesting was supplying
25 fodder for stocks. So how do you do that? Some sort of evidence, photographic or other.

And have you had anything to do with fodder harvesting at all?-- Primarily, my involvement with fodder harvesting is
30 through the regional consultation process. I engaged with a large number of landholders both through the southern Brigalow belt and the Mulga lands, seeking their advice about what's the best approaches for fodder harvesting, what's the best methodology, what's the best processes we could use for
35 sustainable fodder harvesting. I've had a lot of discussions with landholders anecdotally about what they believed to be good, or good practice for fodder harvesting. I've never actually fed stock myself in that process.

40 Okay. I have no further questions.

CROSS-EXAMINATION:

45

MR SHERIDAN: Now, Mr Voller, you were involved, you say, in a number of meetings around about the time you met Mr Knights at Donna Downs in 2002?-- Yes.
50

How many of those meetings would there have been during that period?-- There were quite a lot. That meeting at Donna Downs was actually a circuit we had done which AgForce had
55 organised. I think that particular trip - there were about 13 meetings on that road trip.

5 How many people would have attended these meetings all up?-- Good question. Probably - I reckon it would have been about between - well, a couple of meetings would have had about 20 or 30 people at, others would have had down to five or 10.

10 And your advice and your presentation at these meetings to all these people was that the fodder exemption applied when freehold landholders were drought declared?-- Correct.

That's just completely wrong, isn't it?-- Why is that?

15 The fodder exemption applies for a freehold landholder in drought conditions, not drought declaration - drought conditions?-- The interpretation of the Act-----

What does - you understand the Act; what does the Act say? Do you know that?-- "Drought conditions only."

20 Thank you. What's the difference between drought conditions and a drought declaration?-- Drought conditions would have to be in circumstances where the landholder or some other authority considered - I don't think the Act actually defined "drought conditions," to be honest.

25 No. What's the precursor of a drought declaration?-- Approval by DPI or the Department - a declaration.

30 Would it not be drought conditions? Don't drought conditions come before a declaration?-- You would have to think so, yes.

35 You would, wouldn't you? So, you, going around telling all these people at all these meetings that the fodder exemption didn't apply until they were drought declared was just wrong?-- It was what we were told to tell people.

40 Who by?-- Departmental policy. It was the Department's interpretation - my understanding of the interpretation of "drought declaration" was the requirement for that exemption to operate.

45 The Act doesn't say "declaration," though, does it?-- My understanding of the Act is drought conditions only. And I also-----

There's a world of difference between drought conditions and a drought declaration.

50 BENCH: Yeah, you've already established that, thanks.

55 MR SHERIDAN: Thank you, your Honour. Now, you spoke to Mr Knights on the telephone on - Mr Knights rang you to ask you questions about drought feeding on the 16th of September 2002?-- I don't have any recollection or any diary records of that conversation, I'm sorry.

Did Mr Knights, any time after the times that you had spoken to him, that you have recorded in your statement - did Mr Knights call you and discuss drought fodder feeding with you?-- Not that I can recollect. I deal with a lot of people over a lot of time and I don't recollect all conversations. I've related to you the ones that I can recall and not those I can't.

Thank you. Now, the exemption that applies, that is for all regional ecosystems other than those that are mapped remnant endangered; is that correct?-- That's my understanding. That's my understanding.

Now, do you understand, at all, the definition of "remnant endangered regional ecosystem"?-- Yes.

Do you understand how one finds out if one has remnant endangered regional ecosystem on one's property?-- Yes, you read those maps and then you interpret it.

I see. And you can clear for drought - in drought conditions anything but remnant endangered regional ecosystems. Is that correct?-- To supply fodder for stock in drought conditions only.

Yes. Now, does that exemption cover remnant endangered regional ecosystems dominant and sub-dominant, or is there a distinction?-- There's no distinction.

It's just remnant endangered regional ecosystem full stop?-- As I understand it.

So how, then, does one determine, when one's property is mapped on a regional ecosystem map, with areas that are endangered, dominant, and sub-dominant?-- I would suspect the correct advice in that situation would be that the landholder would have to determine which of those ecosystems was the endangered ecosystem of that mixed polygon, and then actively avoid clearing those areas.

So you understand the concept of mixed polygons?-- I beg your pardon?

You understand mixed polygons?-- Correct.

So in an area that had only five per cent of a regional ecosystem map of a remnant endangered regional ecosystem, would it be the practice to clear - to identify those areas that were of the type that were endangered, and clear around them and leave them standing?-- That would be the theoretical ideal outcome.

Yes. So it was a form of self-assessment-----?-- That would be-----

If you like?-- That would be a reasonable interpretation.

Yes. How, then, if one had a mixed polygon with only five per cent of remnant endangered regional ecosystem - if a landholder clearing for fodder for stock in drought conditions, identified the vegetation that consisted of the endangered regional ecosystem - if he left that standing, how, then, would that affect his exposure to prosecution?

MR WILSON: Isn't that a question of law, your Honour?

BENCH: I don't think so. Well, you satisfy me it is.

MR WILSON: Well, he's asking him how - if he clears it a certain way how it will affect his likelihood of prosecution, clearing trees in an endangered area on the dominant that aren't endangered.

BENCH: Yes, well, if Mr Voller doesn't feel capable of answering, or he doesn't understand the policy, or if he wants to say someone else makes those decisions, I'm sure he'll say that.

MR WILSON: Okay.

BENCH: Thank you. Yes, please.

MR SHERIDAN: Sorry, your Honour. This line of questioning arose from an answer the witness gave that he was involved in seminars on how people would comply with the Vegetation Management Act. So I'll start that question again. If-----

BENCH: I think Mr Voller will remember it.

MR SHERIDAN: Do you remember it, Mr Voller?

BENCH: So if they just cleared around what's endangered, how will that affect their chances of getting prosecuted?-- Essentially, if they haven't cleared the endangered ecosystems, then they haven't cleared it. So there isn't a case to answer. It's a matter of demonstrating that all the endangered in that polygon wasn't cleared. I think the other complication with this stuff is - is that the percentages that are identified as endangered or not - or remnant - endangered, not of concern or of concern in those polygons is the extent of those ecosystems estimated to be present in the pre-clearing extent of those polygons. So it could be that the area that's remnant on the property may, in fact, contain more or less of that endangered ecosystem, depending on what part of the polygon we're in at the time. So it may not necessarily be that there's only five per cent endangered in that patch; it could be that there's no endangered in that patch. It depends a lot on the identification of the different types of regional ecosystems on the property and then excluding those ecosystems from the area that has been cleared under that exemption. That would be my interpretation of that response.

MR SHERIDAN: So say, in these mixed polygons, where it might appear that there was only five per cent of the remnant endangered regional ecosystem, there may be none of that regional ecosystem in that polygon?-- It's possible, and it has happened at times, and I haven't seen this property and I haven't seen the site and I can't tell you whether there is or isn't endangered present on the site.

You haven't been on this property yourself?-- No.

But in your experience it's possible that areas that are mapped in a mixed polygon with a percentage of remnant endangered, that that percentage of remnant endangered regional ecosystem doesn't occur at all in that polygon?-- It doesn't have to be five per cent of every hectare contains an endangered ecosystem; it's an estimate of how much of that polygon may be - will contain an endangered ecosystem.

Yes?-- So yes, it's possible that individual hectares or individual parcels or portions of that area may, in fact, not contain or contain large areas of that endangered ecosystem.

So that's where this sub-dominant sub-category of regional ecosystems comes from?-- Sub-dominant basically - the sub-dominant endangered ecosystem means that there's less than 50 per cent of that ecosystem made up of that endangered ecosystem.

Less than 50 per cent?-- Of the polygon, yes.

So, then, in a map, we've got dominant and sub-dominant regional ecosystems - excuse me, endangered regional ecosystems, and in the polygon it shows that on the map that's, for instance, current at the time clearing took place, that there was only an estimate of five per cent endangered, then it would be wrong to categorise that polygon as remnant endangered, wouldn't it?-- It's basically indicating that there's a potential presence of up to - of around five per cent in that whole polygon.

Potential presence?-- Yes. Depends on what's left of that whole polygon from what has been cleared; depends on what part of the polygon has been cleared; and it depends on what part of the herbarium has mapped. You're probably getting to a level of detail where I'm not expert-----

No, that's fine, don't worry?-- The herbarium people are the experts in this area.

So on an area of the map that was remnant endangered dominant, for instance, that would mean to you that more than 50 per cent of that area contained remnant endangered regional ecosystem?-- If it's mapped as pink, or dominant-----

Yes. Dominant-----?-- -----it's 50 per cent or more, yes.

Dominant in this sense means 50 per cent or more; sub-dominant means 50 per cent or less?-- Correct.

5 Right. Where we see five per cent, it says it's about five?-- Correct.

10 Right?-- You'll see in the description there will be a series of regional ecosystem numbers, and a percentage attached to each of those numbers. So your suggestion is, in this case, there's a mixed polygon which has got two different - two or three different ecosystems.

15 Yes?-- One ecosystem will be either of concern or not of concern, and there will be a five per cent component of endangered, which is what you're describing, by the sounds of it.

20 So then if we were to just categorise the regional ecosystem map in terms of remnant endangered, remnant of concern and remnant not of concern - just go to those three categories rather than these sub-dominant categories - if we lumped an area that was sub-dominant, and that area only had five per cent of endangered regional ecosystem - if we lumped the sub-dominant category in and just called it all remnant
25 endangered, it's highly likely that that would be a massive error, isn't it?-- It's a common - it's a very unfortunate misconception by a lot of landholders, take that - they see a dominant endangered and think, "Oh, it's all pink. I can't touch it." But, in fact, it may be, in fact, that it's only
30 just 50 per cent or greater that's the endangered component of that ecosystem.

35 And does the reverse apply, that a landholder might look at - in your experience, he might look at a sub-dominant regional ecosystem and think he couldn't touch it either because it had that pink dominant-----?-- It's possible that people - one of the unfortunate aspects is that people make their own
40 interpretations of what they see on maps and you can't control what people read into what they see or what they're told by whoever they seek advice from.

Excuse me, your Honour. Nothing further.

45 BENCH: Thank you. Yes, Mr Wilson.

RE-EXAMINATION:

50 MR WILSON: Just going from what my friend said, if you think - if the mapping is wrong, what is the remedy?-- Probably the ideal approach for landholders if there is concern about
55 wanting to access photo or other material and they want to clear an area, the options are to either clearly try to make an attempt to identify those areas that are described as

5 endangered, and they will be described by the regional
ecosystem description - for instance, it might be Gijibala,
and then try and avoid those areas which contain - or which
are obviously a combination of those species. The other
10 alternative is to seek advice from a herbarium or other
botanist-type people that can actually map those areas out for
them, those sub-set areas. They would probably be the two
options that landholders have. Otherwise, take a very
precautionary approach to clearing in those areas.

10 Okay. Thank you. I have no further questions, your Honour.

BENCH: Thanks, Mr Voller. That's the end of your evidence.
15 You are excused now?-- Thank you very much.

WITNESS EXCUSED

20 MR WILSON: Your Honour, I wasn't going to call Andrew Biggs,
if my friend doesn't object.

25 MR SHERIDAN: I have no objection.

MR WILSON: If I don't call him. Have you got any-----

30 MR SHERIDAN: Beg your pardon, sorry?

MR WILSON: I wasn't going to call him.

MR SHERIDAN: No. I don't want him.

35 BENCH: You're not calling Mr Biggs now? So you're calling
Dr Olsen?

MR WILSON: Dr Olsen, thank you. We're on the home straight.

40 BENCH: Beg your pardon?

MR WILSON: On the home straight, I hope.

45

MICHAEL FRANCIS OLSEN, SWORN AND EXAMINED:

5 MR WILSON: Thank you. Could you tell the court your full name, please?-- Michael Francis Olsen.

And could you tell me, whereabouts do you work?-- 134 Inglefield Road, Oxley, in Brisbane.

10 Okay. And what sort of work - what's the position you hold there?-- I'm the director of my firm, which is a specialist botanical consultancy firm.

15 Okay. And what sort of qualifications do you hold?-- I have a science degree, majoring in botany and zoology, and then an honours degree and a PhD in botany.

20 Okay. Have you got a curriculum vitae?-- I added it in as part of my report. I prepared a curriculum vitae, yes.

Now, can you tell us - tell the court how you came to be involved in this matter? Actually, I'll just ask you, have you ever worked for - in the government at all?-- I have. I worked for the Department of Primary Industries, and in the Agriculture branch of the Charleville Pastoral Laboratory, some years ago now.

25 Anywhere else?-- And at the Queensland Herbarium, which initially was the Botany branch of the Department of Primary Industries, and subsequently, after employment with the DPI, became part of the Environment Protection Agency.

30 Okay. Now, you came to be involved in this matter. Can you tell the court how you became involved?-- The Department of Natural Resources, Mines and Energy, as they were at that time, contacted me to undertake a field based assessment of the landscapes property known as Acme Downs, south-west of Bollon.

35 And how did you go about doing this?-- I travelled in the company of Craig Elliot in August of 2005, and after contacting - I believe it was Mrs Knights we contacted at the house, we made a number of traverses of areas of alleged illegal clearing on that property, both vehicle and foot traverses.

40 Now, you made - and what did you see when you made those traverses?-- The assessments were to try and ascertain the types of vegetation, both that were left adjacent to the areas that had been cleared, and also to ascertain the nature of the soils and landscapes to allocate both those remnant areas and the cleared areas to regional ecosystems, which then is related to their status under the regulations of the Vegetation Management Act.

55

5 Okay. Have you got any record of where you actually went?-- Yes, we took a number of photo points. There are 18 in all, which is an appendix to my report, and it has the location of those. And the two areas that were investigated were north-west and south-east of Ferntree Road.

Could the witness be shown Exhibit number - Exhibit number 22.

10 BENCH: Twenty-two is the resume of the other scientist.

MR WILSON: Oh, I beg your pardon. The certificate.

BENCH: What certificate?

15 MR WILSON: Twenty-three and 24, I beg your pardon. The attachments to it-----?-- Oh, these are the-----

BENCH: I don't know whether they were tendered.

20 MR SHERIDAN: No, they weren't, your Honour.

MR WILSON: They were the JRA02 and-----

25 BENCH: I know. Well, what are they part of? I suppose they're parts of different - so you don't want to look him at those certificates? You want him to look at the attachments?

MR WILSON: Yes, your Honour.

30 BENCH: Okay. I will just put them in order.

MR WILSON: Your Honour-----

35 BENCH: So I just get those certificates back then, thanks.

MR WILSON: He has actually got a copy-----

40 THE WITNESS: Your Honour, would this - would they be the same as these images?

BENCH: No, I don't think so?-- Okay.

45 MR WILSON: I was going to say, your Honour, he has got a copy of them.

BENCH: No. He has to look at the originals. We seem to have lost JRA01.

50 MR WILSON: I don't think there was an 01, was there?

BENCH: I will hand down 02 to 09.

MR WILSON: No, JRA01 was his curriculum-----

55 BENCH: His resume?

MR WILSON: The resume, yes.

BENCH: Thank you.

THE WITNESS: Yes, I have a copy of those here.

5

MR WILSON: Perhaps the-----

BENCH: Can you use the Exhibits, thanks.

10 MR WILSON: I was just thinking that you might want to-----

BENCH: I will have a look at his copies, then. I don't think they are the same. They are not the same colour. They are not JRA anything. He has got something else.

15

They are not marked the same?-- This one, JRA02, pre-clearing 5th of the 10th 2000. I think that is - I think they might - I might just have them in a different order, your Honour.

20 Okay. I just-----?-- Yes, sorry, I had them back to front. I will just check to make certain they are all the same.

Okay, well, I will look on your copies then, thanks?-- Yes.

25 You have the originals - you have the ones I have marked and I will have the others back. Yours.

MR WILSON: He has marked his copy, though.

30 THE WITNESS: I have marked my copy, your Honour, with my photo sites so that is-----

MR WILSON: I have got another one here, your Honour.

35 What one have you marked them on?

MR SHERIDAN: Your Honour, I object. As, again, I have not seen this before so - where a witness comes into the witness box with marked copies and then, I assume, is going to be asked where he was, and then the marks would miraculously appear as if he did them while he was giving evidence.

40

BENCH: Have you got a report?

45 MR SHERIDAN: Well, your Honour, that is the matter I raised earlier. Initially this witness - the expert - what purports to be an expert report was disclosed to us as such, but it was incomplete. Then, later on, disclosed to us was a statement of this witness which is not complete in respect of the report we got, and is somewhat different.

50

BENCH: So fertile ground for cross-examination. Why on Earth is this so disorganised, Mr Wilson, that you have not disclosed to Mr Sheridan the markings on the maps up until now?

55

MR WILSON: Your Honour, it was just to show where he had been. The coordinates on the-----

5 BENCH: What do you mean, "just to show where he had been"?
That is not - oh, "That is just to show where he has been," Mr Wilson.

MR WILSON: Well-----

10 BENCH: That is so important.

MR WILSON: Well, it - he has got the coordinates in his report-----

15 BENCH: I cannot believe that we get to this - 3 pm on day two and here is more material - Mr Knights who is here to defend himself, he doesn't know exists.

20 MR WILSON: Your Honour, well, he doesn't - I was just going to ask him to point on that where the - where he went on the property. He has got the coordinates-----

BENCH: This is a technical prosecution about positions. Pointing on a map is not going to be good enough. How can
25 pointing on a map be rendered into the record? Of course you don't want to do that. You want him to produce what he has plotted on the map but you just didn't have - your department didn't have the decency to give it to the other side. And to think that all this was done in 2005 and it wasn't put in a
30 formal - it wasn't put into a form that could be easily given to Mr Knights when he got his complaint. So you are saying that, in the report, there are the positions shown in the report?

35 MR WILSON: Yes, your Honour.

MR SHERIDAN: Sorry, your Honour, I didn't understand that. In the report?

40 BENCH: So this is just to clarify the report?

MR WILSON: Yes, your Honour.

45 BENCH: Already plotted in the report is the positions of the 18 photo points?

MR SHERIDAN: Well, I'm going to object to the report if it ever gets to the stage where he tries to tender it, on the grounds of relevance.

50 BENCH: Well, if you are going to object to the report, shouldn't we do that now before the rest-----

55 MR SHERIDAN: Yes, your Honour. I was waiting for it to be referred to by this witness. If it is in issue now, I object to it.

BENCH: Okay, you are objecting to any evidence about the report?

5 MR SHERIDAN: Yes, your Honour.

BENCH: On what grounds?

MR SHERIDAN: Could the witness-----

10 BENCH: Why should Dr Olsen go out? He is a professional scientist. He is not going to be swayed by what he hears about a legal argument.

15 MR SHERIDAN: If the report, as it was disclosed, was in the nature of an expert witness report, yes. But there are two versions of it. One is a report that purports to be an expert witness, and the other one is a signed statement for the prosecution. So there is that intention of confusion there about exactly what-----

20 BENCH: You had better wait outside, Dr Olsen. It sounds a bit complicated?-- Certainly, your Honour.

25 Thank you?-- I will return these to your Honour.

WITNESS STOOD DOWN

30

BENCH: Can you just hand up what you are talking about there, Mr Sheridan? Can you hand up the report and the signed statement, thanks.

35

MR SHERIDAN: Yes, I am trying to, your Honour, but they are spread out amongst this - that is the - I have flagged this. That is a copy of the statement, have you got a spare copy of the report?

40

BENCH: Thank you. Thank you.

45 MR SHERIDAN: Your Honour might be assisted by that. Your Honour, I have guidelines for experts - what an expert report is supposed to be, if you would like to - if that would assist.

BENCH: So, what is your problem?

50 MR SHERIDAN: My problem is that the report, as it was originally disclosed, purports to be an expert report. If your Honour has a look at the Planning Environment Court Guidelines for Experts-----

55 BENCH: Well, this isn't a Planning and Environment court.

MR SHERIDAN: Yes, I understand that, your Honour, but there doesn't seem to be any guidelines for expert reports that apply to the Magistrates Court. There is - if you have a look at part two, "General Duty of the Court," paragraph 7 in those
5 guidelines, "Any report that is to be addressed to the court is not to be to or for a party." At the bottom of that report-----

MR WILSON: Your Honour, I haven't got a copy.
10

MR SHERIDAN: It says, "Prepared for the Magistrates Court of Queensland on behalf of the Department of Natural Resources and Mines."

BENCH: Would you - have you got a copy of those expert guidelines for Mr Wilson?
15

MR SHERIDAN: Got a copy of the-----

MR WILSON: Actually, I think he is using my copy. I am trying to work out where he is in it, your Honour.
20

MR SHERIDAN: Who is using your copy?

MR WILSON: We supplied them.
25

MR SHERIDAN: These?

MR WILSON: We supplied them in the disclosure.
30

MR SHERIDAN: Have you got a copy or not?

MR WILSON: Yes, I have, thank you.

BENCH: Yes? I am waiting.
35

MR SHERIDAN: Yes, your Honour, appendix 5, which is the very last page of the report, is a statement to the court which, at the time it was disclosed to us, was never signed and it
40 doesn't appear it has been for use today. And given both sets of the report and the statement, which bear some similarity, at least, for being disclosed to the defence, I just want to clarify under what capacity Mr Olsen appears before the court. Is it an expert witness or is it a witness for the
45 prosecution? Because, on the information disclosed to us, those two reports, it appears that he is going to do both.

BENCH: Yes. Well, I would have thought he was a witness for the prosecution. He is called by the Crown. He is not
50 appointed by the court. He is not appointed by the court to carry out some assessment independent of the parties. He is a witness for the prosecution. And the Planning and Environment Court is not a court ordinarily concerned with criminal
55 prosecutions, is it?

MR SHERIDAN: I am unsure of that, your Honour, unless it's a relevant offence.

BENCH: I haven't heard what Mr Wilson has to say, but it's quite clear he's a witness called by the prosecution. He's not an expert appointed independently by the court.

5

MR WILSON: That's correct, your Honour, and, as an expert, he's able to produce a report, I understand.

BENCH: Thank you. Yes, I will hear your submission now.

10

MR SHERIDAN: Yes, your Honour. Well, I then move to the statement of Dr Olsen, lines 14 to 17. Mr Olsen says that he conducted the assessment, in relation to the regional ecosystem mapping, as mapped on version 2.1 certified mapping. Regional ecosystem map version 2.1 is not before the court, therefore, in my submission, his statement and his evidence are irrelevant.

15

BENCH: Are we going to do this bit by bit? Do you want Mr Wilson to respond to that or do you want to go onto your next head?

20

MR SHERIDAN: Well, that's the - it's my submission-----

25

BENCH: That's the whole of your objection?

MR SHERIDAN: The entirety - no, your Honour. My submission is that the entire statement of Mr Olsen and his evidence given - it's based on version 2.1, which is not before the court. That version is not in evidence, therefore, his statement now, that we're dealing with, is irrelevant and his evidence should be ruled inadmissible. If your Honour is against me on that, I will go further, but I will leave that there at this stage. Thank you, your Honour.

30

35

BENCH: Yes, Mr Wilson?

MR WILSON: Yes, your Honour. RE 2.1 is slide 4 in Mr Jeremy Anderson's-----

40

MR SHERIDAN: I don't believe Mr Anderson gave evidence that that's what it was at all, your Honour.

MR WILSON: Well, evidence of-----

45

BENCH: Sorry, that's - he has made that up.

MR WILSON: That's evidence of RE 2.1-----

50

BENCH: Well, it's not very good evidence of it.

MR WILSON: Well, it's from an expert, your Honour.

BENCH: No.

55

MR WILSON: If I had some time, I could check these-----

BENCH: I overrule your objection. I find that Dr Olsen is an expert. He is entitled to be called by the prosecution. He is entitled to give evidence about what he observed, scientifically, at the premises. I hear your objection that it's 2.1. I hear your objection and I understand your objection, in terms of the volume of material and the uncertainty that there is about what the regional ecosystem map was that governed the prosecution. There are two discrete periods of time on the charges. It would seem that the mapping changed in the middle, at least, of one of them.

So that is going to cause some difficulty, I would have thought, for the prosecution in proving, beyond reasonable doubt, some things at some time. So whilst I overrule your objection, I do note with concern, in doing that, that there seems to be a lot of confusion about what the appropriate map was and that no formal map was disclosed to you or produced in evidence as I can recall. And so far as the suggestion that a slide in a slide presentation constitutes conclusive evidence about what the regional ecosystem mapping was, I don't accept that submission. Thank you. Call back Dr Olsen. I will hand you back your material.

MR SHERIDAN: Thank you, your Honour.

BENCH: I give you back your guidelines for expert witnesses as well. Yes, Mr Wilson?

MR WILSON: Thank you. Is Dr Olsen able to have those documents back?

BENCH: What documents?

MR WILSON: Can we have those JRA02? No, Exhibit number-----

BENCH: I don't know why on Earth you're bothering showing him that when he's going to have to produce the other documents that he has written his marks on.

MR WILSON: Well-----

BENCH: Well, off you go, but he is not to touch or mark those Exhibits.

45

MICHAEL FRANCIS OLSEN, CONTINUING EXAMINATION:

50

MR WILSON: Okay. Now, you said you had traversed the property. Can you show the court whereabouts you went and tell the court where you went?-- Yes, the traverses were done over a two-day period in the two sections of the property. Would it be easier, your Honour, if I held it up and just indicated-----

55

BENCH: No, it wouldn't, because I'm not going to remember what you tell me 30 seconds after you point to it?-- True, yes.

5 MR WILSON: Are you not going to remember it-----?-- Well, would you like me to describe it. Is that easiest way, your Honour?

10 BENCH: I would have thought it would be all in your report; exactly your location about every traverse you took?-- No, your Honour, it's not. The location of the-----

15 Well, I'll just let Mr Wilson ask you the questions and see where we go. You ask the questions, Mr-----

MR WILSON: Well, your Honour, I was going to say that the locations are in his report.

20 BENCH: He said, "No".

MR WILSON: The traverses - everywhere he traversed he said wasn't there, or perhaps he can clarify?

25 BENCH: Well, you ask the question, please.

MR WILSON: Okay. Could you clarify what you meant previously?

30 BENCH: No, that is an improper question for a prosecutor to ask.

MR WILSON: Okay.

35 BENCH: Ask a proper question, so the doctor knows what he's supposed to answer, please.

MR WILSON: Thank you. Okay.

40 Do you recall where you went through the property?-- I do.

45 And could you show the court on that map?-- On JRA02, the area in crossed hatch was the area of alleged illegal clearing. It was traversed, as I mentioned, on vehicle and on foot. A number of points within and adjacent to those crossed hatch areas, I took a series of photographs and made some notes, which are an appendix to my report, and the positions of those are recorded in that appendix.

50 When you say the "crossed hatch" areas, could you just point to them? Is that - and describe them?-- The crossed hatch areas in the portion of the property north west of Ferntree Road. The south and south-east of a large deflated dune, south of the central portion of that part of the property. On JRA-----

55 Just before you move off that one, on JRA02, how is that area marked on the map? Is that-----?-- It is indicated as blue

crossed hatching in the legend, and the legend defines that blue cross hatching as cleared areas, not exempt; total area cleared, 186.7 hectares.

5 Thank you.

BENCH: When was JRA02 created?

10 MR WILSON: The aerial photography?

BENCH: No. JRA02.

15 You didn't have that document with you when you went out there, did you?-- No, your Honour. I had a-----

No. So I-----?-- The satellite image base was the same, but I didn't have this document.

20 Well, why don't you produce what you had?-- I don't have that. It was a hard copy that - which the Department digitised lines off, your Honour.

25 So you don't have your source material?-- My field copy? No. That was supplied to the Department to digitise the maps from.

Yes, Mr Wilson.

30 MR WILSON: Okay. So with JRA02, then you would - that's the northern. You said you went there?-- Yes. We traversed, utilising-----

Which map are you referring to you, I'm sorry?-- JA - JRA02.

35 Yes?-- We traversed the available tracks, roads and along the fence lines, both internal fence lines and property boundary fence lines, and conducted a number of foot traverses just to confirm that the sites which are in my appendix represent the areas that were within and adjacent to the blue hatched areas on this satellite image.

40 Okay?-- But it's a standard method to ascertain in - what was there in the pre-clearing landscape.

45 Okay. And what did you find?-- The blue hatched areas were dominated by clay plains, which is also confirmed by earlier studies by CSIRO in this region. Those clay plains conformed to land zone 4 as defined within the Vegetation Management Act regulations, and the vegetation that had been cleared in those areas was dominated by coolabah, billana and there was certain
50 - there was an increasing amount of gidgi, as you progressed south-west towards the southern corner of that part of the property.

55 Okay?-- That vegetation - there were strips that were remnant along fence lines and they were the areas that I used as my reference sites in my report to illustrate the nature of the vegetation that was there, pre and post clearing. I conducted

5 some measurements on the heights and also the girth of the stems that had been felled to ensure that it was the same structure as the forest that was remaining along fence lines adjacent to those areas. And that confirmed that the majority of the vegetation in that area conformed to regional ecosystems 6.4.1 and 6.4.2.

10 Which are-----?-- Which are endangered regional ecosystems dominated by gidgi and billana.

Okay. When you say dominated, is there a-----?-- The canopy is dominated by those species.

15 Okay. And you mentioned two species - two REs there?-- 6.4.1 and 6.4.2. There were minor inclusions of poplar box on the clay plains, which was regional ecosystem 6.4.3, and where the clearing had occurred, some of the clearing did go over the boundary of those clay plains onto the adjoining sand plains, which are dominated by the poplar box, and that was regional ecosystem 6.5.3.

20 Okay. And do you know the status of those ecosystems?-- Regional ecosystem 6.4.1 and 6.4.2 are endangered on the regulations of the Vegetation Management Act. 6.4.3 is off concern. And 6.5.3 is not of concern.

25 Okay. And those hatched areas were-----?-- Those hatched areas would have been approximately - it's very difficult, because they quite often inter-digitate. It's very difficult to draw a precise boundary between the clay plains and the sand plains, because typically the eroding sand plain washes into some of the gilgais and mallan holes in the clay plains. But approximately 90 per cent of that area to the north-west of Ferntree Road was regional ecosystem 6.4.1 and 6.4.2.

30 Okay?-- And only minor components of 6.4.3 and 6.5.3, typically on the fringes of the main strip of vegetation on the clay plains.

35 Can you explain dominant and sub-dominant?-- When you are looking at an area of mixed vegetation, the dominant community is that that occupies the largest proportion of any particular area. There are only two regional ecosystems present in an area. The dominant one will be the one that is greater than 50 per cent. But if you have four or five regional ecosystems combined in an area, it would be the one with the highest proportional representation in that area. And sub-dominant are the other regional ecosystems that occur in association with the dominant element.

40 Okay. So when you say ecosystem, what do you mean by ecosystem?-- The regional ecosystem concept was developed by Sattler and Williams and that became the standard for landscape assessment in the state and those regional ecosystems, which are a combination of soils, geology, depository and vegetation, became inscribed on the regulations of the Vegetation Management Act. So it is not the vegetation

in isolation. It is the vegetation in combination with a series of other geological soil and depository and land form features.

5 Okay. Are you able to speak on fodder species?-- The work I did at Charleville Pastoral Laboratory involved quite a deal of work in the mulga lands. This is right on the edge of the mulga land bio-region. We did quite a considerable amount of work on the nutritional value of fodder species, particularly
10 with sheep, at the time, because it is largely funded by the Wool Corporation.

Okay. And did you see any fodder species on that northern part of the property?-- Yes. There are certainly some fodder
15 species there. The - obviously the dominant feature of the mulga bio-region - mulga is relatively uncommon in those areas. I didn't observe, and you wouldn't expect to find mulga on the clay plains in that blue hatched area on this image. There were some wilga trees, which is a fodder
20 species. Typically you lop the wilga trees, because if you knock them over, you have lost the capital, essentially. Fodder species are utilised in different ways. Again, it is preferable, in many instances, to lop mulga. If you are selling mulga, it is done in parallel strips to allow re-
25 seeded and what have you. So you maintain an element of each landscape feature to encourage the regeneration and you keep stock off it for up to five years to allow adequate regeneration. But there were - there are only a limited number of fodder species. The majority of the species that
30 were felled, as in coolabah and billana, are not known fodder species and indeed, billana can cause some problems if stock graze. And poplar box, when it is pulled over in the fashion in which this was cleared, is generally not - its palatability is much reduced and it's not a known fodder species, as is
35 coolabah.

Okay. So that is in respect of the cleared areas, you are speaking about?-- That was in the cleared areas, yes.

40 What about-----?-- There were other fodder species in the uncleared areas. On some of the deflated dunes in the area, and on the waterway that traverses the north western corner of the property, there was probably a higher proportion of fodder species there, particular wilga. Wilga was quite abundant on
45 those deflated dune systems, but there was the - I did not observe any evidence of utilisation of the wilga, which was probably the most palatable of the fodder species in that area.

50 Okay. Thank you. And what is the result of this clearing?

MR SHERIDAN: I object, your Honour. It's not a matter of the result of the clearing. We are here to prove the clearing occurred. Any subsequent matters that may occur might - the
55 result of the alleged clearing, if it is proved - it might be a matter for sentence, but it is certainly not an issue before the court.

BENCH: What is your response?

5 MR WILSON: Well, it's really a question about land management, your Honour.

MR SHERIDAN: Well, that's not - that issue is not before the court.

10 MR WILSON: In relation to fodder feeding and that sort of land management. In the same-----

15 BENCH: Well, you'll have to come up with a better question-----

MR WILSON: Okay.

20 BENCH: -----about a specific site. If you want to ask a question about fodder feeding, you wouldn't ask what is the effective clearing to get that-----

MR WILSON: Yes. Well, I beg your pardon. I probably could have put it better.

25 What effect does clearing have on those fodder species in that area?--

BENCH: What area?

30 MR WILSON: In the hatched areas?--

BENCH: What hatched areas?

35 MR WILSON: The hatched areas you were referring to in JRA02?--

BENCH: You'll have to get the Doctor to tell us about some specific place he went to-----

40 MR WILSON: Okay.

BENCH: -----because he has already told us about various ecosystems, various different sites.

45 MR WILSON: Yes, okay. Doctor, could you go to your report and, from the coordinates on the map, tell us the coordinates on the map in that top block?-- Yes, I have my report here, yes.

50 Could the witness refer to his report to give the court the coordinates.

BENCH: What coordinates? What coordinates do you want the doctor to tell us?

55 MR WILSON: The coordinates that he visited in this area.

BENCH: What area?

MR WILSON: On the northern part of this block. In Mr - in the northern part of Acme Downs.

5

BENCH: Well, won't all that be set out in his report?

MR WILSON: It will, but it is much clearer - a picture tells a thousand words, your Honour. A picture is worth a thousand words

10

BENCH: Well, you are not asking him to draw a picture. You wanted him to-----

15 MR WILSON: I am asking him to show us the coordinates that he - where he took his studies from.

BENCH: Sure. Refer to your report?-- Sites number 1 and 2 were in the south-western corner of this area indicated on JRA02. Site 1 was an area dominated by gidgee and coolabah, along the fence line with the property adjoining to the west. And immediately adjacent to that was site 2 - illustrated an area of coolabah and balaar that had been cleared, and then pulled over. There was very little regeneration of the balaar, which I found unusual. There was certainly very little evidence, in that area, of regeneration of any of the fodder species. Generally, for fodder harvesting, with the possible exception of areas dominated by mulga, you are not undertake a clearing exercise such as was evident in the blue hatched area for fodder harvesting. And given that there was a high proportion of fodder species on adjoining uncleared landscapes, the operation, from the perspective of a landscape that you would clear for fodder - these clay soils do not yield a high proportion of palatable fodder species. Generally, you would clear the clay soils for pasture improvement, rather than fodder harvesting. Sites 3 and 4 were near the southern boundary of that northern portion of the property, not far from the road - reserve of Ferntree Road, and that illustrated the adjoining sand plains that fringed some of these. Site 3 was immediately on the boundary, which showed an area where a fringe of poplar box on the sand plain had been cleared and the sand plain vegetation behind, which did have quite a high proportion of wilga, which is a fodder species, was left intact, and hadn't been cleared. Sites 4 and 5 were, again, in that south-western corner, illustrating the nature of vegetation that had been left and that which had been cleared. Sites 6 and 7 were in, possibly, the southern third of the property. Again, comparing cleared and uncleared areas with-----

50

MR WILSON: I'll just stop you. Talking about the second - are you talking about the other map, or this map?-- No. We're at sites 6 and 7. Sites 1 to 10 are all in this northern part of the property, as indicated on JRA02. There was a small copse of vegetation at site 7 on the clay plains that hadn't been cleared, and was dominated by balaar and coolabah. Once again, not notable fodder species, and that was the vegetation

55

that had been removed to the west of that site. Sites 8, 9 and 10, again, were in that - in, or adjacent to the cleared area, on the northern end of the blue hatched area. You can see a fairly clear demarcation on the image between land that had been cleared some time previously to the north, and then the fence line, where the vegetation has been retained. That fence line is quite - well, it is very obvious in site 8 and photograph of site 8. Again, it illustrates that the vegetation is dominated by coolabah and balaar. Site 9 is immediately adjacent. They were generally paired sites, so you could, at the same point, so you could see what was there and what had been felled. To confirm that what had been felled was represented by these small copses of remnant, and once again, it was dominated by balaar and coolabah, not noted fodder species. Site 10, once again, was along that fence line in the northern part of the allegedly illegally cleared area. The remaining photographs 11 to 18, are in the area south and south-east of Ferntree Road.

Okay. Can we just go to the map for those ones?-- JRA07 post-clearing 19th of the 8th 2003. The majority of the allegedly illegally cleared vegetation in this portion of the property is along the eastern and southern boundaries of the property. Once again, tracks and internal roads and fence lines were used to traverse the site, and once again, paired sites were selected. Sites 11 and 12 - 11, 12, 13 and 14, are all on, or adjacent to, the northern boundary. On JRA07, you can see a blue hatched area on that northern boundary, and all of those four sites were taken in, or adjacent to, that area. Once again, you see the vegetation is, in the remnants and the areas that were cleared, dominated by - in this particular instance, there was quite a deal of poplar box, and some coolabah, and some gidgee. But, poplar box, as is its wont - I mean, poplar box and coolabah are quite often considered woody weeds because of their ability to sucker up to cop us up, in the landscape. It is often said that you knock over one - one coolabah, and you will get 10 coming up. It is a bit like Moreton Bay ash, in that respect. But once again, very few fodder species - and the fodder species that were in that area, again, are species such as wilga, which are generally - well, which typically are not utilised as fodder - by means of pulling them over, you lop the branches, but you don't - because you will destroy the capital of your fodder reserves.

Well, what was your observations there, in relation to clearing?-- It was the same technique, it would appear, judging by the marks on the trunks of the fallen trees, that a chain had been used to pull the vegetation down. Sites 15 to 18 were taken during a traverse down the eastern side of the property. Once again, they were paired sites, illustrating the nature of the vegetation. There was some brigalow in places on this eastern side, and some of those small copses of brigalow would probably conform to regional ecosystem 6.4.4, but I didn't find any evidence of extensive stands of brigalow that had been pulled in that eastern and southern area. Again, the majority of it was poplar box, gidgee and a little

bit - there was less balaar in that corner of the property. In one of the isolated copses of trees within the cleared area, we did observe a rare and threatened bird, a Major Mitchell cockatoo, and that's one of the species whose
5 resources would have been dramatically diminished. There were quite a large number of tree hollows.

MR SHERIDAN: I object, your Honour. The witness is now
10 talking about rare and endangered birds which, in my view, is absolutely irrelevant.

BENCH: Yes, well, thank you. Yes.

MR WILSON: Well, he's talking about an eco - regional
15 ecosystem, your Honour.

BENCH: Well, thank you. There was no question asked about
20 the birds, so you're not objecting to a question. So I won't be taking any notice of anything about birds.

MR SHERIDAN: Thank you, your Honour.

BENCH: Thank you.

MR WILSON: Thank you?-- Yes, that was reference to the
25 photograph. I apologise, your Honour. It was just the caption on my photograph, so - and site 18 was down in the area of pulled vegetation in the south-eastern corner of the property. This was an area dominated by gidgee which would
30 have been regional ecosystem 6.4.1. So the sites represent the landscapes that were impacted within those blue hatched areas. They represented the variation across the site within those blue hatched areas.

Okay. And what was the - in your view, what was the RE,
35 regional ecosystem classification?-- As I mentioned, there were very small patches of uncleared regional ecosystem 6.4.4 which has the brigalow dominant. The majority of the vegetation, once again, was regional ecosystem 6.4.2 and
40 6.4.1. The proportionality of 6.4.1 was greater as there was lesser balaar in that southern area, and there was a greater proportion of poplar box regional ecosystem 6.4.3. So there was a lesser proportion of endangered as opposed to of concern
45 vegetation in that area to the south and east of Ferntree Road.

Okay. And did you see any fodder species apart from - outside
the cleared areas?-- Yes. Once again, particularly in the
50 sand plain vegetation, the canopy is dominated by poplar box. There were quite a number of wilga trees in that area, and - that is a highly palatable species, wilga. You'll quite often see it's got a horizontal browse line for cattle, and - well,
the browse line varies, depending on whether it's cattle or
sheep, but it's a very clear cut straight line. It's like
55 it's had a haircut underneath the canopy.

Okay. Any leopard wood?

MR SHERIDAN: Your Honour, that is leading.

MR WILSON: I'm just asking about a variety.

5

MR SHERIDAN: Sorry, your Honour, it's still a leading question.

BENCH: Well, wouldn't it be better to ask what species were observed in what area?

10

MR WILSON: It's neither here nor there, your Honour; it's just-----

BENCH: Thank you.

15

MR WILSON: Your Honour, I seek to tender Dr Olsen's report.

BENCH: Thank you. That will be admitted into evidence and marked Exhibit 26.

20

ADMITTED AND MARKED "EXHIBIT 26"

25

MR WILSON: Thank you.

BENCH: I thought I was-----

30

MR SHERIDAN: I'm sorry, your Honour, is that Dr Olsen's report or the sworn statement that we're admitting?

BENCH: The report.

35

MR SHERIDAN: In that case, I object to it.

BENCH: Okay. Well, I'll hear your objection.

40

MR SHERIDAN: Thank you, your Honour.

BENCH: Could you just get the report? Yes.

MR SHERIDAN: Dr Olsen's report contains a-----

45

THE WITNESS: And I haven't been given the exhibit yet.

BENCH: Dr Olsen hasn't got his report?-- I have loose-leaf sections of it but not the Exhibit, your Honour.

50

Very well. I haven't got it either, so we'll wait and see what happens.

MR SHERIDAN: Sorry, your Honour, I'll just get-----

55

BENCH: Right. Isn't that bound up nicely? Where's the report? Is that how you presented it, doctor?-- I've submitted it electronically, your Honour-----

5 Okay, thanks?-- -----to the Department, yes.

MR SHERIDAN: Your Honour, there are three-----

10 BENCH: Three folders or three plastic envelopes.

MR SHERIDAN: Is that - is it three copies or is there three parts to it?

15 BENCH: No, there are three sections, I think.

MR SHERIDAN: Can I see that, your Honour, and see if it is the same document that I've had disclosed?

20 BENCH: Happy to accommodate your request.

MR SHERIDAN: Thank you.

BENCH: Oh, there's actually four; here's another bit coming.

25 MR SHERIDAN: Thank you. It seems to be missing appendix 5, your Honour. I'll just check that - I'll ask my instructing solicitor to check that again.

30 MR WILSON: Oh, that wasn't a document that was prepared for the report.

BENCH: I beg your pardon?

35 MR WILSON: That's just something that someone else has prepared; it's not part of his report, I don't think.

BENCH: Appendix 5 is not your report. What's appendix 5 supposed to be?

40 MR SHERIDAN: Appendix 5 is a statement prepared for the court; a statement to the court, page 62 of the report. Sorry, your Honour, my instructing solicitor is going through the entire document now.

45 MR WILSON: It's just a draft document. I don't know if Dr Olsen has done it or not.

50 MR SHERIDAN: Yes. Am I taking it to mean that there's parts of this report that aren't Doctor-----

MR WILSON: Just this part. I don't know. I can ask Dr Olsen. Can Dr Olsen see appendix 5?

55 MR SHERIDAN: Your Honour, this document is - sorry, the document that we've been disclosed is different to the document that is now - the document that is disclosed to us as Dr Olsen's report dated August 2005 is different. The

document that is attempted to be tendered here is different to the one we've had disclosed.

5 BENCH: Okay. Get the August 2005 version then, please, Mr Wilson, as that's what you've disclosed to the other side you're relying on.

MR WILSON: Well, I haven't seen the differences.

10 BENCH: You must have seen it. The Department supplied it to Mr Knights' solicitor.

MR WILSON: Well, where's the difference?

15 MR SHERIDAN: There's no folio for appendix 5, for a start, and the page numbers are different. Yes, the discussion and conclusion appears to be different, your Honour.

20 BENCH: Have you done several versions of your report?-- Well, I'm sure appendix 5 is now, your Honour. It was basically a template I used for Planning and Environment Court, and that was the draft that I had sent to the Department, and that's when I asked if there is such a thing for Magistrates Court of Queensland guidelines for experts.
25 This was-----

So that is part of your report, that-----?-- No, it wasn't part of the final copy, so-----

30 What do you mean final? How many drafts are there?-- There would have been this draft copy and there obviously isn't a guideline for experts, so appendix 5 wouldn't have been on my final report, your Honour.

35 So what happened to your final one? Did you sign it or just email it?-- The final one I would have just emailed, your Honour, supplied electronically, yes. I signed a statement but not the actual report there, expert report.

40 Well, so-----?-- That's what appendix 5 was to be - was the signature, yes.

45 So why on Earth has your department supplied to the defence a draft report that was then changed and then you haven't supplied them with the final version?

MR WILSON: Well, I haven't seen - been able to compare them myself to find out what the difference is, if there is a difference.
50

BENCH: Well, the doctor just said there is a difference; he changed that?-- Appendix 5 has been taken-----

55 But what else? Did you change the body of the report, because from what I can hear up here, which I shouldn't be listening to, the conclusions and opinions are different. So you

changed some things?-- Yes, there's a few typos and things and - no doubt that I would have corrected.

5 MR SHERIDAN: Your Honour, it appears without - because it's
a 62 page document, so we go through it and compare exactly
what's different. My instructing solicitor has gone through
it, and informs me that there's an entire paragraph in
discussion and conclusion which differs from the apparent
10 draft that we were disclosed, that was disclosed to us, and
now this report that has been sought to be tendered. I'm
sorry, your Honour, that assessment is only after my
instructing solicitor viewing and comparing the first seven
pages of a 62 page report.

15 MR WILSON: Your Honour, can I look at that - the reports to
compare them?

MR SHERIDAN: Show him that page and start - have a look back
[indistinct]

20 BENCH: Please don't use bad language.

MR SHERIDAN: I'm sorry, your Honour. I apologise, your
Honour, I'm at the end of my tether.

25 BENCH: I'm just going to take a short adjournment while you
have a look at that. Thank you.

MR WILSON: Thank you, your Honour.

30

THE COURT ADJOURNED

35

THE COURT RESUMED

40

BENCH: I think you may be seated. Right. Well, where are
we at?

45 MR WILSON: Well, your Honour, I'm just trying to establish,
in the brief of evidence we gave him a report. The report
he's comparing it with is not the report in the brief of
evidence but another previous report that was changed in a
couple of little details. I understand - I haven't had the
opportunity to compare it, but I understand the one in the
50 brief of evidence we gave him is exactly the same as the
report that has been handed up, and the one that he's
comparing it with is the old one.

MR SHERIDAN: Obviously, your Honour, we have been disclosed
55 with two reports which are different.

BENCH: You have?

MR SHERIDAN: Yes, your Honour.

BENCH: You've been given two reports?

5

MR SHERIDAN: Yes, we were disclosed this report, the August 2005, which comprises 62 pages, including appendix 5, and another one that was disclosed in this brief of evidence, which is different to the one we were originally disclosed with - had disclosed-----

10

BENCH: Did you presume they were the same?

MR SHERIDAN: Well, yes, your Honour, to an extent. But now the one that they are attempting to tender is apparently this one.

15

BENCH: That was disclosed to you?

MR SHERIDAN: Yes, your Honour, but also was this other one that is in the proceeding.

20

BENCH: Okay. Well, I'm sorry about that. They should have made that clear, but as it has been disclosed, I'll admit the latest one into evidence and mark it Exhibit 26. And if you need to have an adjournment until tomorrow morning to compare them to cross-examine, you can have that. Otherwise I have got a message I've got to make an important phone call. I know this case is important, too, but I'll only be about five minutes, about quarter past four. So we can continue on until quarter past four and just have a short break and then continue on until about five if you want to, because I'm sure there's a lot of other areas you need to cover other than the report, although you may prefer to do that before you start any cross-examination. But this is your last witness, isn't it?

30

35

MR WILSON: Possibly, your Honour, there may be someone from DPI coming, and I may have someone to seek to give-----

40

BENCH: Well, they'll only be very brief.

MR WILSON: They will be, but the problem is they may not be able to make it here until 11 o'clock tomorrow.

45

BENCH: Okay. Well-----

MR WILSON: And I may seek a witness to put in some regional ecosystem maps.

50

BENCH: Well, okay. So where is that report then, thanks?

MR WILSON: Mr Sheridan has got it, I think.

55

BENCH: No, well, he will only have his copy.

Where is your original? What's that, do you have another bit of it?-- This is mystical-----

5 But you've never signed that copy?-- No, this was, as I said, only a draft.

Okay, thank you. Is that part of the re-draft?-- No.

10 Okay?-- No, that has got dropped off a long time ago.

Well, you keep that there. These four bundles will be admitted into evidence and marked Exhibit 26.

15 ADMITTED AND MARKED "EXHIBIT 26"

20 MR WILSON: Are you going to adjourn now, your Honour, or-----

BENCH: No.

25 MR WILSON: I'm sorry, I thought you were.

BENCH: I said I had to adjourn at quarter past for five minutes.

30 MR WILSON: I beg your pardon.

BENCH: Hopefully you will be finished your evidence-in-chief by then.

35 MR WILSON: Hopefully.

Dr Olsen, are you familiar with bluegrass or Mitchell grass, grasslands?-- Yes. I've undertaken a number of studies for the Commonwealth and State government, particularly on bluegrass communities.

40 Okay. And what can you say in relation to that, those types and the site you visited?-- The areas indicated as blue hatching on those images, your Honour, were not grasslands, they were woodlands.

45 Okay?-- They were dominated by woody vegetation so, yeah, trees automatically convert grasslands into woodlands. Grasses and trees grow together but the grassland regional ecosystems don't have a woody canopy.

50 Thank you?-- Otherwise they wouldn't be grasslands.

55 When you did this, did you have an RE map?-- During the site inspection I didn't have the current certified map. I didn't have any regional ecosystem mapping. Typically in site-based assessments, I try to work from first principles, and then compare which twin has the Tony, so to speak, subsequently.

5 Okay. And did you compare your findings?-- Yes, there were discrepancies, as there often are, when you do an individual site assessment, comparing it to a bio-regional scale mapping exercise, and there were differences in land zones and also the dominant species, which really can only be precisely ascertained with site inspections.

10 And what were your findings in relation - when you had the comparisons?-- The dominant land zone, soil and land form landscape that had been pulled, the vegetation pulled, was land zone 4, and the canopy varied, but it had a combination of either coolabah, balaar or gidgee and lesser elements of poplar box as we discussed earlier.

15 And what sort of regional ecosystem is that?-- A regional ecosystem on land zone 4, a regional ecosystem 6.4.1, 6.4.2 and 6.4.3 and on the fringes, on the parts of the sand plain on the fringes that were pulled, was regional ecosystem 6.5.3.

20 And do you know what category they are?-- The poplar box on the sand plains is not of concern. The gidgee, balaar and coolabah on the clay plains is endangered, and the small areas of poplar box on the clay plains is of concern, or was at the time of my inspection. Their status does change over time, but at the time of my inspection that was the status of those regional ecosystems.

30 Okay. In relation to fodder feeding, in the top block, the charges in respect of - actually, Jeremy Anderson - there's evidence to say that the clearing on the top block was 143 hectares.

35 MR SHERIDAN: Your Honour, he's asking - I don't know what this question is about - evidence of another witness, perhaps; Jeremy Anderson was alluded to.

40 BENCH: Yes, well, there's a case that says you can't tell one witness what another witness has said, so-----

MR WILSON: Sorry.

BENCH: -----can you just please limit your question.

45 MR WILSON: Well, can the witness see those JRA02 and JRA-----

BENCH: Give him the bundle back?

50 MR WILSON: Yes. Just in JRA02 first?-- Yes.

In relation to fodder feeding, have you any idea how many cattle would be needed or sheep - there's a DSE, isn't it? A dry sheep equivalent?

55 MR SHERIDAN: Your Honour, he's just led him again.

MR WILSON: No, I'm just asking him to quantify it in that way?

MR SHERIDAN: In dry sheep equivalents?

5

BENCH: Can you ask the question again?

MR WILSON: Beg your pardon?

10 BENCH: What are you asking him?

MR WILSON: I'm asking him if he can tell me, the fodder that was on that block, in DSE, which is dry sheep equivalent, which is a terminology, or perhaps he can put it another way?-- The proportion of fodder species in the area that was pulled was very, very low, and so I wouldn't be able to give you a precise number of animals that could be carried. The difficulty in ascertaining that also is the fact that it would appear that this area, both areas, were cleared in too short a time period to enable progressive use of the fodder species that were within that area. The fodder species that were within that area are typically not utilised by pulling the vegetation over. They had very low proportions of fodder species in any case, and these are not landscapes you pull for fodder on these clay plains. And pulling all the vegetation over in a short period of time, unless it's almost analogous to a feedlot situation where you have a very large number of stock to access, as I said, the limited number of fodder species over such a large area, the majority of the fodder species would have lost their foliage, and their use as fodder species would have been lost; simply because the cattle or sheep or whatever grazing animal the fodder is being harvested for have got to access it and they've got to access it in a period of time before its fodder value is lost. And such a large area, even with the local portions of fodder species that were there, it wouldn't seem to me to justify pulling the vegetation to access those fodder species. It's a fairly simple equation. You need to get the stock to the fodder before the fodder loses the value and you don't do that by having extensive areas cleared at any one time.

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35

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Thank you. No further questions.

BENCH: Yes.

45

MR SHERIDAN: Thank you, your Honour.

CROSS-EXAMINATION:

5 MR SHERIDAN: Now, Dr Olsen, your CV reveals approximately 45
court appearances in expertise?-- At the time of the
preparation of my report, yes.

10 Are you a member of the Environmental Institute of Australia
and New Zealand?-- No.

And you appear here today not as an expert witness but as a
paid witness for the prosecution. Is that correct?-- I'm
charging a fee for my services, yes.

15 You appear as an expert witness today?-- Yes, I do appear as
an expert witness today.

But you've provided a signed statement for the
20 prosecution?-- Yes.

There is a distinction there, isn't there? Sort of both, are
we?-- The statement, if you like, was a précis of the report.

25 A précis of the report?-- Yes. It didn't contain the
curriculum vitae or photographs, yes. The information
essentially is the same.

Essentially?-- Yes.

30 Now, the document appendix 5 that was attached to your
original report-----?-- Yes.

-----reads that, "I have been instructed by the Department of
35 Natural Resources and Mines to investigate the flora and
habitat implications of the alleged illegal clearing
activities on Acme Downs." That's correct, isn't it?-- That
is correct.

40 And that report was dated August 2005?-- Yes.

Can you tell me a day in August when that was prepared, that
report, with that appendix 5?-- Not the precise day. It would
have been towards the end of the month.

45 Towards the end?-- That draft was prepared soon after my
return from the site inspection, and that was - as you can
probably see, appendix 5 was to elicit some information as to
the appropriate manner in which to present material for the
50 Magistrates Court, as opposed to the Planning and Environment
Court, hence the intent of - you can see in bold-face there,
there's a question. I was wondering whether a modification of
that statement which is typically attached to experts' reports
in the Planning and Environment Court would be appropriate for
55 this forum.

I'm just interested in your instructions from the Department of Natural Resources and Mines before you went and did the inspection at Acme Downs?-- Yes.

5 Were your instructions as appeared in Appendix 5, the report prepared soon after you returned, in that you were instructed to investigate the flora and habitat and the implications of the alleged illegal clearing activities of Acme Downs?-- Yes. To-----

10 They were your instructions before you went out?-- To all intents and purposes, yes. I was to go and have a look at areas of alleged illegal clearing, and ascertain the nature of the vegetation that was in those areas, and what are the
15 ramifications - ecological ramifications of that - that clearing.

So I'll ask that question again. Are your instructions, as you set out in this appendix 5 - were they your instructions
20 as they are written here in this appendix 5?-- No, there weren't - there wasn't a written instruction of those - they were words of my - my construction.

All right. Because in your statement, you swear, "Prior to
25 the 15th of August 2005, I was engaged by the Department of Natural Resources and Mines and Water, to conduct an independent assessment in relation to the regional ecosystem mapping, as mapped as version 2.1 certified mapping on Acme Downs, south-west of Bollon"?-- Yes.

30 Well, which is correct? This one - this one says you were instructed to investigate the flora and habitat implications of the alleged clearing. This one says you were instructed to conduct an independent assessment in relation to the regional
35 ecosystem mapping version 2.1?-- Yes, which is also in the front of my report. That same report, you have, appendix 5 - if I can take you to the page.

40 Yes, page 1. I will read it to you-----?-- Page 1.

"Field investigation"-----?-- Yes, introduction.

45 -----briefly survey the extant flora" - what are you reading from there, Dr Olsen?-- Page 1 of my report.

Would you put that aside, please?-- Sorry.

50 Thank you. This is the report, 2005, with the appendix 5, the draft, page 1. "Field investigations, briefly survey the extant flora of the site with specific survey effort concentrated on the areas of alleged illegal clearing. The aim of this report is to assess the flora of the site, and the impact of alleged illegal clearing on the remnant
55 vegetation"?-- Yes.

There is nothing in there about an independent assessment of the regional ecosystem mapping as mapped on version 2.1

certified mapping?-- Oh, well, perhaps it's the wording, but that's the intent of that survey; the flora of the site. Since the proclamation of the Vegetation Management Act specifically targets regional ecosystems, any vegetation survey, in Queensland, targets the delineation of regional ecosystems.

Appendix 2 of your report - appendix 2 of your report, list of references. Now, are those materials that you had regard to in conducting this inspection and completing this report?-- Yes.

Were there any other materials that you had regard to in compiling this report?-- No other published information, no.

No other published information?-- No, not for the preparation of the report, no.

Now, you say in your statement, that you conducted an independent assessment in relation to the regional ecosystem mapping as mapped on version 2.1 certified mapping. In your opinion, was that the version of regional ecosystem mapping that was applicable at - during the periods particularised in counts 1 and 2?-- It was my understanding that the extent of remnant vegetation as appeared - as depicted on the current certified mapping at the time of the inspection were the areas that I was looking at, yes.

At the time of the inspection?-- Yes.

August 2005?-- Yes.

So you assessed the vegetation as at August 2005?-- Yes. That's when I assessed the vegetation, but it was being assessed against regional ecosystem mapping that existed - the current certified mapping - at the time of the alleged offence, yes, your Honour.

So is your report - the parts of your report that talk about the regional ecosystems, that's as they existed August 2005?-- The extent of the remnant regional ecosystems, that is correct, yes. Sorry, I should qualify that. It's the extent of the mapped remnant regional ecosystems on the current certified mapping at the time of the alleged offence. Yes.

You say in your report that the existing landscape of the study area is dominated by a mosaic of remnant and recently cleared vegetation, and some areas of regrowth?-- Yes.

By regrowth, do you mean non-remnant that has been cleared a long time ago, or regrowth as in non-remnant?-- In probably both respects, regrowth can become remnant, once it exceeds certain prescribed thresholds in the legislation. There are areas of regrowth that haven't currently obtained remnant status, and there are other areas of regrowth that have got above the 70 per cent threshold in height, which is typically the-----

5 And those areas of regrowth that hadn't gained remnant status, do they occur with the area - the hatched area that you were speaking of in your evidence-in-chief?-- No. Specifically, I measured the heights and the girths of the trees, both in the remaining mapped remnants, and also the felled areas, to confirm that the size, height and girth distribution was the same.

10 This mosaic of remnant and recently cleared regrowth, were you talking about the areas that were under the hatch, the areas that are the subject to the charges, was a mosaic?-- No. In the broader context of the area, in that landscape.

15 What I-----?-- The landscape is not dominated by remnant vegetation. There are patches of cleared land regrowth, yes.

20 Inside - you said inside the area that is hatched?-- Inside the hatched areas, it was non-remnant at the time I inspected it, but my observations and the measurements I made confirmed that it was remnant prior to the clearing.

You say the area was "briefly surveyed"?-- Yes.

25 How long did your survey-----?-- Over two days.

-----take? Two days?-- Yes.

30 You say in your report that there is surprisingly little regeneration of gidgee, balaar or brigalow. Wouldn't that be an indication that those species might not have occurred in the landscape prior to the clearing?-- Those species were present as fallen stems, but they weren't regenerating. There - in a number of the photographs, you can see the trunks of
35 gidgee trees or balaar-----

40 And you say that - sorry. You say that that - that the canopy, prior to clearing, would have attained its 50 per cent of its pre-clearing canopy?-- Yes, yes. Hence the reason for the paired - paired plots.

45 You also say in your report that the original forest had been logged and grazed by exotic animals. Is that correct?-- Yes. There was evidence of tree stumps, and certainly, extensive evidence of grazing by cattle at the time.

50 So even given those impacts on the landscape, logged and grazed by exotic animals, wouldn't that be an indication that it was non-remnant landscape?-- No. Factors such as fire, weed, grazing, storms, don't convert remnant to non-remnant vegetation.

55 You also say that there are often discrepancies apparent between certified mapping and the remnant vegetation of the property scale?-- Yes.

That's your experience with this property or properties in general?-- Across the state.

5 So the regional ecosystem mapping is inherently inaccurate, in
a property scale?-- With respect to remnant, non-remnant, it
has a higher level of fidelity across the state. Sometimes
the individual sites show greater or lesser variation.
Sometimes land zones are different. But the remnant non-
10 remnant issue is - there's a high fidelity in that data layer,
but quite often when you do individual site inspections, and
you physically visit the sites, you can ascertain more detail
in canopy floristics and also the soils, than what was
available to the people undertaking the mapping using
15 satellite imagery, that is correct. And other data sets;
they use soil - soil mapping etcetera.

You say that regional ecosystem 6-4-1 was endangered as of -
according to the regional ecosystem database in March
2005?-- That is correct, yes.

20 That's outside the offence period?-- That - that is when the
version of RED that I had a look at, and the status of those
regional ecosystems that I recorded on the site had not
changed from their original status, on the published RED,
25 which would have been - I think from recollection, is - I
can't recall precise - I think it was around about 2000/2001 -
was original electronic publication of RED.

And 6.4.2, again, you compare it with the version of 4.2 in
30 March 2005?-- That is correct.

That's outside the offence period. 6.43 of concern, March
2005, which is outside the offence period?-- Yes.

35 6.53 not of concern, 4.2 March 2005, which is outside the
offence period?-- I believe the 6.5.3 status did change over
time. I think it's-----

40 BENCH: I just have to interrupt you there, and take a short
adjournment.

45 THE COURT ADJOURNED

THE COURT RESUMED

50

BENCH: Thank you, and sorry for that delay. Yes.

55 MR SHERIDAN: Thank you, your Honour.

Now, Dr Olsen, after your brief survey of the north and the south block, you've determined that these areas comprise RE 6.41?-- Yes.

5 6.42?-- Yes.

6.43?-- Yes.

6.53?-- Yes.

10

And at the time of your inspection, you swear in your report, that part of your instructions were to reassess the regional ecosystem mapping as mapped on version 2.1; is that correct?-- Yes - well, I was - that was part of - when you assess the flora of the site, you compare it to the current certified mapping. That's correct, yes.

15

All right. But that's a very specific instruction, isn't it, to conduct an-----?-- Well, you - that was mapping current at that time.

20

I beg your pardon?-- At the time of the alleged offence, yes.

There were two offence periods. Which mapping was current at the time of the first offence?-- Version 2.1, from my understanding. I - I could be wrong, I don't know.

25

And what about-----?-- I was - I was supplied by the Department with an area that was mapped as remnant at the time of the alleged offence.

30

So you were supplied with a Regional ecosystem map?-- Yes, subsequently to our - to our site inspection, yes.

35

Sorry, at the time of the site inspection did you have a regional ecosystem map?-- No, not at the time of the site inspection.

Okay. Now, you said version 2.1 was current at the time of the first offence?-- I wouldn't know.

40

What version of the regional ecosystem map was current at the time of the second offence?-- I wouldn't know.

45

And as a result of your inspections on both the northern block and the southern block-----?-- Yes.

-----you determined that these areas were those regional ecosystems as I read to you a few minutes ago?-- Yes.

50

Okay. Right. Now, your Honour, could the witness be shown Exhibits 12, 13, 14-----

BENCH: Right through to 19?

55

MR SHERIDAN: Right through to-----

BENCH: I will give him up to 19.

MR SHERIDAN: -----17. All the maps.

5 BENCH: Okay. They are all up to 19 there.

MR SHERIDAN: Okay. Thank you.

10 BENCH: No, I think 19 is the notebook page, so up to 18.

MR SHERIDAN: Yes. So long as he has got all the maps, your Honour. Thank you.

15 Now, if I just take you to an area on the northern block, you have the first map - you have Exhibit 12, Remnant 1999, regional ecosystems?-- Yes.

20 "Plotted 28th of May 2002." You'll see "Plotted" there to the right of-----?-- Yes. Yes.

-----the page. Exhibit 12, it should have marked on there somewhere, is it?-- Yes. It has got 12 here.

25 Now, if I just take you to the northern block in the south-western corner?-- Yes.

Can you see an area there that's coloured light pink?-- Yes.

30 Which on this map is sub-dominant?-- Endangered sub-dominant, yes.

Endangered sub-dominant. And those - the regional ecosystem numbers there are 11.3.28?-- Yes.

35 And 6.4.1?-- That's correct, yes.

Are the numbers underneath 95/5?-- Yes.

40 Do you take that to mean that 95 per cent of that polygon was RE 11.3.28?-- Yes.

And five per cent was 6.4.1?-- As - as mapped here, yes, that's correct.

45 Yes. And as a result of your inspection, you say that it is now 100 per cent 6.4.1?-- Well, 6.4.1 and 6.4.2, in that area.

50 So it has gone from-----?-- In part - the areas I looked at specifically were the areas that were cleared and immediately adjacent. Immediately adjacent in that area, it was actually regional ecosystem 6.5.3. It was poplar box on the sand plains.

55 Yes, I'm just concerned with this area now, the areas that were allegedly unlawfully cleared?-- Yes.

Okay?-- Yes. In that area I didn't observe any alluvium.
There's no land zone 3.

That's all right?-- Yes, sorry.

5 Yes, otherwise we'll get confused. The question is, that that
as it's mapped there was only - that polygon, the light pink,
was that 6.4.1 only made up five per cent of that regional -
that polygon?-- On this map. Yes, that's correct.

10 Yes. But you've reassessed it as being - can you describe the
percentage of the 6.4.1 that you now say that is?-- In that
light pink area that was cleared?

15 Yes, the area that's-----?-- Between 80 and 90 per cent would
be - were the clay plains and hence the regional ecosystem
6.4.1.

20 Yes. So you have, in effect, turned that regional ecosystem
map, that polygon in that area on the map, on its
head?-- Well, I didn't look at the entire polygon. I just
looked at a proportion of it, and which is on the western -
western margin of it, yes.

25 Yes. And if you go directly north of there-----?-- Yes.

-----there's an area that's light green?-- Yes.

30 6.3.17?-- Yes.

And straight north of that there are a collection of RE
numbers?-- Yes.

35 And that's an entire polygon that seems to go from the centre
of the north of that block-----?-- Yes.

-----all the way down?-- Yes.

40 Are you with me?-- Yeah.

And that polygon is described as 6.3.28 and 6.4.1, 95 and five
per cent?-- Well, 11.3.28, yes.

45 Sorry, 11.3.28 and 6.4.1?-- 6.4.1.

95 and five?-- The same proportions, yes.

The same proportions, the same-----?-- Yeah.

50 The same proportions as the one we just looked at?-- Yes. It
would have been part of the original pre-clearing polygon, but
the proportion stays-----

55 Did you inspect that polygon?-- Parts of it, I did.

The southern - sorry?-- Yes, parts of it, I did.

Yes, the southern part was - is that part of the area that's allegedly unlawfully cleared?-- Part of it is, yes.

5 And you've effectively turned that on its head, as well?-- In the area that I inspected. I found the area to be dominated by 6.4.1 and 6.4.2, yes.

10 Right. If you have a look at the southern block in the south-east corner?-- Yes.

If you have a look at that southern corner-----?-- Yes.

-----on that same map, 11.3.28?-- Yes.

15 6.4.4?-- Yes.

6.4.1?-- Yes.

20 80, 15 and 5?-- That's correct.

You've assessed that as dominated by 6.4.1?-- In - yeah, in that - along that eastern margin, yes. There were also areas of 6.5.3. It was a more complex mosaic in that area, of patches of sand plain embedded in the clay plains, so that was a mixture of 6.4.1 and 6.5.3. Generally the clay plains were cleared and the poplar box on the sand plains of 6.5.3 were - were left as copses of trees.

30 And if you turn over the page, I think you will find Exhibit 13?-- Yes.

Updated Remnant 1999 Regional Ecosystems?-- Yes. This one is signed by Andrew Levington, yes.

35 The 28th of May 2002?-- Yes.

40 A significant difference between the Exhibit 12 and Exhibit 13?-- Yes, it would appear a reassessment has been made of the areas that weren't dominated by woody vegetation as being remnant, that's correct.

45 And both of those maps were plotted on the 28th of May 2002?-- Plotted date, yes. That may be the day they were retrieved from the system. I'm not certain.

Now, if you turn over the - sorry, the next map is - just keep Exhibit 13 with you. Then Exhibit 14, updated 1999?-- Yes.

50 Plotted the 13th of November 2002?-- Mmm.

There are significance differences between those two maps, aren't there?-- Yes.

55 Okay. If we go over to Exhibit 15, updated 1999?-- Mmm.

Plot date, 28 May 2002?-- Yes.

There are significant differences between those two maps, aren't there, in terms of the regional ecosystem?-- Compared to which one, sorry?

5 Exhibit 13?-- 13. No, I think they're essentially the same. Exhibit 13 and Exhibit 15, the polygons - yes, the polygons are the same.

10 If you have a look at Exhibit 13, the white polygon in the southern block-----?-- That's the inclusion - is this - is this the one?

Yes, sorry, the white one there?-- Yes. Yes?

15 Is that depicted or not in that - Exhibit 15?-- On Exhibit 15? Yes, it is. It's on Exhibit 15, yes.

20 It's not marked or numbered though, isn't it? The RE is not marked or numbered?-- That's because it's not mapped as remnant, so-----

25 There's a different polygon below that area that was white, but it's now a different colour?-- Sorry, I'm not following you there, sorry. There's the white polygon, the non-remnant polygon?

30 Yes?-- And below that there's an arm of a pink polygon, which is that same polygon that we were discussing in the south eastern corner of the property.

Yes?-- Yes.

Is that not different in Exhibit 15?-- No, they're the same.

35 It's not marked with a number?-- Well, it is marked with a number down in the south-eastern corner. That's all the same polygon. It's the same-----

40 I see?-- Same polygon, yes.

45 Now, if you go to Exhibit 16, that map, which is apparently produced by the Natural Resources and Mines, Charleville, 2001, you see - if you look under the scale bar?-- Oh, yes. Yes. Version 3, it says, yes.

Version 3?-- Yes.

50 It records the regional ecosystem as cleared and disturbed, which is a nomenclature that doesn't appear on any of the other maps?-- That is correct.

Now, does "cleared and disturbed", in your knowledge, equate to non-remnant?-- It does.

55 Can you explain, then, why the areas that are cleared and disturbed in the 2001 map are somewhat different in the map at

Exhibit 12?-- The polygons on Exhibit 12 are the same as the ones on Exhibit 16.

Yes. Okay. Good?-- Yes.

5 Now, can you-----?-- The remnant polygons, should I say, yes.

I just want you to concentrate on the cleared and the disturbed?-- Yes.

10 Then there seems to be quite a difference between the non-remnant polygons in the southern block and the cleared and disturbed on Exhibit 16?-- Compared to?

15 Exhibits 16 and 13?-- 13, sorry.

Oh, sorry. No, that's all right. I was looking at 12?-- Yes.

20 Are you able to offer an opinion why that might be the case?-- No.

25 So it appears that these areas in Exhibit 16, that are mapped by the Department of Natural Resources as at 2001, are different to those in Exhibit 13, which is a certified map by Andrew Livingston?-- That is correct.

Now, if I could just take you to your statement? On page 3, about line 114 - - -

30 BENCH: That's the statement of the report?

MR SHERIDAN: Yes, your Honour, the statement. Yes, can you just-----

35 BENCH: You want them - you need them any more?

MR SHERIDAN: Oh, sorry, could-----

40 BENCH: They can be returned?

MR SHERIDAN: They can be returned. Thank you, your Honour. Page - that's all right, doctor. You don't need your statement, I just want you to-----?-- Oh, okay. You'll read it. Thank you.

45 No. Thank you. Your statement, at page 3, at about line 114, you say - you swear, "The areas of alleged illegal clearing contained areas of remnant vegetation." Does that mean that the areas that you spoke about in, for instance, map JRA06 - 50 the hatched areas - at the time of your inspection, contained areas of remnant vegetation?-- No, they would have been remnant prior to the clearing, yes.

55 I see. But were there areas of remnant vegetation in those polygons?-- Within those polygons?

Yes?-- No.

So the entire area was cleared? There were no trees left standing?-- There were no mappable areas of remnant vegetation within those cleared areas. There-----

5 Mappable?-- Yes, there's a minimum size of polygon that can be depicted at the scale of certified mapping.

10 Which is? What's the minimum amount?-- Five hectares.

Five hectares?-- In the Brigalow and Mulga bio-regions.

15 So-----?-- So there may have been - for instance, in some of my photographs I illustrated small copses of trees. We've got a clump of gidgee trees, for instance, which is too small to be depicted at the scale of regional ecosystem mapping. There are scale constraints, because it's 1:100,000 mapping.

20 So within these areas - well, I can't hold two maps up at once - but within both these areas that - the blue hatching on both the northern and southern block, do you say there are areas of up to 5 hectares - standing timber - that was still evident when you did you inspection?-- There were small patches, yes, and you notice those with - some of those copses depicted in that blue hatching would not be depicted on the certified mapping, because they were too small.

25 So when we look at the-----?-- Some of them are more substantial areas. Some of them are, you know, 30, 40 hectares, yes, and they would be capable of delineation at that scale of mapping, yes.

35 So within these polygons, there are areas of standing vegetation, is that-----?-- Within the external boundary of those polygons, yes. Within the actual hatched areas, I do not recall any standing copses of trees. We tried to digitise all of the standing copses of trees within that larger blue hatched area, yes.

40 Now, just on site 1, the photograph you've taken at site 1, shows standing timber, is that in the - in Acme Downs, or is that a picture of the neighbour's place?-- Site 1, I believe, if I can just recall where site 1 was.

45 Just a minute, no, no, no. Just a sec, could you answer the question, please?-- Well, I'll have to have a look at the photograph.

50 Very well, then. Refresh your memory with the photo?-- Site 1, I think you will see the boundary fence. I'm just trying to find it. I was within the subject land where I took the photograph and from recollection - I just can't find site 1 photograph all of a sudden. It was here just a moment ago when we were discussing it.

55

Annex 1, it is, page 8, or page 8 is what I've got?-- Yes. There is - you can't really see the fence but it was looking due west into the adjoining property.

5 Yes, so that's-----?-- But that is actually on Acme Downs. The foreground of that is on Acme Downs.

Right and those trees, are they in the neighbour's property?-- I just can't see the fence. I think they were straddling a fence line, some were and some were not, from recollection.

Thank you. Now, if we go to site number 3?-- Yes.

15 The standing timber in the background of that photograph, is that on the subject property or is that the neighbour's property?-- Yes, it is. No, that's on Acme Downs, yes. That's looking to the north-east from that photo point, yes.

20 Site number 4?-- Yes. Is the - the fence line you can see on the images in the northern part, yes.

So, to the left of the fence line is that the neighbour's property or is that the subject property?-- No, that's still Acme Downs, yes.

Does this photograph depict any of the areas in the hatched areas that are allegedly unlawfully cleared?-- Yes, on the right hand side, the southern side of the fence line is within the hatched areas, yes.

Site number 5?-- Yes.

Is that-----?-- It's, basically, turning it around the other way. Yes, they're the same location.

Excuse me, doctor, I hadn't asked you a question there yet?-- Sorry.

40 Is that site in any of the polygons that are allegedly unlawfully cleared?-- No.

Site number 7?-- Yes, that depicts-----

45 Just stop till I ask the question, please, doctor?-- Sorry.

Thank you. Does that photograph depict any of the areas that are unlawfully cleared?-- The background of that photograph does, yes.

50 In the foreground, though, that is standing vegetation?-- That is correct, yes.

Was that one of these areas you say that could be up to five hectares that wouldn't be mapped?-- No, that is depicted as remnant outside the blue hatched polygons.

So this isn't the photo of an area that was allegedly unlawfully cleared?-- The background is; the foreground isn't.

5 The background is, thank you?-- You are looking across the boundary between the cleared and uncleared vegetation.

Yes. If you could have a look at site number 16 which is page 23 that I have?-- Yes.

10 Is that site in a polygon allegedly unlawfully cleared?-- No.

No. Site number 17?-- Yes.

15 Is that a photograph of an area allegedly unlawfully cleared?-- No.

20 Could the witness keep - could you keep that report, Dr Olsen and tidy it back up in order if you wish, otherwise we'll end up in a mess. Could the witness be shown Exhibit 10, your Honour. Now, I notice in your photographs, sorry, just go to page 10 which is - sorry, just go to page 8 which is site number 1, that will be good enough?-- Yes.

25 I note that you've recorded the locations of these photographs and their site inspections. Excuse me for a minute - in latitude and longitude?-- That is correct.

30 Is it possible for you using that document Exhibit 10, the first page-----?-- Yes.

Is it possible for you to scale off and find and denote your exact location on that Exhibit 10?-- Within the constraints of the scale of the photograph, yes.

35 It's possible for you to do that. Read off a lat and long from, for instance, site 1?-- Off this?

Yes?-- If it had the grid coordinates on it.

40 Well, it doesn't have a grid coordinate, does it?-- No, it does not.

45 So, it's impossible for you to pinpoint your location from that document?-- The accuracy of actually putting a dot on the map?

Yes?-- The error inherent in that would capture the site - see what I'm trying to say there?

50 Yes?-- The site would be within the accuracy of a ball point pen on the sheet.

55 You could pinpoint the accuracy - with the accuracy of the dot of a ball point pen on this Exhibit 10, without any sort of-----?-- From recollection, yes.

Without any sort of a map grid?-- Pretty close.

Without the aid of this site 7, site 8?-- Site 7, site 8, sorry?

5 All the little icons there that show, site 1, site 2, site 3, site 4?-- Yes.

10 How could you possibly scale off a latitude and a longitude on a map that has no grid?-- No, I wouldn't be - it would be from memory where I physically was, and that's just an experience-related thing, looking at our photos and figuring out where you are in the landscape.

15 Right, from that coloured picture?-- Yes.

But you wouldn't be able to do it-----?-- You can see the various features that-----

20 But it's impossible to do - to scale off the latitude and longitude that you've used-----?-- Yes, sorry. I wasn't - yes.

25 Thank you?-- I could depict where I was on this, but I wouldn't be able to - there are no grid references for me to precisely work out with the ruler. for instance.

30 Yes, thank you. Now, you say that these - when you did your inspection, did you have any of these documents JRA03, for instance, any document that showed you a cross hatched area?-- From recollection, there were no cross hatched areas as such. There was an indication of areas of alleged illegal clearing, yes, and they were the areas that were targeted in the field surveys.

35 Yes, okay. Now, you said earlier that the appendix to your report contains the appendix 2 references. That was the source documents that you had recourse to in preparation of this report?-- They're the documents that I actually referred to in the report.

40 Yes?-- If I referred to, for instance, the CSIRO report for the soils, I put the reference in that appendix, yes.

45 I see, right. So you carried out this inspection and you re-affirmed the vegetation, the regional ecosystem mapping, that was current at the time?-- I compared my assessments to that mapping, yes.

50 You compared your assessments to that mapping?-- Yes.

Are you familiar with the document, Methodology for Survey Mapping for Regional Ecosystems and Vegetation Communities in Queensland?-- Very familiar, yes.

55 Neldner?-- Yes, Neldner et al.

And you haven't had recourse to that?-- Yes, all the time.
It's a standard operating document.

5 Well, it doesn't appear in your appendix or anywhere through
your report, that you made these assessments of the regional
ecosystem mapping in line with the procedures set out Neldner,
does it?-- I didn't reference that document in my report, that
is correct.

10 How could you then make a reassessment of the regional
ecosystem mapping prepared by the Environmental Protection
Agency without reference to that document?-- That's what we
use all the time.

15 Yes, but it's not-----?-- I didn't refer to it in the text,
hence it wasn't in the references.

20 Why didn't you refer to it in the text? Isn't it fundamental
to the task that you say you were engaged to do?-- Yes, it's -
I know of very few, if any, expert reports, since the
proclamation of the Vegetation Management Act - because we all
use the same document. It's the same methodology. It's
standard operating procedure, essentially.

25 Wouldn't that be fundamental to be referred to in your report,
if it was so fundamental?-- No, I don't think I've ever
referred to it in any of my - literally dozens of reports.

30 So, it's the absolute basis of regional ecosystem vegetation
assessment; is that correct?-- No.

It's not?-- No. It's the methodology employed by the
Queensland Herbarium.

35 Yes, and if you're going to make an assessment of work that
has been done by the Queensland Herbarium, would not any
assessment done, without reference to this document, be
completely invalid?-- Yes, all practitioners utilise that
methodology. That is correct.

40 Yet - so this is the fundamental document?-- Yes.

45 But you haven't referred to it in your report and you said
earlier that the appendix contained all the references that
you referred to in your report?-- That I referred to in my
report, that is correct.

50 For instance, why then in your report, when you - what you've
done is in critical areas here, you've turned the regional
ecosystem mapping, effectively, on its head?-- In certain
polygons, I've refined the mapping that was present at the
time. That's correct.

55 You've refined it but you've gone from five per cent of what
might be 6.4.1 remnant endangered, then you've ascribed it a
percentage of 90 per cent plus?-- In that area, that is
correct.

And throughout this report, even though you say you followed the methodology of Neldner, you have not referred to it once?-- That is correct.

5

Now, the-----?-- Because I didn't refer to the methodology in my report. The references at the end of the report are materials that I referred to in my report.

10 But now you say that you actually used it when nowhere is it referenced. Nowhere is it even referred to nor referenced that that was the methodology you used?-- That's correct, because it is standard operating procedure, everyone utilises it.

15 So, everyone does it, so you don't have to refer to it, is that what you're telling us?-- Pretty much. I must admit in all the expert reports that I have had to read and review and critique, I have seldom seen it referenced.

20 I'm not concerned with those, doctor. I'm concerned with yours today?-- Yes, well, no, I didn't reference it because I didn't think it relevant to do so.

Now the sheets that you used, don't follow the vegetation mapping recording form as set out in Neldner, either, do they?-- I think they did at the time because they were a direct cut and paste from the herbarium. That document has undergone a number of revisions.

25
30 Yes, which version did you refer to at the time of this report?-- I could not tell you that because I don't have it with me, but the form which I filled in, in my appendices, is an electronic form that I received from the Queensland Herbarium. That is their own - that's their form.

35

August 2005, you completed this inspection and did at least a draft report, that's correct?-- Yes.

40 Could the witness be shown this document, please, your Honour. Now, is that Neldner?-- Yes.

Now, that's version 3.1, just turn over to page 2?-- Yes.

45 Environmental Protection Agency 2005?-- Yes.

Is that the version - can you say if that's the version that you used?-- I couldn't say for certain, no. I'm sorry.

50 Was there a version after that?-- It has recently been updated again and there's about another three authors on it, yes.

So that - this is version 3.1?-- Yes.

55 Well, it was published in 2005. So is this version 3.2 you are talking about a new one?-- I'm not certain.

Do you know when it was published?-- No.

So the version before this version 3, do you know when it was published?-- No.

5 So you can't say which version that you used for this survey?-- No. I used the forms - electronic forms that the Queensland Herbarium, themselves, supplied to me.

10 If I take you over to page 101, I think it is - it might not be - Vegetation Mapping and Recording form?-- Yes.

That bears no resemblance to the form you have used, for instance, in your site number 1, at page 8 of your report?-- Absolutely not.

15 I tender that document, your Honour.

BENCH: That will be admitted into evidence and marked Exhibit 27.

20

ADMITTED AND MARKED "EXHIBIT 27"

25

MR WILSON: Your Honour, I haven't had the benefit of having a look at that document.

30 BENCH: Okay. Well, I will get you to look now.

MR WILSON: Thank you.

35 MR SHERIDAN: Sorry. I thought it was before here.

MR WILSON: I've got a copy now, though.

40 MR SHERIDAN: I've got a copy. I had it in the file somewhere.

MR WILSON: Your Honour, it is quite an extensive document. I've had no - could that be marked for identification, at this point, so I can have some time to look at the Exhibit?

45 BENCH: Well, it's a government publication.

MR WILSON: Okay.

50 BENCH: Why would I mark it for identification when it has from the Environmental Protection Agency?

MR WILSON: Okay.

55 BENCH: It's admitted into evidence and marked Exhibit 27.

MR SHERIDAN: Thank you, your Honour.

BENCH: Well, it's a bit after five.

MR SHERIDAN: Yes, your Honour.

5 BENCH: You're going to be a lot longer with the doctor?

MR SHERIDAN: Well, some time.

10 BENCH: How long, do you reckon?

MR SHERIDAN: Another hour or so, I would say.

BENCH: An hour or so. Yes. Well, we will probably continue
15 in the morning.

MR SHERIDAN: Thank you, your Honour.

BENCH: So are we going to have a couple of short other
20 witnesses?

MR WILSON: Your Honour, I'm not going to call the DPI now.
I will call someone, though, to try to get some maps in.

BENCH: Well, you can talk to Mr Sheridan about that.

25 MR WILSON: Yes, I know.

BENCH: So will you both be ready to make your submissions to
30 - you don't know whether you are going to call evidence yet?

MR SHERIDAN: No, your Honour.

BENCH: You don't know that?

35 MR SHERIDAN: No.

BENCH: So I have to wait until tomorrow.

40 MR SHERIDAN: Yes, your Honour.

BENCH: Okay. Well, if you do call evidence, we may not
finish tomorrow. So are you available on Friday?

45 MR SHERIDAN: What is the date on Friday? Yes, your Honour.
I am.

BENCH: You are. And are you available on Friday?

50 MR WILSON: Well, I may have a problem, your Honour, because
my wife is away in Perth and I have got two small children;
seven and 10. So I have to get them to and from school. I
could make some arrangements. It depends where we actually -
I could try to make some arrangements, but I've only got-----

55 BENCH: Well, okay. Well, We will just wait and see what
happens tomorrow, because we may finish all of the evidence
tomorrow.

MR WILSON: Yes.

5 BENCH: If we finished the evidence tomorrow and we didn't
get the submissions done, you may have to do your submissions
in writing.

10 MR WILSON: Well, I was thinking, perhaps because I - I'm
living in Brisbane, that we might be able to finish it off
there, perhaps. But it would-----

BENCH: Yes. We may be able to.

15 MR WILSON: Yes.

BENCH: So we will see how we go tomorrow. Thank-----

MR WILSON: Yes. I would be keen to see an end to this.

20 BENCH: Thank you. We will adjourn - I don't think we have
got any other short matters in the morning, have we? So we
will adjourn until 9 o'clock in the morning. Thank you.

25 MR WILSON: Thank you.

THE COURT ADJOURNED