

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT

HOGAN, Magistrate

MAG-00214586/10(0)

CAMERON JAMES SARGENT

Complainant

and

TRENTON ALEXANDER HINDMAN

Defendant

CHARLEVILLE

..DATE 02/11/2011

..DAY 1

I, JOANNE BUGDEN, Director of Reporting, Finance and Community Engagement, Reform and Support Services, and the officer in charge of the State Reporting Bureau transcripts, do hereby certify that the abovementioned transcript, pages 1 to 113, is a transcript held in the official records of the State Reporting Bureau.

Dated this 12th day of January 2012



Joanne Bugden
Director
Reporting, Finance and Community Engagement
Reform and Support Services

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BENCH: Yes. Good morning.

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MR KELLY: Good morning, your Honour.

MR SHERIDAN: Good morning.

BENCH: Yes, thank you. Please be seated. Yes. I have these matters of Sargent and Hindman. Yes.

MR KELLY: Good morning, your Honour. My name is Kelly, initials P D, of counsel, instructed by the Department of Environment and Resource Management for the complainant, Cameron James Sargent.

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BENCH: Yes, Mr Kelly.

MR SHERIDAN: Good morning, your Honour, my name's Sheridan, spelt S-H-E-R-I-D-A-N, initials P D, legal practitioner at Palmer Stevens and Rennick Solicitors in Kyneton, Victoria, and I appear for the defendant Hindman.

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BENCH: Yes, thank you, Mr Sheridan. Yes, gentlemen.

MR KELLY: Your Honour, there's a complaint before the Court charging Trent Alexander Hindman with two counts of breaches under the Integrated Planning Act. I'd seek leave to amend the - both counts, your Honour, effectively in relation to the particulars in that count 1 should now read "676 hectares".

BENCH: So instead of 668 it's 676?

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MR KELLY: 676, your Honour. And count 2 should now read "638 hectares" instead of the "604 hectares". That's - that conforms with the report of Mr Jeremy Anderson which I'll refer to in a moment.

BENCH: Yes, all right. The particulars have been amended.

MR KELLY: Thank you, your Honour. Your Honour, in respect of the complaint in relation to Mr Hindman, I'd ask that he be arraigned on that count.

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BENCH: Yes. Well, Mr Sargent, do you require me to read the charges to him?

MR SHERIDAN: Sheridan. No, your Honour.

BENCH: Sorry, yes.

MR SHERIDAN: No, your Honour.

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BENCH: Yes.

MR SHERIDAN: He's aware of the charges and I'm instructed to enter a plea of guilty to both those counts.

BENCH: Yes, thank you.

MR KELLY: If that's the case, your Honour, the prosecution won't tender - won't provide any evidence in relation to Mrs Hindman.

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BENCH: All right. That charge is dismissed and the defendant is discharged.

MR SHERIDAN: Thank you, your Honour.

BENCH: Yes, Mr Kelly.

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MR KELLY: Thank you, your Honour. Your Honour, the prosecution have prepared some folders which may assist the court.

BENCH: Yes.

MR KELLY: They contain my submissions, the Act itself, sections of the Justices Act which may or may not be relevant. There are some references to cases which I'm sure your Honour is familiar with. Not all of them are relevant, in my submission, but they're provided in any event, and they also contain a report of Jeremy Robert Anderson, who I've already referred to briefly, a report of Andrew James Franks, and his report attached of the environmental impact assessment, vegetation and flora, a report by Mr Franks in relation to the regional ecosystem map assessment, a valuation review which has been conducted by a David Ralph, and I understand my learned friend will have some submissions in relation to a disclaimer that Mr Ralph refers to there but, in my submission, it really doesn't take things all that far anyway, and finally, in the folder is an environmental impact report biodiversity prepared by Dr Geoff Mundy-Jenkins and Claire Davies of the Resources Assessment and Information Planning and Assessment Bureau. I'll tender that for your Honour's assistance.

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BENCH: Thank you.

MR KELLY: The submission - submissions commence at tab 2, your Honour.

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BENCH: Thank you.

MR KELLY: The bottom line, your Honour, is that the defendant - the prosecution are asking that your Honour impose a global order penalty of \$150,000, plus investigation costs of \$10,000 and legal costs of \$3,770. At the end of the day, the prosecution will be making no submissions in respect of recording a conviction but doesn't urge your Honour to record a conviction in light of similar cases. That's the-----

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BENCH: Okay. I haven't looked at this. Is the maximum about \$125,000?

MR KELLY: 125,000 for count 1 and 166,500 in respect of count 2.

BENCH: So you're really asking for the maximum, close to it, aren't you; 150,000?

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MR KELLY: If - well, the - it has to be looked at, in my submission, this way, your Honour: count 1 occurred and then after it completed, two years later count 2 occurred, and that was where the increased penalty was.

BENCH: Yes. No, that's fine. I'm just-----

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MR KELLY: So the maximum-----

BENCH: I'm thinking out loud.

MR KELLY: The maximum in relation to count 1 is 125,000-----

BENCH: Yes.

MR KELLY: -----and some dollars. The maximum in relation to count 2 is 166,000.

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BENCH: And there's a formula under the Act, isn't there?

MR KELLY: There is, your Honour, and I go through and refer to that.

BENCH: Yes.

MR KELLY: And offence, of course, involves the clearing of assessable vegetation without a development permit under the Integrated Planning Act. The extent of the clearing is described in the statement of Jeremy Anderson and Mr Anderson is - excuse me, your Honour. Mr Anderson says there during the complaint period - of the two complaints, that is - there were two distinct clearing events. Event 1 was at least 676 hectares. The total area of land cleared in the second clearing event was at least 1003 hectares and in the second clearing event some of the area cleared in the first clearing event was re-cleared. The area of land re-cleared was at least 365 hectares but the total for both of the clearings was at least 1314 hectares. I refer to some reports and aerial photographs and satellite images that Mr Anderson relied on in that respect.

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But the lot - in relation to the two counts of land clearing which he's been charged with involved lots 4 and 2 of the defendant's property. Lot 4 was cleared on two separate occasions, as I've mentioned, your Honour. Lot 2 was cleared once only. Lot 2, of course, is count 2, and that attracts the higher penalty.

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The report of the scientist, Mr Anderson, indicates that the re-clearing was not counted in the total calculation, so whilst there is a total of 1314 hectares have been cleared on this person's property over almost a four or five year period - four year period - the - there were - there was about 300-odd - 365 hectares that wasn't taken into account, so he has the benefit of that, if you like.

The assessable development in question, this operational work, being clearing of native vegetation on land. The first clearing event occurred between the 26th of February 2007 and the 2nd of June 2007 at the property at Wyandra, and the count 2, which involves a two year gap, was unlawful clearing of 638 hectares.

That occurred between the 14th of January 2009 and the 27th of September 2009, at Wyandra, of course, and again, carrying out of assessable development without an effective development permit for the development.

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The assessable development in question, your Honour, was operational work, being the clearing of native vegetation on land subject to a lease and, as I've mentioned, the maximum in respect of count 1 is \$124,875. The penalty unit at that time was \$75 and the maximum penalty for count 2 is 1665 penalty units also, but because it was increased to \$100 for each penalty unit, the maximum for count 2 is \$166,500.

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The defendant was born on the 15th of March 1968. He was approximately 39 years of age at the time of count 1 and 40 to 41 years of age on count 2 as committed. The properties are collectively known as Alpha Station, lot 4, has approximately 8,094 hectares and lot 2, approximately 8,137 hectares. As I mentioned, they're collectively known as Alpha Station and the lease that they hold, it's held in the name of the defendant, Trenton Alexander Hindman, and his wife, Ziphany Fiona Hindman as trustees.

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The clearings were carried out by mechanical means and they were comprised of the native vegetation cleared, comprising entirely of remnant not of concern regional eco-system, so as your Honour would be aware, there are three classifications; this is not of concern as classified under the Vegetation Management Act. I refer to paragraphs 18 and 19 to the dictionary meanings of those relevant terms. As mentioned at paragraph 20 of my submissions, your Honour, whilst classified not of concern, it doesn't mean that the vegetation doesn't warrant protection, but rather it's the opposite; not of concern vegetation requires protection in order to prevent it from being cleared to such an extent that it comes of concern or even endangered.

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Now, in relation to the investigation, your Honour, in the 2006, 2007 State Land and Tree Study or SLATS as they're referred to, detected a vegetation cover and further analysis of satellite imagery by the Department of Environment and Resource Management, that's DERM, remote sensing team, determined that in respect of two events, first between the 26th of February 2007 and the 2nd of June 2007, and again about two years later, between the 14th of January 2009 and the 27th of September 2009, that there were photographs taken or that there had been some vegetation clearing occurring.

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Your Honour, I'll tender some before and after photographs, if you like. But before I do that actually, I'll just refer to

the field inspections; there were a number of field inspections that took place. One was on the 11th of November 2009 and that field inspection related to count 1. On the 26th of May 2010, the same officer, Cameron Sergeant, conducted a second field inspection. That related to the offence that occurred in respect of count 2, and on the 11th and 12th of October 2011, DERM officer Andrew Franks, also carried out field inspections of the properties in relation to his report which is attached which I'll refer to momentarily.

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The field inspections confirmed that the changes in vegetation cover detected by satellite imagery analysis were due to clearing and that the vegetation was remnant and not of concern regional eco-system. The first inspection on the 11th of November, Mr Sargent went to the property and spoke to the defendant and the defendant said to Mr Sargent, who recorded the note, "I pushed dead vegetation with small equipment and burnt it, then I disc-ploughed it and planted oats to assist in getting pasture grass more established." He also made some observations about the under story that had been cleared. That statement was confirmed during inspections by the presence of burnt vegetation that had been raked into piles and the presence of growing sorghum.

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Now, your Honour, if I can refer you now to some of the photographs that Mr Sergeant took? He initially went to site 1 on the property. He took a total of eight photographs and I'll refer to 11 sites. Perhaps if I can refer to them individually and then tender them as a group or I could tender them-----

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BENCH: Yes, certainly.

MR KELLY: -----individually. Perhaps if I tender them individually so your Honour can have some idea of what I'm talking about I guess. The - he went out to the site and he-----

BENCH: Well, just before you go on, just so I get this organised, what I'll do is I'll admit this folder containing prosecution's sentencing material as Exhibit 1.

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ADMITTED AND MARKED "EXHIBIT 1"

MR KELLY: Thank you, your Honour.

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MR SHERIDAN: Your Honour, there is only one objection I have to that entire folder and that's at tab number 17. It's a valuation report.

BENCH: Okay. Yes, I - well, what I'm thinking about here is the photographs-----

MR SHERIDAN: I can just flag it-----

BENCH: If photographs are coming in, then I have to - so that I don't get them out of sequence and so that - so that things are organised, that I should admit them as separate exhibits if you're going to do that.

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MR KELLY: Your Honour, my learned friend will object to that particular tab-----

MR SHERIDAN: But that's the only objection of that entire folder, your Honour.

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BENCH: Okay.

MR SHERIDAN: The rest of it can be admitted into evidence-----

BENCH: All right. Well, I'll - if you like, I'll admit that folder subject to dealing with that objection as we progress-----

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MR SHERIDAN: Yes, your Honour.

BENCH: -----and I may exclude it from the folder at a later time. We'll see how we go.

MR KELLY: That might be the better way, yes-----

BENCH: Yes.

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MR KELLY: -----with respect, thank you. Your Honour, Mr Sergeant went out to the property and he went to the top north-west corner; this is in relation to count 1 of course at site 4, and he went to an - near an old bore drain, he observed a number of dead and fallen trees. There were open areas to the north. He took a series of photographs of eight photographs commencing from the north and finishing at the north-west. I'll tender that photograph.

BENCH: All right. That series of photographs-----

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MR KELLY: The series of photographs will be from site 1 to site 12, your Honour.

BENCH: Yes, I'm just looking at the front of it here before I-----

MR KELLY: These are photographs taken-----

BENCH: Yes.

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MR KELLY: -----by Cameron Sergeant-----

BENCH: Yes, yes, yes.

MR KELLY: -----from the 11th of November 2009.

BENCH: Okay. This series of eight photographs taken at site

1 - that's where it says - it's taken at site 1-----

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MR KELLY: Yes.

BENCH: -----will be admitted and marked Exhibit 2.

MR KELLY: Thank you, your Honour. He then went to - perhaps if your Honour could make that Exhibit 2.1 because I will be tendering a number - a series of photographs-----

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BENCH: Yes.

MR KELLY: -----if you like.

BENCH: All right. That's 2.1.

MR KELLY: If my learned friend's going to refer to them, it may be difficult referring to Exhibit Number 3 or 4 or something like that. Exhibit-----

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BENCH: If you want to me to number it, I'll number it 2.1.

ADMITTED AND MARKED "EXHIBIT 2.1"

MR KELLY: Thank you, your Honour. It may become - it may be of assistance later on. Mr Sergeant, on the 11th of November, then went to site 2, which was a vehicular track beside a fence line. He observed standing vegetation to the north and clearing to the south with some trees remaining. He observed that the ground appeared to have been cultivated with machinery; again took a series of eight photographs and that's photographs taken at site 2 on the 11th of November 2009. I tender a photograph of that.

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BENCH: And I should mark that 2.2.

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MR KELLY: 2.2, your Honour.

BENCH: Admitted and marked Exhibit 2.2.

ADMITTED AND MARKED "EXHIBIT NUMBER 2.2"

MR KELLY: At the same site, he took two photographs of a plant referred to by Mr Hindman as turkey weed which is said - Mr Hindman said had been right throughout the property. I'll tender a photograph of those too.

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BENCH: Is this 2.3?

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MR KELLY: 2.3, your Honour. Perhaps if I mark 2.4 on the top it might-----

BENCH: Well-----

MR KELLY: -----give you some assistance. The next photograph, he went to site 3, again took a series of eight photographs. He observed similar ground cover to the previous site. There was standing vegetation to the north and on the other side of the fence where he was standing and cultivated ground with a merging grass-like growth to the south-east and through to the south-west. He, again, took some photographs. I'll tender that - those series of eight photographs, which would be 2.4, I think, your Honour.

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BENCH: That will be admitted and marked Exhibit 2.4.

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ADMITTED AND MARKED "EXHIBIT 2.4"

MR KELLY: He then went to site 4, which is a point about roughly halfway down the eastern edge of the identified clearing that he was at. He observed that most of the surrounding area was clear of standing vegetation and it had been cultivated and planted out to crop. He observed several piles of burnt vegetation around him and cattle grazing in the distance. He took a series of eight photographs commencing from the north and finishing at the north-west. I'll tender that, which I believe will be 2.5.

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BENCH: Yes, admitted and marked Exhibit 2.5.

ADMITTED AND MARKED "EXHIBIT 2.5"

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MR KELLY: He then went to site 5, observed many piles of vegetation that had been pushed around the bases of standing trees. He observed two piles up close which appeared to contain both dead vegetation due to leafless, bleached limbs, and recently living vegetation due to the presence of leaves remaining on the branches. He also observed that the ground had been cultivated and planted out to crop and, again, took a series of eight photographs. I should mention, if it's not already obvious, they were photographs taken in a standing position of the surrounding - 360 degrees if you like. I'll tender that - those series of photographs.

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BENCH: Admitted and marked Exhibit 2.6.

ADMITTED AND MARKED "EXHIBIT 2.6"

MR KELLY: He then went to the other side of the closed pushed vegetation pile to the east and he took a single photograph which depicted leaves attached to branches. I'll tender that single photograph.

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BENCH: Admitted, 2.7.

ADMITTED AND MARKED "EXHIBIT 2.7"

MR KELLY: He then went to site 6 and - which is on the edge of an undisturbed of mapped remnant vegetation. He observed several piles of pushed vegetation and cultivated and planted out ground. He looked at a pile of vegetation to the east containing many branches and leaves. He observed undisturbed remnant vegetation to the south, which is depicted in some of the photographs, and he took a series of eight photographs commencing from north and finishing at the north-west. I'll tender those series of photographs.

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BENCH: Admitted and marked 2.8.

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ADMITTED AND MARKED "EXHIBIT 2.8"

MR KELLY: At that same site, near site 6, he - on the other side of the closed pushed vegetation pile to the east he took a single photograph which depicted leaves attached to branches. I tender that photograph.

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BENCH: Admitted and marked 2.9.

ADMITTED AND MARKED "EXHIBIT 2.9"

MR KELLY: He then went to site 7 where he thought was the southern edge of the identified clearing and travelled along a vehicular track. He observed fallen and dead vegetation on each side of the track. He didn't observe any vegetation piles or cultivation or obvious signs of clearing. He observed a lot of turkey weed or turkey bush. He took a series of eight photographs commencing from the north and finishing at the north-west and a - I should also indicate

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that on each of the photographs he indicated his GPS reading points. So I'll tender that photograph, your Honour.

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BENCH: Admitted and marked Exhibit 2.10.

ADMITTED AND MARKED "EXHIBIT 2.10"

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MR KELLY: Thank you, your Honour. He then went to site 8 and observed signs of older chainsawing of mulga and a large population of turkey weed. Again, he took a series of eight photographs. I tender that photograph.

BENCH: Admitted and marked Exhibit 2.11.

ADMITTED AND MARKED "EXHIBIT 2.11"

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MR KELLY: He then went to site 9, again took another series of eight photographs. He didn't observe any signs of clearing. He observed a lot of new growth leaves from standing trees and he thought - or was of the view that they may have been from a recent stressful event, like drought conditions. Again, took another series of eight photographs.

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BENCH: Admitted and marked Exhibit 2.12.

ADMITTED AND MARKED "EXHIBIT 2.12"

MR KELLY: He then went to site 10 at the south-west edge and observed cultivation to start. He traced around the northern edge of the - of an undisturbed gully and by that he had his GPS unit operating and enabled him to conduct a tracking function and he took a series of those photographs whilst he was doing it which shows some of the clearing that he observed. I'll tender those series of photographs.

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BENCH: Admitted and marked Exhibit 2.13.

ADMITTED AND MARKED "EXHIBIT 2.13"

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MR KELLY: Thank you, your Honour. Now, on the 15th of March 2010, some period after that he sees those first - that first inspection, Mr Sargent obtained further satellite imagery that

indicated additional areas of the property that had been cleared and he conducted a second site inspection on the 26th of May 2010. During that second inspection, he observed pushed vegetation piles, charred and burnt grassy area with some larger mature trees standing, revealing that the understorey similar to the first series of photographs of native vegetation that had been cleared. He also observed distinct and regular linear markings on the ground. And I'll tender those photographs, your Honour.

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Again, a similar series of photographs. He went to a small area straight along the track to approximately the top edge of the identified clearing area on lot 4 and walked south from the vehicle for a short distance, observed a number of standing trees around him. He observed a small area of charcoaled and burnt vegetation remnants to the north-west. Again, took a series of eight photographs. I'll tender the series of photographs in relation to site 1. Perhaps these could be Exhibit 3.

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BENCH: Yes.

MR KELLY: I tender the first photograph taken at site 1. These photographs are on a slightly larger piece of A3 paper.

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BENCH: Right. That's admitted and marked Exhibit 3.1.

ADMITTED AND MARKED "EXHIBIT 3.1"

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MR KELLY: Thank you, your Honour.

BENCH: So - wait. Just pause. This is site 1 which is the same area covered by the photograph of-----

MR KELLY: This is-----

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BENCH: -----Exhibit 2.1?

MR KELLY: The - they're probably different GPS points, your Honour. They all-----

BENCH: So why does he call it site 1? This is just site 1 on this particular inspection?

MR KELLY: This is site 1 in relation to count 2.

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BENCH: All right.

MR KELLY: The first series of photographs were tendered in relation to count 1 of the complaint.

BENCH: Okay.

MR KELLY: These series of photographs will be relevant to the

GPS coordinates that he went to inspect of the second inspection which relates to count 2.

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BENCH: All right.

MR KELLY: So in relation to his first inspection in respect of the second account, he went to site 1. He also then went to another area a bit further east and stopped near an area of undisturbed vegetation which he noted as site 2. Again, he made GPS coordinates and observed an open, grassy area with a few mature trees standing to the west and north-west. I'll tender that - those series of eight photographs.

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BENCH: Admitted and marked 3.2.

ADMITTED AND MARKED "EXHIBIT 3.2"

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MR KELLY: Thank you, your Honour. He then walked at that site for about 30 metres to the north of the site and observed charcoal on the ground, and then walked a short distance in a north-west direction, stood close to a standing - undisturbed vegetation and took a photograph of the vegetation and of the charcoal on the ground. I'll tender that photograph.

BENCH: Admitted and marked Exhibit 3.3.

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ADMITTED AND MARKED "EXHIBIT 3.3"

MR KELLY: Thank you, your Honour. He then drove further east to a point which he refers to as site 3 where the internal fence joined to another internal fence. He'd considered at that time that he was at the fence which separate lots 4 from lot 2, and observed some standing mature trees in open grassy areas around him and again took a series of photographs. I'll tender those photographs, your Honour.

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BENCH: Admitted and marked Exhibit 3.4.

ADMITTED AND MARKED "EXHIBIT 3.4"

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MR KELLY: He then drove south-west to an area within the identified clearing to site 4. He observed many mature trees standing and open grassy areas. He observed a few piles of burnt vegetation remains in the distant, and again took a series of eight photographs from the north to the north-west.

BENCH: Admitted and marked Exhibit 3.5.

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ADMITTED AND MARKED "EXHIBIT 3.5"

MR KELLY: Thank you, your Honour. He then drove further south to site 5. He observed many mature trees standing and open grassy areas, and also observed several files of pushed earth and vegetation, again took a series of photographs from the north to the north-west. I tender that photograph.

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BENCH: Yes, that's admitted and marked Exhibit 3.6.

ADMITTED AND MARKED "EXHIBIT 3.6"

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MR KELLY: He then travelled to site 6, observed other piles of pushed earth and vegetation. He - at site 6 he noticed or observed he was within an open grassy area with some mature trees nearby, and undisturbed vegetation to the south-east. He stood close to a pushed pile to the south-east and took a series of eight photographs, again finishing - commencing from the north and finishing at the north - north-west. I tender those series of photographs.

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BENCH: Admitted and marked Exhibit 3.7.

ADMITTED AND MARKED "EXHIBIT 3.7"

MR KELLY: He then went to site 7 within a clean grassy area with some mature trees present, again took a series of photographs. I tender those photographs, your Honour, taken from the north to the north-west.

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BENCH: Admitted and marked Exhibit 3.8.

ADMITTED AND MARKED "EXHIBIT 3.8"

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MR KELLY: He then went to site 8, stopped at an area close to an undisturbed vegetation to the south, observed a distinct regular linear markings in the ground and pushed vegetation piles on the edge of the open areas, and again took a series of photographs from the north to the north-west. I'll tender those photographs also.

BENCH: Admitted and marked Exhibit 3.9.

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ADMITTED AND MARKED "EXHIBIT 3.9"

MR KELLY: He then went to site 9, within a large open area, stood beside a pushed burnt pile which contained a lot of charcoal to the north-east. He observed several pushed, but unburnt piles of vegetation to the west and some mature trees remaining in the - also were observed remaining. Again, took a series of photographs from the north to the north-west. I tender those photographs.

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BENCH: Admitted and marked 3.10.

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ADMITTED AND MARKED "EXHIBIT 3.10"

MR KELLY: He then went to site 10, again observed some open grassy area with undisturbed vegetation to the south, observed some pushed and burnt piles of earth and vegetation. There were only a few mature trees standing nearby that he observed, and again took a series of photographs - eight photographs from the north to the north-west. I tender those photographs.

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BENCH: Admitted and marked Exhibit 3.11.

ADMITTED AND MARKED "EXHIBIT 3.11"

MR KELLY: He then went to site 11 and took a single photograph of a pile of pushed vegetation and noted the GPS recording in his notebook. That was taken somewhere near site 10.

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BENCH: That's admitted and marked Exhibit 3.12.

ADMITTED AND MARKED "EXHIBIT 3.12"

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MR KELLY: At site 12 that he refers to he took two photographs of pushed vegetation. I tender those photographs, those two.

BENCH: Admitted and marked Exhibit 3.13.

ADMITTED AND MARKED "EXHIBIT 3.13"

MR KELLY: And then he took a single photograph of a pile of pushed vegetation at site 13. I tender that photograph.

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BENCH: Yes, that's admitted and marked Exhibit 3.14.

ADMITTED AND MARKED "EXHIBIT 3.14"

BENCH: Just give me a moment. Yes.

MR KELLY: At site 14 he observed a - he made a video of some piles of pushed vegetation up against standing vegetation. He recorded the coordinates, the GPS coordinates. I won't tender the photograph other than - the video other than to say it was a video of quite substantial pushed vegetation, similar to the photographs that I've already shown your Honour, and at site 15 he observed again pushed and burnt piles of earth and vegetation in the distance and took a series of eight photographs. They're not immediately observable in the photographs, but they're in the distance of these photographs which I'll tender, your Honour.

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BENCH: Right. They're - that's admitted and marked Exhibit 3.15.

ADMITTED AND MARKED "EXHIBIT 3.15"

MR KELLY: Thank you, your Honour. He then went to site 16 and again observed an open grassy area. He observed an area of undisturbed vegetation standing from the south of the site to south-west. He took a series of eight photographs commencing from the north and finishing at the north-west. I tender those photographs.

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BENCH: They'll be admitted and marked Exhibit 3.16.

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ADMITTED AND MARKED "EXHIBIT 3.16"

MR KELLY: At site 17 he observed an open grassy area and noted again the coordinates on his GPS unit, observed some pushed and burnt piles of earth and vegetation. I'll tender

those photographs, your Honour, taken from the north to the north-west.

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BENCH: Admitted and marked 3.17.

ADMITTED AND MARKED "EXHIBIT 3.17"

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MR KELLY: And then at site 18 he observed an open grassy area with a few matured trees standing within view, again took a series of eight photographs commencing from the north and finishing at the north-west. I tender that final photograph, your Honour. Those photographs, of course, [indistinct] taken from the sites in respect of both counts 1 and 2. Of course-----

BENCH: That - I'll just record that that last photograph is admitted and marked Exhibit 3.18.

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ADMITTED AND MARKED "EXHIBIT 3.18"

BENCH: Thank you. Yes.

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MR KELLY: And, of course, the vegetation that was cleared in respect of count 1 between February '07 and June '07 was 676 hectares of vegetation that had been cleared, and count 2, two years later, a total of 638 hectares cleared about two years later, and the clearing that was done two years later does not include what appeared to be also clearing of another 365 hectares which don't form part of the charges. They're essentially an uncharged act, if you like, but he's not charged with that clearing.

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In any event, the - Mr Anderson - Jeremy Anderson, who is a senior scientist for DERM's Remote Sensing Centre, he recorded that in both clearing events clearing was largely restricted to the understorey of the property. Mr Anderson, by reference to the technology that was available to the department; land satellites and what's called a GeoEye-1 Satellite, and also photo technology and took us - was available - was able to take a series of photographs and from that was able to discern that - the extent of the clearing that had taken place, if you like.

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The photographs, perhaps, corroborate the photographs that were taken by Mr Sargent. I'll tender those as one group. They were stapled together, but probably you'll need a little bulldog clip to-----

BENCH: We can organise a staple.

MR KELLY: Thank you, your Honour. But, in essence, depending on the type of satellite imagery that's used it can be taken from either a long way out or can be taken fairly close up.

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BENCH: Mr Kelly, I haven't finished looking at these, but I have a question. If I limit myself to the first slide, which happens to be slide 3, the first image, I guess the date is just - I guess this is the obvious, I suppose, that the date of the photograph is the 26th of February 2007?

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MR KELLY: Yes.

BENCH: Yes, that's the date at the top.

MR KELLY: That's so, your Honour.

BENCH: Yes.

MR KELLY: What-----

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BENCH: I - when I - I must say, when I first saw this I thought this was a composite graphic thing of more than just the first image, but I'll just - I'll put that to one side and I'll continue. Just if you give me a moment, if you wouldn't mind. So, if I could just pause again. Going back to the graphic, which is perhaps - do I understand this to be the case, and correct me if I'm wrong, I'm looking at slide 10, which is dated the 14th of January 2009, has a large red irregular image on it. It's up the top left-hand corner. It says, "Slide 10."

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MR KELLY: Yes.

BENCH: Okay. If I just pause so that Mr Sheridan-----

MR SHERIDAN: Yes, your Honour.

BENCH: Yes, you can - you know what I'm looking at?

MR SHERIDAN: I know what you're looking at, but I haven't got one.

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BENCH: Sorry? You haven't got a copy of that? Well, perhaps if I could just go on and then I'll come back just so-----

MR KELLY: Perhaps, if-----

BENCH: -----I could just explain what's going on in my mind, sometimes it's a scary place. But, anyway, the next one is slide 11 which is the same area, but not filled in in red - the red outline. Now, it seems to me, as a pure layman, that there's no clearing in the areas marked as cleared, but if I go on.

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MR KELLY: What's the date of the first slide?

BENCH: Same date, 14th of January 2009.

MR KELLY: Yes.

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BENCH: The next slide is slide 13. So - sorry, the next slide is slide 12, which is - sorry, okay. So, slide 11 shows an outline of an area which was said to be cleared, but in fact with no clearing at all shown. But if I go to slide 12, which is dated about six weeks later perhaps, on the 3rd of March 2009, it does show lighter areas within the outline which seem to a layman like me as if they are areas which have been cleared.

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MR KELLY: Yes.

BENCH: So, if I progress to slide 13 and the lighter areas, if I'm correct in assuming that these areas of clearing is greater, and it continues on the more one looks, and that slide is dated the 19th of March, about two weeks later. A further slide another couple of weeks later is slide 14. It shows a greater area of clearing, and so it continues on. So, if I go back - well, perhaps if I go forward then to slide 17, which is dated the 7th of June 2009. It seems to show the area in the graphic in the earlier slide where the whole of that area is - has now been cleared. So, I know I'm just thinking out aloud here, but it seems that the graphics, if I return then to slide 10, dated the 14th of January 2009 - in fact, on 14th of January 2009 there was - that area marked in red was not cleared, but the clearing occurred subsequently. But that is given to me to give me an indication of where the - where to look for for the clearing.

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MR KELLY: Yes.

BENCH: Are you with me on that, Mr Sheridan?

MR SHERIDAN: I don't have a copy of that one, your Honour. I've got what was-----

BENCH: Yes.

MR SHERIDAN: -----given to me by Mr Kelly this morning.

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BENCH: So, I'm given a whole series of aerial photographs with graphics on them.

MR SHERIDAN: Yes.

BENCH: And it's not as if they're just clean sheets of paper.

MR SHERIDAN: No.

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BENCH: So, I want to make clear that I'm understanding that this graphic here...which is quite dramatic, all this large patch of red through the middle of it, merely represents an area which is said to have been cleared, but that particular slide is not pretending to tell me that that's where it's been - that it's been cleared. I can see that it's been cleared on that slide. That's merely something to guide me.

MR KELLY: Yes, I don't know if I can help you with that so much. It's obviously the red doesn't - is not meant to indicate that that's what the colour of the earth looks like.

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BENCH: No.

MR KELLY: No, it's - we don't have Mr Anderson with us, of course. He would have been able to explain that. In his report of course, at page 6, which is in tab 13 I've handed to your Honour, he speaks about the clearing events and the second clearing event occurred between the 14th of January and the 27th of September 2009.

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BENCH: Yes.

MR KELLY: And the first clearing event was the 26th of February '07 and the 8th of April '07. He then took - provides various tables in respect to different areas which occurred on the property.

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BENCH: Yes.

MR KELLY: So he's able to go in, in his report, and isolate various parts of the property which were cleared during particular periods, and table 2 of his report, at tab 13, deals with those areas that were cleared, according to his professional expertise - or scientific knowledge - on those particular dates referred to in the table. Then table 3, he then assesses the extent of the assessable clearing and then, of course, says, "In both clearing events, clearing was largely restricted to the understorey."

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In my submission, if your Honour looks at slides 28 and 33, it probably sums up Mr Anderson's report and that one that I think your Honour is just looking at shows that there's a canopy of trees but essentially what the prosecution case is that the defendant did leave a number of large trees standing and cleared what's referred to as the understorey, and so that when one looks at it from a satellite image it's what's called parkland clearing, so - but the understorey - all the vegetation that's under the tree canopy has been totally taken away and the photographs taken by Mr Sargent depict the extent of that and show in some areas some quite open areas and then in other areas a number of standing - large standing trees with scrape marks and ploughing and disc ploughing and so on around them.

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So that's the extent - Mr Anderson's satellite imagery really pinpoints the particular dates when the events occurred and is also able to pinpoint with more degree of accuracy the extent of the clearing. So that's the basis of the photographs that have been tendered, your Honour.

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MR SHERIDAN: Your Honour, if it might assist, it's not in issue that this area was cleared and, as my learned friend suggested, the understorey was disturbed. So if it gives your Honour any comfort, we'll - there will be no contest about that. So - if that gives your Honour any comfort there will

be nothing-----

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BENCH: Yes. No. Thank you very much, Mr Sheridan. Well - all right.

MR KELLY: Is your Honour comfortable with that?

BENCH: Yes, I'm comfortable with it. Look, just give me a moment. I'm just going through - I've got a fairly good-----

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MR KELLY: Perhaps slides 28 and 33 show that - particularly the two black and white photographs if you like, which were taken from a fairly close range show - in the top of one of the slides shows fairly dense degree of trees and scrub and then in the cleared area you can see the effect of the parkland clearing and clearing of the understorey if you like. Does your Honour see that?

BENCH: I do see the clearing of the understorey and-----

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MR KELLY: And I think from-----

BENCH: -----I - the maps show different areas of the property and I can appreciate where they are. All right. Well, now-----

MR KELLY: And Mr Sargent, of course, has been at pains to show the vegetation in the distance and the effect of the parkland clearing from the photographs that he's taken.

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BENCH: Yes, all right. Well, look, I haven't formally admitted these aerial photographs. They'll be admitted and marked Exhibit 4.

ADMITTED AND MARKED "EXHIBIT 4"

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MR KELLY: Thank you, your Honour. Now, your Honour, a third and fourth site inspection was conducted on the 11th and 12th of October this year, recently, by Mr Andrew Franks for the purposes of confirming and reporting on the map assessment classification of the regional ecosystem often associated with the subject properties, often referred to as the RE, and also he conducted environmental impact assessment on the vegetation and flora as a consequence of the defendant's conduct. My learned friend has asked that I call Mr Franks and that he be cross-examined, so it may be appropriate at this stage, with your Honour's leave though, call Mr Franks in respect of his report.

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BENCH: Yes, all right. Just so that I've got a perspective on what we're doing, there's - Mr Franks is being called, and then are there any other witnesses?

MR KELLY: No, not from the prosecution point of view.

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MR SHERIDAN: We'll be calling the defendant, Mr Hindman-----

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BENCH: Okay.

MR SHERIDAN: -----so your Honour can hear from him direct evidence under oath of his motivation or what he's actually doing, and that will be not to make any contest about the plea of guilty, that's been established, but to the penalty that your Honour should impose, because the question here when it comes to penalty is the degree of environmental harm that's been caused and, as I understand the prosecution, is urging you a significant monetary penalty-----

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BENCH: Yes.

MR SHERIDAN: -----on that basis. So that's the reason why we'd like to hear from Mr Franks and cross-examine-----

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BENCH: Yes, sure.

MR SHERIDAN: -----him on his report. And we'll make Mr Hindman available in the same vein for my learned friend.

BENCH: All right. Just - that's mulga country down there?

MR SHERIDAN: Sorry?

BENCH: It's mulga country, isn't it?

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MR SHERIDAN: Yes, your Honour. We can call it mulga country, box - white box-----

BENCH: Where the mulga stops-----

MR SHERIDAN: -----poplar box-----

BENCH: Sorry?

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MR SHERIDAN: It's variable but it's - yes, mulga country and poplar box. More poplar box, I'm told, than mulga.

BENCH: It's sort of - it shifts. I mean, my knowledge of the area is limited.

MR SHERIDAN: It's between - yes, halfway - Wyandra - halfway between here and Cunnamulla.

BENCH: Yes, I know. I know where Wyandra is. The-----

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MR SHERIDAN: It's variable. It's not the mulga that - mulga that you see around Charleville. You know, it breaks up and opens up when you get down there.

BENCH: Yes. Yes. More emus.

MR KELLY: Mr Franks can give some - that, your Honour.

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BENCH: Yes, certainly.

MR KELLY: I call Andrew Franks.

ANDREW JAMES FRANKS, ON AFFIRMATION, EXAMINED:

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BENCH: Thank you.

MR KELLY: Now, would you state your full name, please?-- Andrew James Franks.

And your occupation?-- I'm a senior botanist with the Queensland Herbarium, the Department of Environment and Natural Resources.

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And what professional qualifications do you have, Mr Franks?-- I've got a bachelor of science and a bachelor of science with honours degree.

And you're undertaking some current studies?-- I am. I'm completing a PhD study.

And what - in what field?-- In ecology, population dynamics of rare and endangered plant species in fragmented landscapes.

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Now, have you - do you have with you a CV?-- I do.

Yes, I'll tender a copy of that, your Honour.

BENCH: That CV is already part of Exhibit 1.

MR KELLY: Thank you, your Honour. I just - now, Mr Franks, you've referred to your site inspections in relation to the subject property; is that correct?-- That's correct.

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And as part of your employment with the Department of Environment and Resource Management, I think you mentioned you were a senior botanist with the Queensland Herbarium at Toowong?-- That's correct.

Could you explain what the herbarium is?-- The herbarium is the - the State's botanical research institute if you like. We have a range of different botanists there from regional ecosystem mappers through to taxonomists, the scientists that actually name plant species. Specifically, I'm associate with the regional ecosystem mapping group.

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So you've mentioned the regional ecosystem mapping group. Could you just enlarge upon what that is?-- Okay. We've got a - a range of botanists who are currently mapping the regional ecosystems around the State and we - we produce regional ecosystem maps for the majority of the State at the time being, and my role is to assist with compliance matters when

they do arise and I also look after the coordination for the Brigalow Belt South bioregion, making sure the mapping is kept up to date.

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All right. And that's the area which covers the subject properties; is that correct?-- No, the subject properties are in the Mulga Lands fire region.

Right. Can - well, you received a request to undertake a field assessment of the regional ecosystem classification for the mapping area which occurred across the subject lots; is that correct?-- That's correct.

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And you completed a further assessment in addition of the REM - mapping covering that in October 2011; is that correct?-- Yes, it is.

And in relation to the regional ecosystem map assessment which is exhibited to Mr Franks's documents, and perhaps if I take you to that. Do you have a copy of that report with you just so I can take you through parts of that? You mentioned at page 5 that - in your introduction that you were going to carry out a map assessment of the regional ecosystem RE mapping associated with lots 4 and 2?-- Yes, that's correct.

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And then on page 6 you refer to the methods that you used.

BENCH: Mr Kelly, just hold. I've got a document report on the environmental impact assessment vegetation and flora, Exhibit AJF5.03, that's what it says on the front.

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MR KELLY: Yes, there are two reports that Mr Franks has done, your Honour.

BENCH: Yes, I'm obviously reading the wrong one.

MR KELLY: Yes, there's a regional ecosystem map assessment report as well.

BENCH: Report of regional ecosystem map assessment?

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MR KELLY: Yes.

BENCH: All right. Let me just open that so I can follow. Yes, I have the right one.

MR KELLY: Thank you, your Honour. Now, in your introduction-----

MR SHERIDAN: If your Honour could just give me a minute, I've not had this disclosed until now, so I've not seen it, but I'll do my best to follow it through.

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BENCH: You haven't got this? I might just stand down so you can get a copy. You'll need a copy of it.

MR SHERIDAN: I've got a copy of it here in the material that my learned friend gave me this morning, but I've not, you

know-----

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MR KELLY: I apologise. My understanding is that my learned friend was given a copy of this last week sometime.

MR SHERIDAN: No.

BENCH: If you need a few minutes to read it before we go on-----

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MR SHERIDAN: Yes, your Honour.

BENCH: -----I'm happy to give you that.

MR SHERIDAN: Yes, your Honour, I might do that.

BENCH: Yes. I mean, if it's-----

MR SHERIDAN: Because the other materials were disclosed Friday evening by email, so this one I'm not familiar with.

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MR KELLY: I don't want to get in an argument about that, but I've not - I can't really concede my-----

BENCH: It's academic from my perspective. If Mr Sargent [sic] needs a bit of time, I'll give it to him.

MR KELLY: Yes.

MR SHERIDAN: Sheridan, your Honour, sorry.

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BENCH: I'll just - how long do you need?

MR SHERIDAN: Oh, just five minutes to go through it, your Honour.

BENCH: Well, why don't we make it 15 minutes.

MR SHERIDAN: Yes.

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MR KELLY: Your Honour, I'm happy to - Mr Franks to speak to my learned friend if he needs to.

BENCH: Yes, yes. I mean-----

MR KELLY: Mr Franks is presented as an extra witness of course, so-----

BENCH: Yes.

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MR KELLY: -----he's certainly available for my learned friend.

BENCH: All right. Yes. Well, I'll stand down for 15 minutes anyway so you can-----

MR SHERIDAN: Thank you, your Honour.

BENCH: -----just get a better handle on that.

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THE COURT ADJOURNED

THE COURT RESUMED

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ANDREW JAMES FRANKS, CONTINUING:

BENCH: Yes, thank you. Yes, thank you, Mr Murphy [sic]?

MR KELLY: Thank you, your Honour.

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EXAMINATION-IN-CHIEF:

MR KELLY: Mr Franks, I take you to the report of regional ecosystem map assessment. In a general sense what can - what does that report tell us?-- In a general sense we received a request to review the regional ecosystem mapping. The Herbarium usually undertakes regional ecosystem mapping at a one to 100,000 scale. When we get specific requests such as this we tend to look at it - the mapping on a property scale and it allows us to actually refine the line work and have a closer look at a property level and see if there's any areas - areas that were in error, for example, areas that may have been erroneously mapped as remnant. There may have been regrowth or - or vice versa.

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All right. Now, is it fair to say that, one, when you're doing an RE mapping you can't go to every square foot or metre of land in Queensland, a lot of it's done through satellite imagery and so on; is that-----?-- That's correct. Because, as you know, Queensland's a very large area, we can't have a - site data in every polygon that we mapped for a regional ecosystem, so there's a lot of looking at remotely sensed data and extrapolating from consistent patterns that we see in the satellite imagery or the aerial photos.

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Now, before you went out and did your - I think I've heard the term "ground trusting", is that a correct phrase?-- That's a fair comment.

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Basically confirming what the RE mapping has already deemed the area to be mapped as?-- Yes.

In your - in this particular matter you did an initial assessment by use of - by reference at least to satellite

imagery, aerial photography, and you say geology and land system mapping. Can you just explain that generally for us?-- Okay. The - the process for our initial assessment was purely desktop based. There was no field trip with that first assessment, and so we gather as much of the resources available to - to perform our assessment. So, that includes the chronological series of landscape imagery. We try and get as many of the historical and - and current aerial photography's that include the - the property, and we look at a - the time sequence if you like to - to confirm that an area could be remnant vegetation.

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Mmm?-- We also look at the geology mapping and see if the geology and our land zone mapping is comparable, and land systems mapping, if it's available, we look at the old CSIRO land systems mapping and see what - how they interpreted the landscape and see if it corresponds to our regional ecosystem.

In this case you also had reference to some field inspection photographs-----?-- Oh, that's-----

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-----undertaken by Mr Sargent; is that correct?-- That's correct.

And you received a request to go out and do some confirmatory or ground truthing of the RE mapping that had been done from the desktop; is that correct?-- That's correct.

When were you asked to go out and do that?-- That was October - last month, October 2011.

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All right. October?-- 2011.

Right; okay. And you went out on the 11th and 12th of October?-- Yes, that's correct.

So are you able to say how long before that you were asked to go out and undertake that?-- Oh, I'm sorry, yeah - September we received a request to go out and the field trip was planned for early October.

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And you in fact went out on the 11th and 12th of October?-- That's correct.

And as a result of that prepared this particular report?-- Yes.

Okay. Now, you talk about line intercept transect - transects, and you give an example of that in - excuse me for a moment - in the figure (i); is that correct?-- Figure (i) indicates the results of the transect data.

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Could you explain what you mean by transect locations and how you undertake that and what's the purpose of it?-- Yes.

And what it means, if you like?-- What it means is I looked at the current spot imagery which indicated that there had been some form of disturbance on the lot, and determined that we

should put in some transects in - in the impacted area or
disturbed area and compare it to nearby areas or the same
regional ecosystem in an undisturbed state. A transect is
basically we pull out a measuring tape, a hundred metre tape,
and we - we try and determine the heights and covers of the
predominant canopy along that transect. So basically you
start at the zero point and look at a point directly above
your head. Then you walk along the tape until you actually
get - get a point above your head that intercepts the canopy
or the start of the canopy; then you walk through until the
canopy ends, and then because it's over a known distance you
can work out the percentage of - of canopy cover along that
transect. We also measured the tree heights of the trees that
did intersect that - those line transects, using a clinometer
and a 50 metre tape.

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Now, in figure (i) you talk about the transect locations. Can
you say how many locations you went to on the subject
properties?-- For - for the transects we did four paired
sites, if you like. So a transect in a - in the disturbed
site and a transect in the - in the reference or undisturbed
site in four different locations.

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So comparing an undisturbed area with what you believe to - or
observed to be a disturbed area?-- Yes, that's correct.

Comparing like with unlike, if you like. And you also
referred to - at page 11 of your report - I should say, sorry,
page 10. You talk about "prior clearing, time since clearing,
the effect of natural disturbances" - this is at line 100 -
"such as storm damage and fire history, as well as the
consideration of relative heights and crown covers of the
predominant canopy as seen and measured on imagery and on site
were used as the basis for determining remnant status of
regional ecosystems in the area." Could you explain that,
please?-- Yes. When we talk about evidence of prior clearing,
this is when we have looked at the historical aerial photos or
the - the previous Landsat imagery, and if we see a point that
- or an area that had been previously cleared or - or thinned
and can monitor - monitor that through our time sequence, we
can determine if that area can still be classed as remnant or
- or regrowth. We also take into account if the Landsat
imagery has any indications of fire scars that are - are
apparent in the landscape, and of course the - the time that
the Landsat says the photo was taken, you'd - you may have a
fire directly after that, but we can't take that into account
because over time those fires scars will dissipate, if you
like. Storm damage is more picked up on aerial photography
where we can see that parts of trees have been disturbed by
some event, whether it's been a high wind event or a storm as
well.

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And just above that you talk about quaternary site
assessments?-- Quaternary site assessments; yes, that's right.

I see; thank you. What does that mean?-- Quaternary site,
it's - it's one of the levels of assessment that we use
commonly for regional ecosystem mapping. There - it's a

plotless sampling method and basically when the vegetation changes, a perceived change flow, you're on site, you can quickly record the geology land form and the dominant species of that site and compare it back to regional ecosystem mapping to see if it is correct or in error.

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Now, page 11, you talk about your results and you give various numbers and so on; and then you talk about the various RE class definitions under the Vegetation Management Act. Dealing firstly with the numbers, what can you say about that?-- Okay. The regional ecosystems that we define in Queensland are identified by a three-part number. The first number corresponds to the bioregion which that RE occurs in. In this case it was bioregion 6 or the Mulga Lands bioregion. The second number is - relates to the land zone which corresponds to the geology and land form of soils. In Queensland we've defined 12 different land zones which encompass - it's basically a broad definition of the geology, if you like, clumping geologies together into a single unit or one of 12 units. So in this case it's a land zone 5 which is usually uniform and near level quaternary plains, so sand plains, that have you - have - were - were deposited by - mostly by wind over time. And then the final number refers to the ecosystem number which basically corresponds to the vegetation community.

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All right; okay. Now, here you talk about the three classifications or definitions in the Vegetation Management Act. Endangered: you've given a definition of that. In layman's terms, could you just describe that, what an endangered vegetation classification system means for-----?-- Certainly. An - an endangered RE is an RE that has been cleared to less than 10 per cent of its pre-clearing extent within a bioregion. So, for example, you may have a particular RE that was very widespread. Brigalow, or some of the Brigalow communities on clay plains, for example, in the Brigalow Belt, they've been cleared for pastoral development and they only exist in less than 10 per cent of their - their pre-clearing extent.

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So that puts them in the category of endangered?-- Of endangered, yes, that's right.

And then "Of concern"?-- Of concern: is similar, but there's between 10 and 30 per cent remaining within the bioregion.

And then you've got "Least concerned, previously not of concern"; could you explain the difference in classification there?-- Yes, the Vegetation Management Act went through an update in 2009 and the terminology for "Not of concern" was changed to "Least concerned", but the definition remained the same.

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Yes; all right. And you say it's 30 per cent-----?-- Yeah, greater than-----

-----using the same classification?-- Yes, greater than 30 per cent remains within the bioregion.

Now, you talk about, on page 12, remnant vegetation and you talk about the 50/70 species rule; what do you - can you say about that generally?-- Okay. We class vegetation as remnant if it's satisfies that 50/70 species rule. So that's - that - that means a site has to have at least 50 per cent of the predominant canopy cover of - of the same RE in a undisturbed state, at least 70 per cent of the canopy predominant canopy height of the same RE in a - in an undisturbed state, and composed of the species that are characteristic of that regional ecosystem.

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And-----?-- So all three of those factors have to be met for a site to be mapped as remnant.

Right. And in relation to the subject property?-- In relation to the subject property, the results of my transect data indicate that where the transects were at the disturbed the site, those sites still had 50 per cent of the canopy present and still had greater than 70 per cent of the canopy height remaining. So, whether the transects that occurred can still be classed as remnant vegetation.

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And the particular bioregion and subregion, you say that it falls within the Warrego Plains and Nebine Plains; subregions of the Mulga Lands bioregion?-- Yes, that's right.

What can you say about the Mulga Lands bioregion in relation to the subject properties?-- Well, the bioregion framework was developed back in the seventies - late seventies and - and they - they looked at shared geologies, shared vegetation types and could delineate areas based on those - those characteristics. With subregions it goes to a finer level. Again, subregions tend to have areas or characteristics in common rather than dissimilar.

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Now, on page 14 you talk about the findings, you considered that the vegetation found on the lots, both at the time of clearing and at the time of your site visit, was native vegetation?-- That's correct.

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And then you refer to figure 1 and then on page 16 you refer to figure 2, what does figure 2 tell us?-- Figure 2 is the results of the line intercept transects I performed on the site. So, you can see that it's broken up. I've identified the - the undisturbed sites as - or reference sites as being R1, R2, R3 and R4 and those transects that corresponded to disturbed areas are identified as I1, I2, I3, I4. So, figure 2 indicates - it compares the - the canopy heights of the predominant canopy along those transects in both the disturbed and undisturbed sites, and you can see how comparable both the disturbed and undisturbed sites were in terms of height.

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All right. Now, R1; what does that mean?-- R1 basically refers to the undisturbed reference sites. So, if you refer to figure 1 it indicates where those sites are. So, in particular, R1 and R2 are on figure in the - in the top left-hand corner.

All right. So, they don't always match up, do they? Like, for example, R1 and I1, there's a slightly - slight difference?-- Slight difference, yes, because one - the R sites were in the undisturbed vegetation and I1 site was in the disturbed area.

All right. And R2 and I2, I2 is higher than R2?-- Not significantly higher, but, yeah, it still indicates that large trees were present in the disturbed sites.

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All right. And, similarly, with the canopy cover shown in figure 3?-- Yes.

The same sort of process was gone through there?-- That's right.

And in R4 and I4, there seems to be a difference there. What comment do you make on that?-- That was interesting because where we put out site, the - the cover in our remnant area, it was - was low and where our - we positioned our site in the disturbed area, it coincided to a - a - roughly to a line of trees as well. So, if we had moved those lines 50 metres either way we may have got a different result.

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A different reading. All right. So, by itself it doesn't mean a great deal of-----?-- No.

Now, at line 241 you talk about the layers being greatly - the layer had been greatly reduced and was generally sparse to absent in the impact areas. What are you saying there in relation to your transect assessments?-- In transect - well, when we're doing our transect we - we tend to stratify the vegetation community into strata. So, the - the predominant canopy in this case, for example, was dominated by poplar box and so we - we defined that as the T1 layer. It's - it's a shorthand method we use.

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Just on poplar box, what can you say about that in relation to the subject property?-- It was - it was present. It varied in it - it's - it's - it's density.

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It's a form of some of the vegetation that was seen, is that-----?-- Yeah, it's a - it's a tree. It can form trees - a height up to 20-odd - 22, 28 metres tall. I think in general, if you look at figure 2, it tended to be around maybe 17 metres average on the sites that I assessed.

Right. And in relation to turkey bush?-- Turkey bush, yes.

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Did you see examples of that on the property?-- I did. It's - it's a low shrub. It can form quite dense populations in the understorey.

And in terms of the RE, what - how is a turkey bush classified?-- Okay, REs are defined by the predominant canopy. So, you're looking at the canopy that has the greatest biomass. So, if you're like - if you recall breaking the

vegetation up into strata; if you visualise cutting down and weighing each of those strata, which strata has the greatest weight, that would be the strata with the greatest biomass. It tends to be the - the tree layer because you need a lot of other things to equal weight of a single tree. The turkey bush is - it's a low shrub. I don't know how many - many turkey bushes you would need to equal the weight of one poplar box tree. So, the RE is defined on its dominant or predominant canopy, which on - on some of the sites on the property were characterised by poplar box. So, it may be mentioned in the original ecosystem descriptions, but it doesn't characterise them if that makes - makes sense.

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Now, you came to a conclusion that native vegetation had been cleared from the property in question, that's at line 247 on page 18 and then you refer to your appendix and then in appendix c you go through the - as you referred to the numbers before, you start at 6.36 and then how did you classify the subject property in terms of those mapped REs?-- How did I classify the property?

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Yes?-- Basically, I - I - I looked at the results of the transect data coupled with the quaternary site assessments that we did. We tend to focus our assessments around the area that had been identified as the - the clear charge area, solely to - to - to confirm that the original ecosystem attributions were correct within those polygons, so the areas that were mapped, were they given the right code, if you like. We found that based on undisturbed areas, that the majority of the area was originally mapped as 6.5.10, which was a mulga dominated unit with occasional emergent poplar box. By looking at the undisturbed areas it appeared it was the other way, that it was more the prominent canopy was poplar box rather than mulga, and mulga was a lesser component in those particular areas. And so there was some change of the attribution from a 6.5.10 to a 6.5.3 and it also allowed me to look at the accuracy of the line work as well, to see if the - the - where the changes of the vegetation type or the changes from remnants and non-remnant were accurately mapped.

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All right. And did you form a view that it had been - the RE had been correctly mapped?-- No, it wasn't correctly mapped originally and I subsequently updated original ecosystem mapping on my return to the Herbarium.

All right. Now, for the purposes of the Act and enforcement proceedings, it's regarded as not of concern; is that the new RE mapping symbol that you gave to it?-- At the time of the offence, yes. It - that - that particular RE 6.5.3 was not of concern.

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Right. And 6.5.10?-- It's also not of concern.

All right. Now, you've still got a poplar box, what is the botanical name given to that?-- Eucalyptus Populnea.

Eucalyptus - that's P-O-P-U-L-N-E-A?-- That's right, Populnea.

And that's referred to on page 28 of your report; is that right?-- It's - for that particular original ecosystem, 6.5.3, yes.

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Yes, and then you've got 6.5.10, that Acacia aneura, that's mulga; is that right?-- That's correct.

Okay, thank you. Now, you also were asked to conduct - was there anything else you need to explain there that you - or need to enlarge upon?-- No, I think that covers it for that one.

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Now, if I can deal with the report that you did on vegetation and flora, that was conducted and prepared and completed in October 2011; is that correct?-- That's correct.

And the assessment, as you say, on page 4 and the executive summary focussed on the impacts that the clearing had on the regional ecosystem and the RE types present?-- That's correct.

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And the impact was assessed at regional - subregional local scales. Just - can you just explain what you mean by that?-- Part of the assessment is looking at the area that was impacted and compares that to the 2005 extent of those REs. So we have a report by Arnin Akard who's - he does statistics and produces a report each time there's a new release of the regional ecosystem mapping. So, we - we look at the area that's - the amount that's been cleared and compare that to the - the extent of that particular RE on a bioregion and the subregions that it occurs in, and also we look at the local government area as well.

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I'm sorry, Mr-----?-- We also compare that to the area of that - those REs within the local government area and the protected area estate.

Now, paragraph 3 on page 4, the executive summary, you refer to, "We advise map of the remnant and extent. No REs present on the lot was completed." That's what we were talking about before; is that right?-- That's right.

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And then you talk about not of concerns REs cleared and impacted by the unlawful clearing, and then you classify the particular impact on the unlawful clearing by reference to the botanical names, et cetera; that's correct?-- That's correct. The regional ecosystems are defined by botanical names rather than common names.

And on page 6 you talk about the loss of habitat and other effects. Can you just enlarge upon that for us, please, by reference to your report? You talk about the unlawful clearing, for example, occurring in the Mulga Lands by a region which had-----?-- Yes.

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-----23 per cent of its original native vegetation extent cleared. Can you just explain that for us?-- Well, just trying to put it - the - the clearing into a context, so by identifying particular areas that have had a high clearing

extent with not much remnant vegetation remaining, and that's why that report goes into looking at the - the subregions as well, so I talk about the Nebine Plains and the Warrego Plains and how they've been ranked in Queensland as the - the most cleared, but these two aren't substantially cleared. One's got only 9.7 per cent cleared and the other one's 32.7 per cent cleared.

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So, the cumulative impact you referred to-- Cumulative impact is the - the on-site impacts that may be associated with removing the understorey vegetation and - and the shrub layer, and the cumulative impact is how that adds with other properties that have cleared in the - in the local area.

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And then you refer to in that final paragraph the problems occurring by the unlawful clearing?-- Yes.

Landscape fragmentation?-- Landscape fragmentation, general habitat loss.

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Just enlarge upon that for us? What do you mean by-----?-- Landscape fragmentation, so if you imagine a sheet of dough being the landscape and cookie-cutting out bits and - overtime and eventually what's left is the - the vegetation that is remaining, this can either be broken or - oh, connected by narrow remnants. So, a - a largely intact area the dough would be relatively intact, a largely fragmented landscape there won't be much of the dough left if you can go along with that analogy. And so when you're removing the - the native vegetation you're - you're - you're fragmenting the landscape, you're removing any habitat that that - that vegetation may have provided for flora and fauna. It promotes, you know, weed invasion, soil loss and may promote soil loss if it's - depending on the type of clearing that has occurred. There's changes to the nutrient cycle and hydrological cycling, carbon cycling for example.

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And habitat loss?-- Yes, so as I mentioned, because you're moving vegetation and in most cases replacing it with a - partially you're changing habitat values of that - that site, so species that depend on - on native vegetation, because it's been altered or - or removed, that habitat's removed as well.

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And weed invasion?-- Weed invasion, it varies from site to site. You may get a site that's been broad scale cleared and - and stick raked and ploughed and - and sowed with Buffel Grass, so you're introducing an exotic species into a system where that species wouldn't normally be present.

And did you observe that here, for example?-- To a limited extent; yes, I did.

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And you mentioned soil loss?-- Soil loss again related to the type of clearing that may have - may have occurred. You may get some - some soil loss from root masses being knocked over and - and the soil being disturbed. Removing any of the - the vegetation may lead to, if the soil surface being exposed and being impacted by rainfall events and - and sheet flow of - of

water across the surface.

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And you mentioned also the loss of nutrient cycling?-- That may be interrupted. It's - it's-----

What is that, loss of nutrient cycling?-- If you have a - a situation where you've got your native vegetation remaining, all those plants are - are taking nutrients out of the soil. They drop leaves, they syne leaves. The - the nutrients are released from the - the - those leaves, go back into the soil, so the cycle is through that. So, removing part of the - the vegetation community that may affect that nutrient cycling as well.

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And, of course, greenhouse gases through loss of vegetation, and you say a range of other effects. Generally what other things are you talking about there?-- The - well, you could get some follow on effects by increased stocking on those - those areas, so it may lead to more soil disturbance. You may get a carbon being released as well through the burning of vegetation, so trees being a carbon sink, it stores carbon and when you burn it it releases carbon into the atmosphere.

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Now, I think we probably dealt with a lot of those things that are contained within the body of your report. We talked about page 11. You go on again and mention in your report about the 50/70 rule, and you refer to - on page 11 of the remnant/non-remnant status and the maps depicted in appendix C and D which represent the remnant extent of the REs found on the lots of the respective sites. I suppose that - that's the results of your finding and how you reclassify them if you like?-- Yes, that's correct.

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And by comparing the desktop analysis with your on-ground site inspections?-- Yes.

Right. Now, On page 13 you go into a fair bit of detail about the impacts of vegetation clearing on regional ecosystems and flora values, and you refer to some findings by Mackenzie. You've just spoken about soil erosion, and you also compaction in your report. Just enlarge upon that for us?-- Compaction, if it's mechanically cleared your - you're A horizon or your - your topsoil may be compacted by the frequent movement of machinery over the - the soil surface. Reploughing will remove some of that compaction. You may also get compaction related to stock, so stock travelling along a consistent line to a watering point, for example, may compact the - the soil in that particular area.

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Okay. Now, you referred to Mackenzie and you've spoken already about some other things, the oxidisation of organic matter, what does that mean?-- Well, Mackenzie lists a range of impacts. Oxidisation probably doesn't really apply on - on this instance. It - it's probably more related to acid sulfate soils being expressed in coastal areas.

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All right. Well, we won't go into that then, but hydrological cycle?-- Hydrological cycle, so the hydrological cycle is

talking about the - the movement of water through the system, so water passing into the soil being - taken up by plants, released through transpiration through their leaves, promoting - well, in some cases you may get clouds forming over remnant vegetation. In the Wheat Belt of WA they've shown some -----

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Yes?-- -----cloud formation over remnant vegetation, and then by removing some of the parts of the - the components you may have some changes to the hydrological regime on - on the site.

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All right. Now, other than the oxidisation of organic matter, the other matters there that were referred to by Mackenzie, are they the sort of things that you would see as being capable of having occurred in respect of the subject property?-- Yes, to - to an extent.

And I think you mention that on page 14, "All of the above issues relate directly to the unlawful clearing carried out on the lots in question."?-- Yeah.

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Now, on page 15 under RE 6.5.3 which you say applies predominantly to the cleared lands in question, you say the remnant area unlawfully cleared, that that was your estimation, but the area equates to approximately .56 of the remaining extent of the - this RE in existence and then you talk about the nearby plains subregion, et cetera. Could you just explain that for us, please?-- Okay. I compared the - the area - the total area that was cleared to the total area of that RE at that time and as a - as a proportion - so as a percentage - so as you see-----

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So that's what that - those figures mean?-- Yes.

Right. Thank you. Now, page 17 you talk about flora values and the last full paragraph there the numerous scientific papers and so on?-- Yep.

And you talk about parkland clearing. Can you explain that for us, please?-- Parkland clearing which was evident on - on our photo, it - it leaves large trees standing and removes a large proportion of the understorey to promote pasture and grass growth.

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And by removing the understorey, what effect does that have?-- Well, you're changing - you're simplifying the - the - the natural structure of the system by removing those elements. Particularly on our photo, large trees were - were left but the - the - the lower trees, the - the shrub layers were - were removed. So basically, you're left with something that looks like a park; large trees with grasses. And so you - you're altering the - the natural functioning and the natural structure of that system, so any species - native species that depend on those lower - lower layers can be affected by this type of clearing.

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And the environmental impacts that you spoke about earlier, does that apply when there's been understorey clearing like there has been here?-- To a degree, yes.

Well, what do you mean by "to a degree"?-- To a degree, it - it could've been worse. It could've been broad-tail cleared where everything was removed and - and the woody material left on the ground, tractor, no stick-raking or - or blade ploughing afterwards. So the - the impacts were something with clearing in - in that method would've been greater than it would be in this parkland clearing.

Right. Now, in terms - have you heard the phrase "thinning"?-- Yes.

Thinning of property. Can you describe what that process is?-- It - basically, always the same sort of idea; removing a proportion of the - the - the woody layer - layers to promote pasture growth.

Now, does that have a definition, if you like, under the Vegetation Management Act?-- I believe there is a definition for thinning in the VMA.

And in terms of thinning and understorey clearing - complete understorey clearing - is that what has occurred here?-- Yes, it - it has. Thinning - the - the department does promote specific ways to do - to do thinning. I'm - and I can't really say whether they would've approved this - this type of method as a - as a method of thinning.

Now, in your view, what's your final conclusion, if you like, in relation to your scientific examination of the subject properties and the history of the land and its previous RE mapping?-- As a conclusion, I guess the - the RE mapping wasn't correct and I - I corrected it. The - the areas where I did put those line intercept transects in the impacted areas can still be classed as remnant vegetation under the Vegetation Management Act, but there still would've been some degree of impacts on the natural functioning of those systems because of the - the changes - the simplification of the - the - the system - the ecosystem and removal of the understorey and the functions that it - it provided.

Thank you. No further questions, thank you.

BENCH: Yes, Mr Sheridan.

CROSS-EXAMINATION:

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MR SHERIDAN: Thank you, your Honour. Now, Mr Franks, you concluded an inspection on October 11th and 12th, 2011?-- That's correct.

And you were instructed by the complainant, Cameron Sargent, to carry out that inspection?-- That's correct.

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Now, the purpose of your inspection was to ground the true regional ecosystem mapping?-- Yes.

And you determined that the mapping was in error?-- Yes, that's correct.

And you made certain amendments to that mapping?-- Yes.

It hasn't altered the conservation status in that the vegetation even though the regional ecosystem has changed from, if I remember correctly, mulga - a mulga-dominated regional ecosystem to a poplar box regional ecosystem?-- That's right.

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Now, you just referred to - and I just want to clarify this before we go any further. You referred to clearing and various types of clearing. This wasn't what we see probably more common where a landholder gets a chain between two bulldozers and - do you want to call that broad scale or total? Which would you rather be comfortable with?-- Broad scale.

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Broad scale. Okay. Broad scale clearing is where we get the typical clearing, which is a large chain between two bulldozers where the entire landscapes flattened?-- Yes.

And it's then raked and burnt, typically?-- Typically. Some-----

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Or just burnt?-- -----landholders just knock it over and - and don't clean it up.

Knock it over. And then there's improved pasture species like buffel grass, for instance, planted in there for improved grass production for beef production?-- Depending on where you are, yeah.

Beef or sheep?-- Yep.

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Yes, okay. And this isn't what's happened here, is it?-- No.

No?-- It wasn't-----

There's been-----?-- -----broad scale cleared.

I notice there in your report you say - that's in - I'm looking at page 18 of the report on the regional ecosystem map

assessment, your Honour. That's the one that is marked Exhibit AJF02 but I'm not sure what exhibit your Honour's got for that. I think it's at number - partition number 16 in that bundle. Just on page 18 there - is your Honour with me? Inclusions, page 18, the last sentence there, "No nominated woody species were recorded on the transects I measured during my site visit and I did not observe any extensive or structure planting of either native or non-native vegetation."?-- No.

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That's correct?-- That's correct.

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Now, when Mr Sargent gave you his instructions to go out there and do what you did, he provided you with the photos that he took on his previous inspections?-- They were supplied with the initial map assessment I received last year, yep.

Oaky. And you noticed there that there was some planting of - I think it might've been sorghum or another species, did you know? Was-----?-- Sorghum.

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Sorghum. Was there any of that there evident when you conducted your-----?-- There was.

There was. Now, did you do in your transects an analysis on the cleared area of the grasses that had - because you went out there in 2011. This is some years after the clearing that occurred. Did you do an analysis and a pasture count of the grasses that had dominated that area now?-- No, I didn't. Time was - was pretty limited to two days and we - and it was quite a large area that we tried to cover. So we were more interested in looking to see if the predominant canopy was affected because that's what defines the regional ecosystem.

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The dominant canopy in this one is poplar box, isn't it?-- Poplar box. That's right.

And that hadn't been affected?-- It was present. It had been affected in some spots but it still fell within - where I had the transects, it still fell within the definition of remnant vegetation, yes.

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Right. Okay. You revised the regional ecosystem map and you did that according to the procedures set out in Neldner?-- Yes.

Now, Neldner is the bible or the manual, if you like, that must be followed by anyone who wants to amend the regional ecosystem map, isn't it?-- It's - it discusses a - well, it's a methodology, so it's discussing the process or the methods behind the map production. If you are familiar with the document it - it details a number of different hierarchical-----

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Steps?-- -----plots-----

Yes?-- -----so, for example, a - a primary plot is one which you would set up and monitor over a long period of time and it's quite comprehensive, and that goes from primary,

secondary, tertiary to a quaternary level. So you wouldn't be following - you wouldn't do all those types of sites during a site inspection. It's only - some of those are only used for particularly setting up new regional ecosystems, for example. So, defining a new RE, you would use a primary site over a secondary site, for example. And it does - I wouldn't say it was completely the manual, but it does describe a preferred method of going about mapping.

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But you say in your report that you followed the procedures set out in Neldner to-----?-- Yes.

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-----do your report. Because what you've done, when you change your regional ecosystem map, you're in effect changing the law, aren't you?-- Well, the regional ecosystem mappings are the basis of the Vegetation Management Act, as you know, so they are a legal document. So, yes.

So it's not something that you should undertake if you - in a haphazard manner, is it?-- Definitely not.

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Because it has grave consequences?-- Yes, I agree with that.

Now, what you've done - and this is where I just want to flesh this out a bit - it's somewhat at odds with Mr Anderson's report. What you've done - and then Mr Sargent's report. What you've done now is undertaken an assessment and as a result you've changed the regional ecosystem mapping on the subject area, but that change has happened well after the clearing's occurred, years after?-- Yeah.

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So, when you go through your report and then analyse the effect of the clearing on the landscape, you've based that on the mapping as you've altered it, based on your October 2011 assessment?-- But using stats that were generated with the previous regional ecosystem, yes.

Yes. But you've been very specific to tag it to the new regional ecosystems that you've put over the property?-- Yes.

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All right. Okay. Now, are you aware then that there is a tension between the Department of Environment and Resource Management and DEEDI about the effect of the clearing on this land?-- I was sent a letter that you had drafted to the department about this issues, yes.

And you saw that. Now, and that tension is based on the fact that DEEDI, having had a look at the condition now, having looked at the - let me get this right. If we have a look at cleared and uncleared, DEEDI had - did an assessment of the uncleared area which is the understoreys dominated by turkey bush and other, what they term native shrubs, but their view is that this land is so degraded where it hasn't been treated that the woody shrubs infest the property and they want to use the results of this clearing as a demonstration site for management of woody shrubs?-- Well, the officers who are working underneath a different legislation to what we're working under.

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Yes, I understand that. Just bear with me. None of this affects the fact that clearing occurred and was done without a permit?-- Mmm.

I want to make that clear?-- Okay.

But what I'm getting to is the effect. Now, can you see the tension that's occurring between one Government department, operating under its legislation, prosecuting Mr Hindman for what he's done because it's a breach of that legislation-----?-- Mmm.

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-----and another Government department, being DEEDI, having a look at the effect of what's gone on, and their view of the world is that it's actually improved the land because prior to the clearing this piece of land is so degraded that it's in fact dominated by what is known as turkey bush?-- Yep.

And you're aware of that before you went out there?-- I wasn't privy to that letter before I went onto the property, no. I received that letter afterwards.

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But that-----?-- But DEEDI do come from a different background, so they're looking at economic development of the property while we're looking at an environmental perspective if you like. So from their point of view the - the clearing has enhanced the property for a pastoral production. From our point of view, the environmental point of view, we're saying that it's had an impact by simplifying the ecosystems on the property and changing the-----

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No, don't - sorry to interrupt. I don't think that the - I don't think they're coming from that at all. Their view is that the landscape dominated by - woody weeds in this case or woody shrubs - dominated by woody shrubs such as turkey bush is not in a - well, it's in a steady state but it's in a bad state, and whereas following the control of the woody weeds the native grasses have in fact re-established themselves and are now persisting?-- Well, I would argue against that actually because, as you said-----

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He did say that a landscape dominated by woody weeds and no grass, no native grasses, is a more desirable state than the one that occurs now?-- Well, to use your - your own words that you called it, in a steady state with those shrubs; so without constant management of that - that area, you would expect that those shrubs would come back in to - to dominate. So, to - to keep a - a - the pasture or the native perennial grasses dominant, you - you would have to have active management of that site to keep the shrubs down. The shrubs occur there-----

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You'd have to burn it?-- Burn it.

You can't burn it either because burn is classed as clearing under Vegetation Management Act, isn't it?-- I don't know about that, I'm sorry. But-----

Just a minute - sorry. I'm sorry to interrupt?-- Sorry, Mr Sheridan.

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Just - I thought it was; I just want to clarify it. "Cleared for vegetation means remove, cut down, ringbark, push over, poison or destroy any way, including by burning, flooding or draining." So, if one was to attempt now to maintain the native grasses that now exist on that cleared land you're saying it's not possible. So, eventually it must return back to the-----?-- Without active management-----

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Without active management?-- Yeah.

And that's the sort of active management that occurred in pre-European times, isn't it, when Aboriginals would burn-----?-- Well-----

-----regularly?-- -----it's questionable how often they did burn out in these areas. I - I - I couldn't hazard a guess. So you'd have to take into account traditional burning regimes and - and lightning strikes as well.

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How does this woody weed shrub dominance - say, for instance, turkey bush, that occurs from historical overgrazing?-- It - it usually reflects some change in land management practices, whether it's exclusion of fire or overgrazing, yes.

Right. Would you say that this - you say in your report in various places that this area of Queensland is recognised as one of the most degraded landscapes in the State?-- The soft mulga area, yeah, that's right.

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And one of the reasons for this degradation is the historical overgrazing?-- Partly, and partly because it also had one of the highest rates of tree clearing about 10 years ago.

But this hasn't been cleared previously though, this area?-- No. No.

But it's still degraded?-- Yeah, in the general region.

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So would just map it that the degradation - if we look at degradation of the dominance and the flipping over, if you like, from open grassland to this woody dominant sub-storey, has occurred from lack of fire and overgrazing, because it hasn't been cleared?-- Yeah. From a land management perspective as well. But what I was saying was that the steady state, the state that would - it would normally default to, would be the one with a shrubby understorey and - and some perennial grasses.

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But there are no perennial grasses in the uncleared area?-- There were perennial native grasses in the uncleared area.

Right. Then what perennial native grasses did you - you say you didn't observe any in the cleared area because you didn't have the time?-- I didn't measure them, but I did observe

them. There was things like Mulga Mitchell, Thyridolepis. There was some Panicums. Some of the Panics were there; these are-----

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Mulga Mitchell, that's a perennial, isn't it?-- It's a perennial native grass.

So on the cleared area we have perennial native grasses re-establishing?-- Yes, I believe.

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And yours would have had Eragrostis?-- Probably the worst time of year to try and get an assessment of annual grasses.

Mmm, because they'd be January, February, wouldn't they, at the end of summer, at the end of the wet?-- Probably a little bit later, maybe April or May.

Right. Spring; after the spring and they'd start to die out when the soil dried?-- Yes, that's right.

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Right. So, if this is degraded, we say, and the steady state is degradation, there's no way then, absent being able to undertake what Mr Hindman did or to introduce fire, there's no way then to rehabilitate or do anything about that land at all?-- To rehabilitate the land-----

If you can't do as Mr Hindman did-----?-- If you-----

I mean, we know he can't put a chain between two bulldozers and flatten it because that's the worst possible thing?-- Yep.

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We know then we can't try and manipulate the understorey to bring back perennial grasses into the system because that's why we're here before the Court today. We know we can't burn it because that is again defined as clearing. So, this steady degraded state from overgrazing, that is what we're stuck with?-- Yeah. It - yeah, if you're not managing the property or-----

Well, even if you do stock it, there's no stock there because there's no grass there. There's very few perennial grasses in this steady state, woody shrub situation?-- Yeah.

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It's not going to be able to be grazed, so if there's no - there are no stock there and there's no fire and there's no nothing, even if we lock it up for timely memorial, that state is not going to change?-- Yeah, that's right. The - the woody - the woody weeds, the native woody species, the unpalatable species, they would probably - it would vary from site to site of course with soil.

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So, it's a variable landscape as you've-----?-- It's very variable out there.

Yes?-- For example, the Gidgee areas out there have naturally opened on the - on the - in the ground cover. So, what's happened in - in this situation is that the unpalatable native species has been removed to - to promote perennial grasses.

Perennial grasses are still there, but in a - in the undisturbed area, but at a much lower-----

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Yes?-- -----cover.

Yes. And nothing - no native animals eat these woody shrubs, do they?-- Well-----

Kangaroos don't eat it?-- I don't think so, just foliage grazing. I'm not too sure.

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Insects and that sort of thing?-- Insects may.

But we're not talking about any macropods?-- Yeah, but macropods - no, they tend to be grass eaters predominantly.

So, they'd be happier out on the cleared stuff, wouldn't they?-- Quite possibly. They tend to like that edge interface as well.

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So they can go there and sit in the shade during the day which is-----?-- Yeah.

-----what we'd all like to do. Okay. So now, it's unfortunate when you went and did your inspection at the behest of Mr Sargent because - did he show you his photos, but he didn't show you the statement that he collected from Mr Hindman?-- No, that's right.

Right. So, you were aware, or not, that Mr Hindman has since the very first inspection that was conducted told Mr Sargent, or that's in his statement, you never saw his statement, so are you aware that he is - and I'll put it to you, that Mr Sargent has told the department exactly what the purpose was since day one, the purpose of the clearing?-- The purpose of the clearing?

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To rehabilitate this area that was completely dominated by woody weeds and turkey bush?-- No. Yeah, Mr Sargent didn't - didn't say that.

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He didn't tell you that?-- No.

Right. So, it would have been helpful perhaps if you'd gone out there with some sort - some - I don't want to say act in mind because that's - I don't mean to infer that, but some sort of indication that this is what had happened and this is what the defendant was asserting, so that you as a botanist could get some sort of an idea. Well - 'cause the way I see it - well, the way I see it - the way the defendant says, "It's the perfect before and after. We have before and it's surrounding. The before is it's natural state, never been cleared, but it's been degraded over 100 years perhaps by over grading and absence of fire," and then in the middle of it we have an area that's been subject to this development that now appears to be dominated by native perennials. And couldn't we infer that those native perennials were part of a natural system because they haven't be sown, have they? They haven't

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been introduced there?-- No.

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But it appears though once the woody weeds are removed then there must be a seed bank of these native grasses in the soil from time gone past, then that gets a chance to grow?-- Yeah, that's correct.

So, we can infer from that they were part of this system prior to the degradation that's occurred historically?-- Definitely.

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And they just need a chance to get going and away they go?-- Yeah.

So, that's - it would have been good, but you haven't gone into that level in your report, to that site specific level to, sort of, assess the native grasses that - and their extent on the cleared area, and then compare that with the same area that was uncleared, have you?-- No.

No?-- I didn't unfortunately.

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Because it just seems in that report you have - and I understand that you're trying to get a context of the impact of the clearing on a state-wide and bioregional level, but it just seems that that is very easy, and you say you didn't have much time, but I'm not surprised because you weren't commissioned to do this until October, wasn't it?-- Mmm.

And this - the matter was set down for today and tomorrow initially, so you had about a fortnight to do your inspection and then provide the report and then disclose it to us?-- Even less than that.

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Less?-- Yes.

How long did you have?-- Um, after the field inspection I - I think there was three working days between getting back in the office and having the mapping updated and the report was written.

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That's just not enough, is it?-- I would have liked to have had a bit more time.

Mmm?-- Especially, you know, a bit earlier notice to do the field inspection, definitely.

Because this has been - the department's been aware of this for a very long time?-- Mmm.

And obviously aware that this - the work of your nature was required as part of either the trial or the sentence?-- Yep, yep.

50

It is very unfortunate because now we're in a position where based on your report, if we read your report on face value, we find that your assessment is that there's been a significant degree of environmental damage done by the clearing, but then when we go through it and find what you didn't have time to

do, you know, the other side of the coin doesn't seem to have been given all that much-----?-- I see what you're saying.

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Yes?-- But predominantly my instructions were to - to look at the attributions of the regional ecosystem mapping, so looking at the predominant canopy species. So, that's what I focussed on in the field, was looking to see if it was; (a) remnant vegetation or non-remnant vegetation-----

Yes?-- -----and (b) looking to see if the regional ecosystem-----

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But that was - at the time you were instructed that was never in dispute though, was it? Were you told by Mr Sargent it was in dispute whether it was remnant or not remnant?-- Not by Mr Sargent, no.

Right?-- We were - if I - I can just say, we were just asked to assess if - if the extent of remnant vegetation on the property, so-----

20

I understand that. You're coming to Court as an expert?-- Yep.

A well qualified expert, and your instructed as such and you can only present to the Court your report, but based on your instructions?-- Yeah, exactly. If the instruction was, "Can you go out and assess the perennial grass cover", that's what I would have done.

30

All right. Okay. So, you say at page 5 of your report, and I just want to go into this-----?-- Which report is that, Mr Sheridan?

Sorry, it is the AJF03, the environmental impact statement on vegetation and flora?-- Thank you.

Just at the last paragraph, "Habitat or threatened flora species"?-- Which page, sorry?

40

Sorry, page 5?-- Five.

The last paragraph?-- Yep.

Is your Honour with us? The report AJF03, page 5, the last paragraph.

BENCH: I think I am.

MR SHERIDAN: There's a heading in bold, "Habitat or threatened flora species"?

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BENCH: Yes.

MR SHERIDAN: You say there are no species listed or known predicted to occur within 20 kilometres of the lot in question?-- That's correct.

So, we don't - I just want to make it clear, when we consult these databases and there is no evidence of the existence of a threatened flora, or perhaps even a fauna species, it's not correct to infer that the absence of evidence somehow constitutes evidence, is it?-- No, that's right.

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Yes. So, there are none. Okay. And then we descend then on page 6 to the Mulga Lands fire region?-- Yes.

Some of the highest clearing rates occurring in the State. Now, these clearing rates, I just want to draw the distinction again between the sort of clearing that's taken place here - I mean, I - you've referred to it as parkland clearing. There's very little of this goes on, is there?-- It's - yeah. No.

10

Mainly its chains and bulldozers, isn't it?-- It's broad scale mainly.

So, when we call it clearing, when these statistics, this is the broad scale, two bulldozers and a great big chain-----?-- Completely - removal.

20

-----and everything gets flattened?-- Complete removal, yep.

Right. Do you understand the role of these poplar boxes or large trees in the landscape-----?-- Yes.

-----as far as - they're sort of a - the engine, if you like, for the nutrient cycling from deep down in the soil profile to bring it up to the surface, aren't they?-- Yep.

30

Yes. And if you knock down big trees with a chain, well, that then stops the whole system, doesn't it?-- Yep, exactly.

And have you seen areas close by Alpha where people under a permit have actually gone and flattened things with a chain and they have the same turkey bush problem?-- Yes, I did notice that in some areas.

Which is counterintuitive but it's a reality, isn't it?-- Yes, that's right. So again, it's showing that even though they - they broad scale cleared, there's been no management over it.

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Well, that's it. There's some misguided notion-----?-- Or poor management.

-----that if you knock down the big trees the grass will grow but-----?-- Yeah.

-----that's not really the problem, is it?-- No.

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No. It's the degradation of years of overgrazing which has led to an imbalance in the system?-- Yep.

And there's native grass and seeds which are setting there in the soil for - they persist for decades. Once there's - the competition is removed they can get it going and, as you say, if you keep managing it, then you might be able to have that

as a steady state, the open grassland system as it one
was?-- Steady state - it will be a - it will be a state-----

1

Be a state, yes?-- -----but yeah.

Right. Now, there was no - in your inspection, you saw no
weeds? And by that, I mean exotic weeds, nothing else
that-----?-- Exotic weeds?

Yes. Sorry. Weed - what's the definition of "weed"? A plant
that's going where it's not wanted or in the wrong place, I
suppose?-- Well, from my perspective, I could say-----

10

There wasn't-----?-- -----buffel grass is a weed.

Well-----?-- But noxious weeds, anything that was-----

Sorry, noxious - no noxious weeds?-- No.

No. Okay. So you - after your inspection, as constrained as
it was, and your reporting period, as constrained as that was,
you determined that the clearing had an adverse impact on the
regional ecosystems?-- Yes.

20

Do you say then that these regional ecosystems are better off
the way they are, dominated by a woody shrub
understorey?-- That's how they naturally occur. So if you
read the full regional ecosystem description, particularly for
653, it describes the - the canopy, how it should be, that
there's usually a - a low tree layer, there's usually a shrub
layer, there's usually a low shrub layer, there's usually
perennial grasses, and they - they - they range in its natural
state from either - either of those sub-communities from as
vast or dense-----

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But this landscape's degraded though? Haven't we determined
that minutes ago?-- It would - I - from an ecological point of
view, I would say that it was - the - the - the areas that are
dominated were turkey bush in the understorey. That's the
steady state 'cause that's what the systems drives itself to,
if you like, without intervention. So that's the natural
state, so I wouldn't say that that was degraded per se. From
a pastoral perspective, that-----

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No, I'm not talking about a pastoral perspective. I'm talking
about ecological perspective. So - I'm just having trouble
coming to terms with this. We're agreed, I thought, that this
area of land - well, it's in your report - that the mulga
bioregion is the most degraded area of land in the State and
this area - Alpha is an example of the degraded
landscape?-- Right.

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So surely we can't then say that the landscape in this
apparently degraded condition is the best way for it to be and
that anything that is done - either what the defendant has
done, or being, for instance, which is unlawful as well - can
leave - can have an adverse impact. I'm not asking you to
comment on the legality because we know that what we've done

is an offence, but from a purely ecological point of view we can't-----?-- From-----

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-----now possibly say that leaving it in its degraded state - put lawfulness aside. Just look at the ecological aspect - can have an adverse impact?-- So from a degraded - so are you saying a predominance of turkey bush?

Yes?-- Yeah. Well, the thing is that - that turkey bush was part of - of the system but it - it was-----

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Not in its current thickness though, is it?

BENCH: Mr - could you just not interrupt him when he's making his answer.

MR SHERIDAN: I'm sorry, your Honour.

BENCH: I'm listening to him and I'm having trouble following if you don't - just let him finish.

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WITNESS: So you get - turkey bush was removed but also removed were things like any of the - the - the taller low trees that were present in the understorey such as maybe - mulga was present on my - my reference sites and there was very little in the impact areas. Vine tree was also recorded. Ironwood. So you know, those species that typically occur in the understorey of that regional ecosystem, they've been removed as well as - as turkey bush. So in - in my opinion, I - I still believe that the - the clearing has had an impact because it's - it's - it's simplified the complete structure of that of that regional ecosystem and - and - and it's - particularly fauna species that depend on the - on the understorey for - for nesting. You know, you can get a suite of passerine or perching birds that depend on - on an understorey - presence of understoreys. So if you're removing the understorey you're effectively changing the way that system's functioning.

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BENCH: Yes. Yes.

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MR SHERIDAN: I-----

BENCH: Mr Sheridan, you were just - he was answering your question and, of course, you're asking very good questions, which is why I want to listen to what his answer is, and he was in the middle of giving the answer and you interrupted him. You've done it several times and-----

MR SHERIDAN: I'm sorry, your Honour.

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BENCH: -----that's why-----

MR SHERIDAN: I'll let-----

BENCH: I did want to hear what he first had to say.

MR SHERIDAN: Sorry, I did get a bit conversational-----

BENCH: And I didn't mean to-----

MR SHERIDAN: -----your Honour.

BENCH: Sorry?

MR SHERIDAN: I get a bit conversational on this subject.
It's - it intrigues me.

BENCH: You're obviously well across your material.

MR SHERIDAN: Well, thank you, your Honour. I hope it's
somewhat obvious-----

BENCH: You know what you're talking about.

MR SHERIDAN: Yes.

BENCH: Yes, okay.

MR SHERIDAN: Thank you, your Honour. Okay. Now - so even
though you weren't - you say your instruction was to go there
to really check the validity of the regional ecosystem
mapping; is that right?-- Yes, that's right.

And you weren't there then - you didn't go there instructed to
assess the impact on the clearing; is that right? You weren't
instructed to do that?-- No.

No?-- It was purely to verify the regional ecosystem mapping.

Purely to verify the regional ecosystem map. But then you
then went on to make significant findings as to the impact of
the clearing. Where did - did you receive extra
instructions?-- I was asked by Nick Lichte in our litigation
unit who was looking after this case to prepare an impact
statement specifically on - on the impacts for the - the
vegetation impacts and the flora impacts.

Right?-- So a botanical point of view there.

And is that when you were told the tension at - the apparent
tension between the Department of - DEEDI I call them, or
Department of Primary Industry and your department about the
impact of the clearing?

MR KELLY: Well, your Honour, I've given my learned friend a
fair go on all of this but what DEEDI have to say about what
my learned friend says DEEDI says, it's really outside the
realms of this witness's expertise and knowledge, quite
frankly. My learned friend is really getting into the realms
of making statements from the Bar table and making
submissions, if you like. I've given him a fair leeway. I -
and I haven't objected to a number of the matters and which
your Honour's actually brought to his attention, but what
DEEDI says and what my - what this witness says about his role
under the legislation are two totally different things.

MR SHERIDAN: I'm trying to establish what the instructions were for this expert, your Honour.

BENCH: All right. Well-----

MR SHERIDAN: If he says he was instructed-----

BENCH: Perhaps if you can ask-----

MR SHERIDAN: -----to do this, that's fine.

BENCH: -----the question then, if you understand what I'm saying. If you ask the question - the question might be: were you given information that DEEDI had provided a certain letter? That's a question. So-----

MR SHERIDAN: Were you given information-----

BENCH: I'm happy for you to ask a question if the course - the immediate answer might not be relevant but it might lead to something which is relevant.

MR SHERIDAN: When Mr Lichte instructed you, did he tell you that he had been provided a certain letter?-- He - he provided that to me, yes.

And that letter set out what?

MR KELLY: Could we just clarify which letter he's talking about? Who was the letter from, whether it was from DEEDI or was it indeed from my learned friend.

BENCH: So Mr Sheridan, the objection to your question is that you've left the witness sort of open, I suppose, or there's some uncertainty as to what he - what answer he might give to your question about what the letter said.

MR SHERIDAN: Yes. Which letter were you provided with?-- I was provided by - a letter from you to Kirsty Duffy, I believe, describing that there had been a site visit by DEEDI employees, yes.

Mmm-hmm?-- And it's - it provided your interpretation of their conclusions and raised a few issues, yes.

Did you then contact those people?-- I beg your pardon, I didn't hear-----

Did you then contact the people in DEEDI?-- No, I didn't.

Right, okay. You saw no evidence of soil erosion on the cleared area?-- In the cleared areas, no.

Bear with me, your Honour, I think we're very nearly at the end. Nothing further. Thank you, your Honour.

MR KELLY: Yes, thank you, your Honour.

BENCH: If I could just interpose here for - it might be easier for me to ask this at this stage. Remnant vegetation, that doesn't mean your assessment of what the vegetation was before European settlement?-- No.

So, remnant vegetation dates back to a certain point in time, does it?-- It - it does. It's mainly before the reports found mechanical clearing that happened post four years, but we tried to - to avoid using the term pre-European. But, basically, we look at - our definition of remnant vegetation is what's under the Vegetation Management Act. So, an area of advanced re-growth could attain remnant status again once it fulfils those three criteria under the 50/70 species rule.

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Okay. Because I'm looking at the definition in the Vegetation Management Act and it seems to be circular, but I don't want to ask you questions about matters of law?-- Okay.

I really want to know your - what you say as an expert witness in this area?-- Well, we - your Honour, we can - we can - for some particular sites we can access aerial photos from the 1950s, for example. If we can see that that patch of vegetation is evident in that whole chronological series of aerial photos we can conclude that it's probably hasn't been disturbed and is remnant vegetation, and so that can fall under the description of the predominant canopy in an undisturbed state.

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All right. So, you've been asked questions by Mr Sheridan about turkey bush and how - my understanding of the questioning was that the affect of the - the presence of the turkey bush represented a degradation of the land, and I maybe misunderstanding it, but would you agree with that proposition?-- I agree to it to an extent from a - from a partial point of view. It would represent a - a degradation of a - what could be a productive property. From an environmental point of view, turkey bush is a natural part of the system.

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Yes, which really brings me to the point that the turkey bush was there all along?-- Yeah.

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That's what you're saying?-- That's right, it's a native species. It's been there all along. Poor land management - overgrazing. Like, if there was palatable perennial grasses in the ground cover overgrazing removes that. So, turkey bush can come in and - and out compete and form canopies so that perennial grasses won't - won't - won't come back.

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Well, perhaps the question then arises that it wasn't - it may have been there all along, but it's - the proportion of that particular species is altered by the fact that there's been grazing of animals on the land?-- It may reflect the land management practices. It may reflect some previous disturbance that may have occurred as well; fire, for example, but it's a natural part of the system and if you read the original ecosystem description, particularly for 6.5.3, it is

mentioned that - that a low shrub layer can be present from a sparse to a dense cover.

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What's its biological name?-- Eremophila gilesii.

Thank you. Now, anything arising from that, Mr Sheridan?

MR SHERIDAN: No, your Honour.

BENCH: Yes. Yes, Mr Kelly.

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MR KELLY: Thank you, your Honour.

RE-EXAMINATION:

MR KELLY: Just on that last point, that's the botanical name of turkey bush. Is it included in the RE for the area as one of the species?-- Yes, it's - it naturally occurs in the Mulga lands.

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And the questions my learned friend asked you about degradation and grazing and so on, does that alter your opinion in relation to what impact the clearing had on the subject land?-- No, it doesn't.

The environmental impact would say it'd simply comply with that landscape and by removing the understorey simplified the landscape and has had a detrimental impact on the landscape?-- On the functioning of the system, yes.

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Beg your pardon?-- Yes, it has and in the functioning of the system overall, yes.

Now, in relation to a letter that you say you saw from my learned friend's firm, were you ever aware that the department had received a letter from DEEDI, were you shown any photos - any letter from DEEDI?-- No.

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The only letter you've received is - what you're saying, is a letter from my learned friend's firm; is that-----?-- That's correct.

All right. All right. No further questions. Thank you, your Honour.

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BENCH: Yes.

MR SHERIDAN: Nothing arising from re-examination. Thank you, your Honour.

BENCH: Thank you. Yes, thank you, Mr Franks. You're excused?-- Thank you, your Honour.

WITNESS EXCUSED

BENCH: Yes, Mr Kelly.

MR KELLY: Is there anything arising out of that which your Honour may wish to hear further - in other words, I was just going to continue on with my submissions in relation-----

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BENCH: I think you should do that.

MR KELLY: Yes, thank you.

BENCH: Yes.

MR KELLY: Your Honour, on page 5 I deal with Mr Franks report and on page 6 I go to the biodiversity environmental impact report prepared by Claire Davies and Dr Geoff Lundie-Jenkins, which effectively is summarised in the executive summary, which I've extracted there. That desktop assessment confirmed that the vegetation clearing the fence involved regional ecosystems that have been identified, et cetera, as having state and regional significant biodiversity values for - which contain habitat for protected native wildlife.

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The clearing will have a significant impact on these environmental values and that the research by DERM scientists in this particular area indicates the impacts of vegetation clearing are sustained and longer term as flora and fauna communities in both cleared and regrowth vegetation. And it goes on to basically say, as I understand it, that if one goes and clears this property and there is regrowth or a regrowth is allowed to occur, then it can't get back to the way it was before the clearing took place.

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So, there's been a detrimental effect on the property even if it - if there was an opportunity for it to regrow, and of course as your Honour's seen from the photographs, the clearing has been raked. There's been raking and plowing and so on, and then redone again, so there's no chance of it regrowing, if you like.

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In relation to the valuation review I can inform the Court my instructing solicitor has made a phone call to the author of that report and whilst there's a disclaimer at the end of it the disclaimer was really in relation to broadcasting that report to all and sundry outside the - these proceedings. So, if my learned friend wants some evidence on that I'm happy to do so, but at the end of the day there's not much that really turns on it. The valuation is to the effect that the property's been enhanced by the sum of about \$30,000 and there's been some cattle increase from 540 to 570 head of cattle.

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The defendant, of course, was requested to participate in a

record of interview, but didn't respond to a request by Mr Sargent by both fax and telephone. That's his right of course. There were four permits for vegetation clearing found on the property's title search. So, in my submission the defendant was well aware that if he wanted to do any clearing he would need a permit.

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I then go onto page 6 and 7 and talk about penalty and refer to the general factors to be taken into account on sentence in matters of this kind to protect the biodiversity and prevent land degradation by the clearing of the vegetation that has occurred here, and that there is specific legislation dealing with this type of clearing. Of course the clearing of vegetation, without obtaining a development permit, deprives the department of the opportunity to consider whether the vegetation clearing is appropriate or achieves the purposes of the legislation, and the department ask that the Court consider the purposes of that legislation that protects this valuable resource as well as considering the amount and type of vegetation that was cleared here and the environmental impacts referred to by Mr Franks.

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A significant amount of clearing, your Honour, on two separate occasions separated by almost a two-year gap occurred and of course Mr Franks, whilst making some concessions in respect to my learned friend, does not at the end of his report walk away from what he believes as being an environmental impact caused on this - the subject properties by the clearing.

Your Honour, in relation to mitigating and aggravating factors - and I should indicate, your Honour, on page 7, I indicated a penalty and I also indicated the prosecution does not seek investigation costs; that's a typographical error there. The prosecution does seek investigation costs. That's at point 47 of my submission. The prosecution does seek investigation costs.

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In relation to mitigation - there was some degree of cooperation - there's no prior convictions that we're aware of. He's - there is a plea of guilty, albeit late. In terms of aggravating factors, as I say, it's a late plea. There's been considerable expense in prosecuting the matter. There's been some marginal increase in the value of the property which quite clearly, in my submission, your Honour, the purpose of the clearing was to establish pasture for cattle for commercial purpose and it seems at least on my learned friend's instructions and there is no correspondence between DERM and DEEDI that I can put before the Court and indeed my instructions reveal there's been no communications between DEEDI and DERM and it seems that, at least on my learned friend's instructions, there has been that economic or commercial purpose that DEEDI has recognised by the provision of the pasture for cattle. It's a commercial purpose. It's avoiding the need to purchase feed.

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Here, there was rake and burning, disc-ploughing and sowing of sorghum and grass seed. It has reduced the ability of the area to naturally regenerate. It had intention to utilise for

pasture. There's been the introduction of foreign species and your Honour would be aware recently of the case of Scriven which I'll refer to shortly, but in that case Scriven, I understand, cleared - pushed it over and let it sit there which allowed some regeneration. That hasn't occurred here and we're really not talking about wooded trees, your Honour. This is the understorey that's been cleared here and I agree with my learned friend there is some difference in some of the case where there has been a total re-clearing of the property, but the issue here is the clearing of the understorey for, quite clearly, pasture purposes. It demonstrates an intention to utilise it for pasture and it seems that's effectively what my learned friend's been putting to Mr Franks, and of course as Mr Franks says, there has been a detrimental environmental impact due to the nature of the vegetation cleared.

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In my submission, your Honour, there's been a lack of remorse. There's been tempt, if you like, to justify actions by reference to improving the area by clearing the vegetation which is not seen as being in harmony with grazing; the turkey bush and other matters. The defendant doesn't seem to be concerned that his actions are in steep contrast with the laws governing the manner in which sound environmental practices and intended environmental laws are to be conducted and land managed, particularly when, on my instructions, he'd previously applied for fodder and drought permits, so for the two quite large clearings, no permits were applied for here.

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There's to be, to some extent, a contested hearing, and again, that doesn't demonstrate remorse in terms of the defendant trying to mitigate his actions in circumstances where there's been previous permits applied for, and a reckless disregard, if you like, your Honour, by not applying for permits or seeking an appropriate permits prior to conducting any clearing, and as a grazier - and it's been recognised in a number of cases; as a grazier - it's his responsibility to know exactly what is allowed to be done with leasehold land. In one of the cases, his Honour Magistrate Morgan indicated that these laws have been around for about 10 years and there was wide publication as to why or how people should go about applying for permits. There's been a total disregard for the law in that regard.

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Your Honour is aware of the penalty guide that's contained in the Vegetation Management Act and in Dore, her Honour Judge Bradley affirmed the use of that and of course commented on the need for significant penalties for offences like this as well as the important of general and personal deterrence. The penalty guide provides a formula and the formula is provided there on page 10; that's obviously quite significantly more than what the maximum is allowed for under counts 1 and 2, but I if could take your Honour to the comparatives which are attached to the folder I've provided to your Honour. In my submission, the relevant cases are Pets, Cooper, Klinderson and Scriven.

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Pets, of course, there, there was 584, and these are all cases not of concern of vegetation. Pets was 584 hectares. It was

not of concern. There was tordoning of the property there. There was a restoration order placed on the property. The Court there, in the judgment, referred to general and personal deterrence. The Court also discussed Dore and the - and his Honour Magistrate Morgan's comments about there being open public debate for at least 10 years, and there should be no excuse for not knowing about these laws, the sheer brazenness, if you like. Her Honour Judge Bradley was also referred to in Pets case - in the Dore case and said that it was appropriate to apply penalty guides in considering the penalty.

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Cooper - and I should say in Pets, there was 25 per cent discount awarded. In Cooper, there was a 60 per cent discount applied, however, Cooper-----

BENCH: Sorry, just - you say these percentages; did the Magistrate say, "I'm discounting penalty by 25 per cent?"

MR KELLY: That's effectively - I don't know if they actually used those words, but in terms of the actual penalty that was imposed, I'll - perhaps I'll just-----

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BENCH: Twenty-five per cent from what?

MR KELLY: From the maximum of the 125,000. I'll just refer to the judgment, your Honour.

BENCH: Well, my understanding is that hasn't happened; in other words that the Magistrates in these cases, I stand to be corrected, hasn't - haven't said, "I'm discounting this by 25 per cent."

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MR KELLY: No, no, no.

BENCH: So this is a discount from the maximum penalty?

MR KELLY: Yes. If one analyses the judgment-----

BENCH: Yes.

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MR KELLY: -----then one can glean from it that there was a 25 per cent discount. I don't - and I don't believe the Magistrate has actually said that there would apply a discount of 25 per cent.

BENCH: I'm just worried, I suppose, about the concept. When approaching sentencing of going to the maximum penalty and then trying to discount that down from the maximum.

MR KELLY: There was a discount of 25 per cent mentioned in Pets, your Honour.

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BENCH: So the Magistrate said, "I'm discounting it from 25 per cent from the"-----

MR KELLY: Yes, on page 6.

BENCH: -----"maximum."

MR KELLY: Page 6, "Taking into account all mitigation and aggravating circumstances and the penalty provisions of the relevant Acts, I consider that a discount of approximately 25 per cent of the maximum penalty, \$124,875 should be allowed." And then went on, "So as I indicated earlier, my view is that the starting point for any fine for this type of offence should be in the vicinity of the maximum penalty." So that was Pets' case.

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BENCH: Does that comply with usual sentencing procedures?

MR KELLY: It's taking into account, I suppose, the penalty guide which her Honour Judge Bradley said should be taken into account.

BENCH: Yes. So if we use the penalty guide and get - and the penalty guide takes you above the maximum-----

MR KELLY: The penalty guide-----

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BENCH: -----the submission is that you then start from the maximum.

MR KELLY: That's one way of doing it. The other way by reference to the penalty guide is to look at how serious the Legislature sees these matters and what the Legislature sees as a guide for committing an offence of this nature or of this magnitude. And in this case the penalty guide indicates that the Legislature, at least when they've set the penalty guide, sees this as being far in excess of what the - of the maximum statutory penalty that can be imposed and should be, and it seems as a result of that there's been some difference of opinion as to whether you should use the start as a starting point as the maximum and then work back. And it seems in some of the cases, particularly in Pets, that by using that formula they've then discounted a figure of 25 per cent.

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And it's - I know in my criminal prosecution days and, as I'm sure in your Honour's days as well, would be well aware that particularly Prosecutors tend to discount 33 per cent or a third for a plea of guilty and then try and get whatever is the tariff for a particular offence and work that way as well. It's probably working along those lines in my submission.

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But-----

BENCH: All right. Well, I won't hold you up any further. Continue.

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MR KELLY: It's clear that the legislature has seen these matters as significant. It's also clear from the cases that I believe, in my submission, are appropriate to be considered, although I've included all the other cases of similar types of offences. But, in my submission, the Courts have indicated that significant penalties should be applied in cases like this.

In Cooper - and I'll just see if there was some reference to discounting it by 60 per cent. I - Cooper, I should say from the outset, the offending there was solely done for feeding stock. The entire understorey was left intact. The large trees were basically knocked down and to allow for stock to feed on them, so there was regrowth occurring and the damage to the land was minimal. So that explains, in my submission, why there appears to be, if one looks at the maximum, a discount of about 60 per cent.

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In Prentice, there was a lower amount there. A discount of about 35 per cent seems to have been applied, if one looks at the maximum, and, your Honour, in the case of Scriven - and I understand in Scriven that was also pushed over and allowed to regenerate - there was no commercial intent in Scriven; it was allowed to regrow - regrowth was allowed to occur and he didn't plant other crops. Those matters aren't an existent here.

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I then go on, page 11, and talk somewhat about Pets case, and then on page 12, looking at the - my submission in relation to there being separate offences, the - if one applies a reduction of 15 to 20 per cent, then in my submission, taking a figure around the order of 15 to 20 per cent, it takes into account the totality principle. There have been two offences committed here and whilst the maximum for count 1 is \$124,000 - \$124,875, if one was to impose separate penalties, in my submission that would certainly offend the totality principle.

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However, the fact that there have been two significant clearing events is something which needs to be taken into account and that by a penalty range for both counts in this particular matter should be in the order of not less than \$150,000, taking into account the seriousness of the offence indicated by the maximum penalties in respect of each, the deterrent effect that the law recognises should be considered on like-minded persons who flout this particular law, there being two offences committed, the - they were wilfully committed and two years apart, and the aggravated features that I've referred to, that a figure in the order of \$150,000 imposed, but apportioned in the discretion of the Court and - but recognising, in the interests of parity, other cases and what the individual penalties would have been imposed but for the totality principle.

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So, in my submission, your Honour recognising what the maximum penalties are in respect of counts 1 and 2 would apportion that \$150,000 in accordance with the maximums that are allowed under the law.

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The department seeks investigation costs of \$10,000 and we can provide some figures on that if that's required, but they're - in my submission, they're reasonable and fair, and legal costs of \$3,770. There are no submissions being made in respect of recording a conviction, but as I say in my submissions, your Honour, when one compares the authorities in fairness to the defendant there appears to be reason why a conviction should be recorded.

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They're my submissions. Does your Honour wish me to - I won't go through each of the cases. I'm sure your Honour's-----

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BENCH: No.

MR KELLY: -----quite familiar with them, and I'll-----

BENCH: Just a couple of points. Just deal with those last points. You're claiming legal costs of \$3,770. I might just ask Mr Sheridan whether there's any argument about that figure.

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MR SHERIDAN: Not about the legal costs, your Honour-----

BENCH: All right.

MR SHERIDAN: -----or there will be about the investigation.

BENCH: Well, okay, that's - the next question is you don't concede that \$10,000 is an appropriate figure?

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MR SHERIDAN: No, your Honour, certain-----

BENCH: No, there - you might have two arguments. You might have an argument that maybe I shouldn't make an order at all, but if I were to make an order it wouldn't be 10,000.

MR SHERIDAN: That's about how I was going to go, your Honour.

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BENCH: Okay. Well, now, Mr Murphy [sic], then isn't the obligation upon you to establish the figure?

MR KELLY: Yes, I can hand up an appendix of costs, your Honour.

BENCH: Okay.

MR KELLY: And I've - did you receive this? And also in relation to legal costs I'll hand - take the opportunity-----

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BENCH: Yes.

MR KELLY: -----of doing that at the same time.

BENCH: Clearly, if there's no argument about the legal costs then I won't be worried about that.

MR KELLY: What we're actually asking for is less than what's been-----

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BENCH: Oh, I see.

MR KELLY: -----outlaid. So, in my submission, they're fair and reasonable costs in the circumstances-----

BENCH: Okay.

MR KELLY: -----given the late plea.

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BENCH: All right. Now, just - I'll come to that in a minute. Mr Murphy, if instead of-----

MR KELLY: Your Honour might be thinking of my old friend Patrick Murphy.

BENCH: Murphy, Kelly, you're all Irish. Yes. Mr Kelly-----

10

MR KELLY: I think his Honour-----

BENCH: -----if he hadn't spent two years not doing anything and indeed he had continued the same illegal activity continuously, there'd only be one charge?

MR KELLY: That's so.

BENCH: What would be the penalty for that charge?

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MR KELLY: That's so. Well, it would have fallen - it would have taken it out of the - it would have fallen within the maximum period, so it would have shown I guess two distinct periods. But that hasn't happened, of course.

BENCH: I know it hasn't happened, but I am dealing-----

MR KELLY: So I mean hypothetically-----

BENCH: -----with the totality principle. So I'm looking at a man who has cleared a total of about 1,300 hectares-----

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MR KELLY: Yes.

BENCH: -----but because he didn't do it continuously you're saying that the penalty that I impose should be considerably more than it would be if he did do it continuously?

MR KELLY: That's-----

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BENCH: If you broke it up into two - by virtue of breaking it up into two pieces of time-----

MR KELLY: That's a hypothetical reasoning of course because - but the reality is that when he has committed the secondary clearing-----

BENCH: Yes.

MR KELLY: -----he actually has gone back and re-cleared some earlier clearing in respect of count 1. That hasn't been charged, of course.

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BENCH: No.

MR KELLY: But there's been two quite clear events separated not by a short period of time, by a period of almost two years. So, to talk about saying it's all the one offence, one can perhaps apply logic along those lines, but in my submission the logic is ill-founded, with the greatest of respect, because of the way in which the clearing has occurred on two separate occasions separated by a period of almost two years. So, that, in my submission, takes it out of the realms of considering the types of logic that your Honour's raising.

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BENCH: Well, I obviously am sentencing him for two offences.

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MR KELLY: Yes.

BENCH: In considering the penalty for those two offences, as you've rightly pointed out, I must take into account the totality principle, and the totality principle involves here essentially clearing of land over two separate periods. I just have to check the particulars for a moment. In count 2 he's actually clearing the same lot, which is lot 4 on plan P533, whereas in count 2 he's clearing lot 4 and lot 2.

20

MR KELLY: Yes, and-----

BENCH: Yes.

MR KELLY: -----clearing - I should add that the clearing in relation to lot 4 on the second occasion is a new clearing if you like. It's not a re-clearing of earlier - doesn't-----

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BENCH: It's not a - okay.

MR KELLY: It doesn't cross over.

BENCH: It's a new clearing, but the very nature of these offences is that they go on over a period of time.

MR KELLY: Yes.

BENCH: So, it's gone over one period of time, and over another period of time. Indeed, the total period of time involved in the clearing here is less than it was in Scriven. The total area covered here is less than it was in Scriven, yet you're inviting me to impose a penalty significantly higher than it was in Scriven, and that's basically because there are two separate charges.

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MR KELLY: That's simply it, your Honour, yes.

BENCH: All right. Okay. All right. Thank you.

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MR KELLY: Thank you, your Honour.

MR SHERIDAN: Yes, your Honour, I was going to call Mr Hindman to give evidence.

BENCH: Yes, all right.

MR SHERIDAN: Would that be - would it be an opportune time for lunch, or when does your Honour consider, because I expect my learned friend to cross-examine him as well.

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MR KELLY: I don't think I'll be very long, your Honour, quite frankly if that's of any assistance.

MR SHERIDAN: It might take an hour, your Honour.

BENCH: Yes, all right.

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MR SHERIDAN: If this is a convenient time, then I'm not sure what your Honour's practice is as far as times.

BENCH: I'm flexible, but-----

MR SHERIDAN: Would you rather have an early and-----

BENCH: Perhaps if I can ask you a question?

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MR SHERIDAN: Mmm-hmm.

BENCH: Do you anticipate leaving Charleville at some stage in the foreseeable future?

MR SHERIDAN: No, your Honour, we have not. We-----

MR KELLY: We're in the same situation, your Honour.

BENCH: You're going to be here overnight?

30

MR SHERIDAN: Yes.

MR KELLY: Overnight, and I believe we're booked on the 2 p.m. flight tomorrow.

MR SHERIDAN: Yes.

BENCH: Okay. All right. Well, clearly there are a number of issues here, they do require serious consideration. If you want an adjournment now, if you feel that's appropriate, then I will adjourn that.

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MR SHERIDAN: For lunch, your Honour?

BENCH: For lunch.

MR SHERIDAN: Yes. What time not before?

BENCH: Sorry?

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MR SHERIDAN: Not before?

BENCH: Well, if we resume at, say - we'll say 1.30-----

MR SHERIDAN: 1.30, thank you.

BENCH: -----if you're happy with that.

THE COURT ADJOURNED

THE COURT RESUMED

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BENCH: Yes, thank you, good afternoon. Yes, Mr Sheridan?

MR SHERIDAN: Thank you, your Honour, defence calls Mr Trenton Hindman.

BENCH: Yes.

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TRENTON ALEXANDER HINDMAN, SWORN AND EXAMINED:

BENCH: Yes, Mr Sheridan.

MR SHERIDAN: Thank you, your Honour. Can you state your name for the tape, please, Mr Hindman?-- Trenton Alexander Hindman.

And you're the owner of the subject land, known as Alpha Station?-- Correct.

30

Do you have any formal academic qualifications?-- I have a bachelor of applied science and rural technology from Gatton College.

When did you-----?-- Queensland University.

When did you graduate for that?-- 1987.

40

What is your current employment?-- I am a - a broadacre agronomist.

What's that mean?-- Since leaving university, I obtained a major in plant protection.

Yes?-- Which deals with, basically, three areas, plants, diseases and insects.

Yes?-- And as a - as - I've been involved in that industry ever since and as an agronomist I would advise farmers or - and also myself, I do some farming.

50

Yes?-- So, it's making decisions on a daily basis about the growth of plants.

But now you - when did you buy this subject land?-- In mid 2006 we purchased the property.

And why did you buy it?-- At the time I - I - I convinced my wife to buy it, which is quite interesting, because she - she went along with me on it and the - I said, "There's an opportunity to buy some land at Wyandra." What appealed to me was the - the country was in an 18 inch rainfall in the isohide - if you - if you studied the maps, you'd see that this - this area does get good rainfall at times. It had a - it had a history of a lot of draught this - in - through the - through the 90s and the 2000, so it was - it was - it was in a bad patch, as it had over experienced dry times throughout - throughout white man settling. So, I saw that there was an opportunity that it was in a draught, that land was relatively cheap and I recognised the - that - for what I purchased the property for, it - it met all the goals for the family.

10

Right, and what was the condition of the land when you bought it?-- I'd say it's - my - my personal definition of it was severely degraded.

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How was that - how was it degraded?-- It was quite evident that the - all the land holders since settlement, each one of them had added to the destruction of the property. It - it - over the history of it, which I found out from talking to locals and other people, people like the cattle agent in Roma, he owned it for a - for a certain amount of time, Goondi Healy his name is, and he used it as a dumping ground for livestock, they just - they put 10,000, 15,0000 sheep on it, you know, excessive numbers of stock at that time for the property and just even the last two landholders weren't really conversant with good land management, they were - the - the last owner, all they wanted - they wanted to own a sheep station, they were from Tasmania, and they came up here with some - some dream to own a property and they - they soon departed and sold it to me.

30

And did you seek advice from anyone else before you purchased the property?-- I did. In my investigations I - I talked to the - to the - to the neighbours of the - of the land. I - and then I - I - I talked to DEEDI, I called into Charleville here on - on my visit with the real estate agent, we looked at a number of properties and I went to DEEDI and I asked them-----

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Just hang on a minute, DEEDI, is that Department of Environment - what is it, Department of-----?-- It's basically-----

The old DPI; is it?-- The DPI.

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Yes?-- Which is a - I went to the DPI and asked them the - the fact that the property had extensive areas of green turkey bush on it.

Hang on, slow down, they told you that?-- No, well, everyone knew it had green turkey bush on it.

Right?-- That - that area is predominantly covered in turkey

bush.

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Right, so that was anecdotal evidence; was it?-- That's right, the-----

Was that confirmed by the DPI people?-- The DPI people, as an agronomist, I asked them, "I - I would like from you, all the information on green turkey bush that you've got available", that I could read on it, and they supplied that to me.

10

And did they provide you with this booklet, if I could hand that up for identification, your Honour? No, you stay there?-- Right.

BENCH: Well, you want - you're asking the witness a question, did they-----

MR SHERIDAN: I'm going to ask him to identify this and then I intend to tender it, your Honour.

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BENCH: Yes. Well, maybe he should identify the book before it comes to me.

MR SHERIDAN: Yes, your Honour. That's-----?-- That's correct, I - I - I-----

What is that - sorry, just a minute, slow down. What's the name of that booklet?-- It's called, "The best practice manage - native shrub management manual for Southwest Queensland."

30

Who's it published by?-- The Queensland Government.

What about - down the bottom there, on the bottom of the booklet?-- Queensland Government National Resources and Mines.

Okay, and is that the booklet you were provided with by the DPI?-- That's correct.

I tender that, your Honour. Your Honour, I have another copy of that, your Honour can keep that one-----

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BENCH: Okay.

MR SHERIDAN: -----and it might be easier if I question the witness through it.

BENCH: All right, well, I'll-----

MR SHERIDAN: I have another one here, but that's all.

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BENCH: I might admit this, for what it's worth, as an exhibit. Now, I think we're up to Exhibit 5. So, that's admitted and marked Exhibit 5.

ADMITTED AND MARKED "EXHIBIT 5"

BENCH: Yes.

MR SHERIDAN: Now, if we could you just have a look at this book, I just want you to point out through this booklet to the Court - perhaps if we begin at page 1, the introduction. That then sets out the background?-- Correct.

What does it say about thickening of native shrubs - it's at page 1 I'm at, your Honour, "introduction"?-- It - it, basically, is a - is - is - is a - it's an issue that's been with this country for over a 100 years now, they had a Royal Commission into it in - into shrub thickening and woody weeds in 1901 and the - it's showing that the loss to the - to the Mulga zone here is some 12 million dollars a year to-----

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Sorry, when was this booklet published? It should be in there somewhere; 2002. Have you got a copy of that? If we just go down near the causes of thickening of native vegetation; what are - they're set out in that booklet on page 1, the bottom of page 1?-- It - it runs through the - the Closer Settlement Policy. At the time of European settlement, it had a major impact on the grasses. The introduction of rabbits, the use of bore drains in distributing water right across the environment.

20

What does a bore - for the Court, what's a bore drain?-- Early on, the settlers put down bores into the Great Artesian Basin which enabled water through the use of bore drains to distribute that water right across the property. On Alpha, it's - it's got an extensive system of bore drains. When we bought the property, those - they were still in existence, those bore drains. The - the bore - the bore was producing a million litres a day that was getting onto the ground and all previous landholders had done nothing about that.

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So they run continually, a bore drain, do they?-- It has since the start of the century onto that landscape.

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And any animals can then access the water. It's like a man-made creek sort of thing, is it?-- Basically, the bore drains went right round 40,000 acres, so all - all rabbits, kangaroos, pigs had unlimited ad lib water.

And is that still-----?-- Twenty foot.

Yes. Keep going, sorry. Is that still-----?-- It-----

-----the case? Are the bore drains still like that on Alpha?-- No, we - we decided through the GABSI initiative, which-----

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What's the GABSI?-- The GABSI's the Great Artesian Basin Sustainability Initiative.

Yes?-- It's a jointly funded program by the Government with landholders to cap bores. The bore on Alpha was in a degraded

state; it was leaking several metres down and the hydrologist advised that a new bore had to be put down. The old bore was cemented, encased and capped off and a new bore was put down and we then put in pipe and troughs - pipes, poly pipe and water tanks right across the property.

1

Mmm-hmm. And does that enable you to control the water and therefore the grazing pressure?-- That's correct. One of the important parts of GABSI is, some landholders will just leave their troughs on all the time, but you can then turn all the waters off so this would then represent what initially historically the landscape would have looked at. It would have had - at dry times, there'd be no surface water available and that would have major impacts on the native animals. In that, they would not stay in those areas; they would have to move back to the Warrego - Warrego River.

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So would that reduce overall grazing pressure on a given - an area of land?-- That would because it - it basically is a spelling activity which is induced by lack of water.

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What did it cost you to do a new bore and put the - to fix up the bore drains?-- Approximately our investment, it was about \$300,000.

Did the Government put in any money for that?-- They did.

How much?-- It's a tricky formula, but it's basically about a 75/25 contribution. The Government put - put in 75 percent-----

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Yes?-- -----and the landholder puts in 25 per cent and on that point, all the previous landholders decided - it's up to the landholder to do that. The Government cannot force you to do it.

Mmm-hmm. So now you say you went - the land - you knew that the land was infested with turkey bush; is that right?-- That's right.

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Now, you went to the Department of Primary Industries and they gave you that booklet which is Exhibit 5. What, from that then, did you glean from - what sort of management measures for the turkey bush or the woody weed infestation did you glean from that?-- Well, as - as my training - an agronomist and a landholder, with these - with these solutions, you have to look in an integrated approach to it.

Mmm?-- And it took a lot of time to work out turkey bush because I'm originally from the Brigalow area-----

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Mmm?-- -----from Warra and - turning up in the Mulga area is a completely different production system and landscape-----

Mmm?-- -----so it did take me a long time to work out a strategy on managing the turkey bush.

Now, if we just go to page 3 of that booklet?-- Yep.

There's a very important passage in there, "Before treating particularly native species, please contact the Department of Natural Resources about permits." Now, it's not an issue that you cleared the land, nor that you did so without the relevant permit. Why did you clear the land in the manner you did without a permit?-- The - the goal all along - after extensive reading; I've read Bill Burrows, he did a thesis on turkey bush. He'd be one of the early research elders from Charleville. People like Noble, who's written extensively about thickening of woody weeds in - in Queensland, New South Wales. Having read through all the scientific journals on it, I - the goal was to get the native pastures back into the country. The perennial grasses - in my reading of it, went back to the start, and it used to be described as an open grassy woodland. All the early explorers used to travel through on horseback and they all describe it as an open grassy woodland. And it's quite-----

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Which - what do you mean by "open grassy woodland," in simple terms?-- Well, earlier today, we were talking about poplar box. Now, these poplar box trees are quite - you can hardly put your hands around them.

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Yes?-- They're large trees that have been in the landscape for a lot of years. That, obviously, was dominant in this particular area. It was the large box trees - and that's - that's the basis of that landscape.

As opposed to Mulga country; I heard this morning about Mulga country. Is that a different land-type and a different ecosystem-type?-- Correct.

30

Right. Yes, keep going?-- The state it would have been in, would have been large boxed or medium-sized to large box trees with a - with a perennial grass cover on the ground.

And what was the state of the land when you - that confronted you?-- My observations on our - you - you could - you could see-----

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BENCH: Mr Sheridan?

MR SHERIDAN: Yes?

BENCH: You asked him a question which he hasn't answered.

MR SHERIDAN: I'm getting to it, your Honour.

BENCH: Well-----

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MR SHERIDAN: I'll put it again; why did you clear it without the permit?-- Okay. I cleared - the - the goal for me was to restore the native pastures and I believed that I didn't need a permit for that.

But you didn't clear it with a bulldozer and chain in the typical fashion?-- That's right. If I - if I'd gone down-----

So no, hang on?-- Sorry.

His Honour's interested in this. You cleared, and we know now that what you did is defined as clearing; did you have some other idea of what clearing entailed?-- I - I - I went - I call it "native pasture restoration." That's - that's my goal in - in the exercise down there, was to get the perennial grasses back there, to rebalance - to rebalance the turkey bush to the grass. That's what I did, and I did not see it as clearing as such. It was pasture renovation and this - I - people always say, "You're got into trouble with the Court for tree clearing." Well, I - I didn't clear any trees. If I had two bulldozers and a chain, I would have been tree clearing, but I've left all the box trees there, as the landscape would have been in the past.

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Have you seen this dozer and chain clearing carried out nearby?-- The - the next-door neighbours have been given money to do it by the Government.

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And what's the result of that?-- Well, once you jump over the fence and walk out through it, you look at it and you think, "Where are they - where are they going to go from here?" Because they've got as much turkey bush as I have on my country, but they've got no big trees left and the big trees are the important part of the landscape.

Why are they important to the landscape?-- As an agronomist, you go - you get the soil and you work out what the soil is. It's - it's an acid loam soil. It - it runs about four and a-half to five and a-half, the PH of the soil, so therefore it's an acidic sandy loam. When I did the soil test on it, it - you register the fact that it's got aluminium. It's got an elemental formula of 3 plus so it's a cation. The - when you've got aluminium as a percentage of the total cation exchange capacity of the soil, so all the cad-iron's aluminium, magnesium; you add them all up together, the aluminium makes up 25 per cent of the cation exchange capacity. That's what this soil has got. It's got a very high aluminium percentage of cation exchange capacity. When you've got an acid soil and high aluminium percentage, not many plants can grow in it.

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So, how do you remedy that?-- There's a couple of solutions to that. You could lime it. You could get - you could get lime from the coast and get a spreader and you could alter the pH of the soil. You could increase it from a low pH which is one to seven and seven being neutral. We're running at four to five to six in there. You actually - you could ameliorate the soil by putting lime on it, and you would lift the pH to neutral and that would enable a lot of other plant species to grow. Because we've got an acid soil with a high aluminium per cent, that's not economic to haul lime out there and spread lime on it. So, you're left with a - with a soil that really is best suited to what's growing there, which is native perennial grasses or trees.

50

How do you know that native perennial grasses were growing there prior to your purchase of the land?-- The results speak for themselves there, that - we talked earlier about seed banks. The amount of perennial grasses that have come back into that country is testament to the seed bank that is in the soil.

1

You didn't plant any perennial grass seeds there, did you?-- No, no. You - you cannot buy perennial grass seeds commercially.

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So, are you saying that any perennial grasses that are now there in that landscape are a result of the seeds that have been laying there in the soil for a very long time?-- Well, that's right. Those grasses have had a time. It - it - it just shows their resilience in the landscape. To be flogged out, to be over grazed, to be nearly made extent and through one treatment like this the country is regenerated to what it would have looked like in the past.

20

Now, this book that sets out a variety of control measures, one of which is burning, could you have burned that landscape and brought it back to its native state?-- Burning is a - is a - is a - in this booklet is a - is a prescribed method of integrated control for - for shrubs, but a problem exists on our farm that the fuel load is insufficient to start a fire.

Won't the turkey bush burn by itself?-- It - it - there's - there's insufficient fuel load in the turkey bush and also grasses to - to cause a fire.

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So then, why did you decide to undertake this turkey bush control, or this woody weed control using mechanical methods?-- Studying the plant and - and what's written in the book, actual mechanical disturbance of it is the only way to upset the plant and to rebalance - to give the - by - by chopping - by ploughing the turkey bush out it turns the soil around, and there is perennial grass seeds that are down deep in the profile, or ants may take them down, or they've fallen down a crack. They get locked away there. So, a lot of grass seeds need light and moisture to germinate, those two things. If - if they get a - even moonlight can germinate a seed and - they - they get that message, and then if there's sufficient moisture they'll germinate and away they go. But with the turkey bush, because it's a - it's - Bill Burrows did his thesis on it. Basically it's a - it's a very aggressive plant. It's - it's only that...high. When it hits the dry time-----

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Sorry, about how high? 50 centimetres?-- About 60 - 50 - rabbit height.

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Right?-- About there...When it hits the dry time it'll shutdown, it'll drop it's leaves. So, it's a beautiful plant because it - in this environment it'll - it'll - if there's rain it'll take up straightaway because it's an extensive root system, and then when it goes dry it'll drop its leaves, so it just gives into dormant mode. So, it - it works within the -

the rainfall patterns quite successfully. Because it's a little woody plant like that it - you can't - nothing will - the cattle won't eat it, they can't - they can't it, sheep won't it, kangaroos won't eat it. So, the only thing that Bill Burrows identified in '71 when he did his thesis was grasshoppers. He was - that's the only thing he concluded in the end, was that hopefully some grasshoppers will eat it.

1

Right?-- A wingless grasshopper.

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Okay. So then, describe what your mechanical process of this woody weed control? What did it entail? What did you do first?-- Firstly, identified the area which I thought would - on the property which would be most suited to this treatment, and that was the open poplar box area, and it was - there was only two things really there; it was the big box trees and then there was a sea of turkey bush on - on - on this - and we basically went in there with a - a light wheel tractor with a stick rake and raked out the old mulga stumps where they would have chopped them down in the past for feed. So, it was-----

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It was dead timber, was it?-- Dead.

Right?-- You could see the mulga - you can see the mulga - old dead mulga stumps there where the old timers would have chopped it with an axe.

Mmm?-- They were rotten, termites had eaten them, and the raker's just basically gone through and they were all smashed up. And the turkey bush, it got a percentage of it out, and that went into little piles and we burnt that, and then we came back with a - a disc plough just - about enough just to turn the - turn the soil over, to - to chop that turkey bush out, to set it back - because there's a massive seed bank over the ground. Like, there's - the - the amount of turkey - because the - the turkey bush drops all its seed every year, so there's all this seed there, and then we just disploughed it and fortunately we had two years of wet weather.

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And what was the result of that wet weather?-- The - the native grasses came up. We didn't overstock it. We kept the pressure on it. The kangaroo harvester chap in Wyandra kept an eye on it to keep excessive numbers of it, and all the native grass - pasture.

40

Now, in some of those photos that are before the Court it appears there's been some sort of cropping done there. Was there - did you plant some sort of crop in there early on?-- What I did was - as an agronomist in - in - in - it's standard practice in - in - say, sowing native - in sowing improved pastures is you put a cover crop in.

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Mmm-hmm?-- So, we sowed an oat - an oat seed that was getting back to that soil type with high aluminium percentage, a southern oat. So, it can - it - they're a little bit more - because they're acid soils in southern Australia, if you put that oat in with it, it - it went okay, it was nothing fantastic. It got up and it - what then, it died, because

it's only an annual oats. So, it died, but it gives a little bit of cover over the landscape, and in such a harsh temperature, if you've got a little bit shading, and then that little one - the perennial grass, the native perennial grass just pops out of the ground, he's got a bit of shading there. It's a little bit cooler right beside this oats plant, and it's dead by October. So, you sow your oats in - in June, the oats gets - goes out to about November, too much heat, dies, but it leaves you a bit of cover like that, and therefore, when the grass comes out of the ground, the microclimate - and hopefully you get a bit more rain poking away, and - and the grass takes off quite quickly, they grow like an inch a day. Whereas, poor old turkey bush back here, he - he's been there for 50 years. He - he's very slow. It's like the turtle and the hare. So, he - a lot of them just - because ploughing puts them too far down they won't germinate, but the turkey bush is sitting there, so he's slow now, but the grass has taken over all of a sudden. So, all of a sudden you get a whole landscape full of grass, what it used to look like.

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So, was there any intention of harvesting this crop of oats that you put in?-- No, I - I think that - when Cameron Sargent went out there-----

That's the complainant?-- That's correct.

Yes?-- -----I actually put in front of him before we even identified it was turkey bush, I said, "Do you know what this is", and he said, "No, I don't." I said, "Well, if you don't know what" - in my head I said, "If you don't know what turkey bush is, what chance do you have of understanding this production system? What chance do you have understanding the people out here? What chance do you have of understanding the environment?"

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Mmm?-- So, I - I really - I - I lost trust in him there straightaway.

So, you've raked it, burnt dead and other material that you scraped off, failed to dig the turkey bush out, put the cover crop in and then fortunately you got some rain and there was a response of native grasses?-- That's right, and - and when we got that - when we got that - you know, I'm - I'm well under the gun here because I've had a summons sent to my house and that, and I said, "I've got - I've got to measure what - what result I got out of this", so I said, "Well, if I do the measurements, what credence has that got? I've got to get another party involved in this", and obviously I talk to DEEDI all the time about - as agronomist what we do in cropping systems.

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Yes?-- I said, you've got to come and measure this because I think I've got a fantastic result on this compared to the untreated right alongside it, and - and the results from DEEDI were quite significant.

What did they advise after they went and inspected it?-- They basically did transects across - across the property. A

summary of those transects is that we had a 300 per cent increase in - in cover, in forage yield, in biomass production, we had a 300 per cent increase in biomass. We had a 10 per cent increase in cover, and we had twice as many grasses and palatable species than we had in the uncontrolled. That's basically a summary of that.

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And did you ask them to assist - for some assistance in this matter?-- I did. I said this is - you know, we - what we're on to here is probably another example of this - this - an approach to managing turkey bush and it's - it's been highly successful, the fact that we've had a run of good seasons on it, and I said we should - we should use this as - to demonstrate to other graziers, and also to DERM, that this - this is - this is a - a - a quite significant change in the landscape.

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And did you ask them to prepare a case study for Alpha for use in these proceedings?-- I did.

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What was their response?-- I thought that was quite - quite plausible to do that.

And what was their response?-- I was - I was a bit surprised with their response.

What was their response?-- They said, "No, we won't do that."

Can the witness be shown this document, please, your Honour? No, hang on, I've got copies for you, too. Now, that document there is an email from - it appears - could you confirm that - Jane Hamilton at DEEDI. Now, is she a person who inspected the property?-- That's correct.

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All right. Now, that email, the 28th of October, what was her - this - she refers to a phone call. What's her response there in that email? Could you read it out, please, Mr Hindman, from "Dear Trent"?-- "Hi Jane, thanks again for the visit to Alpha Station" - that - that's where you want me to start, there?

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There's a - I hope I've got the right one?-- "Hi"-----

The 28th. Down the bottom. 28th of October - hang on. Which one have we got here? Have you got the-----?-- I've got - I've got June.

You've got 16th of June. Yes, 16th of June, if you like. "Hi Jane"-----?-- "Hi Jane, thanks again for the visit to Alpha Station at Wyandra. Would you mind putting together a case study on the Alpha results? I need it to assist in discussions with DERM in recognising the benefits of this pasture renovation and recovery methods conducted at Alpha. Your results are showing increased cover [indistinct] on a number of grass species when compared to the untreated areas. The situation with DERM is that they are claiming that we have conducted assessable development without a permit. Your visit and data is valuable as it shows the regional ecosystem has

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benefited from the pasture recovery work. I hope you can help as I need this information before the end of June."

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And what was her response and when?-- "Hello Trent, thanks for your email and am pleased that you are happy with the data we prepared for the property visit. I am yet to burn and send a copy of the photos we took. I'll do that next time I'm in my office. Unfortunately, we're not" - "we will be preparing a case study for you to put to DERM. You may have mistaken our intentions and we may have mistaken yours when it comes to the use of this data. We'd like to prepare a case study with information about a practical approach to managing turkey bush in the mulga lands. However, there is no chance that this will happen before the end of June. The case study we have been" - "we are imagining is for other producers, not DERM, with the overall aim of improving grazing land management and productivity. There is nothing stopping you using this data we gathered for your own case study, however it needs to be noted that our intention in gathering the data was not justifying your developments but rather we were invited to learn from your experience. I'm sorry we can not help you further."

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I tender that email, your Honour.

BENCH: Yes, all right. Well, that will be admitted and marked Exhibit-----

MR SHERIDAN: Yes, that one, and you can-----

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BENCH: -----6.

ADMITTED AND MARKED "EXHIBIT 6"

MR SHERIDAN: There is a further exchange between you and that same officer on the 28th of October?-- I left a phone message for Jane to call me on this matter. "Dear Trent, thank you for your phone call yesterday requesting a report on the findings of the property visit we did mid-year. As you stated, this has been requested by your barrister for our Court case with DERM next Tuesday. I've liaised with my managers and have been advised that we need to seek approval from our department's director-general to proceed with this request. Consequently, regardless of the outcome of the department's decision and given the short timeframe, you should proceed on the basis that a report will not be available for next Tuesday. I would"-----

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I tender - yes, is that the end?-- "I will advise you of the department's decision when available."

I tender that document, too, your Honour.

BENCH: Thank you. Admitted and marked Exhibit 7.

ADMITTED AND MARKED "EXHIBIT 7"

MR SHERIDAN: So then you've taken video footage of before and after the development you've done down there?-- That's correct, I did that.

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Your Honour - when your Honour's ready, we have it here set up. It's about two minutes. It shows-----

BENCH: Yes.

MR SHERIDAN: -----before and after in the same area of the subject land.

BENCH: Have you-----

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MR SHERIDAN: We did it this morning, your Honour.

BENCH: -----been dealing with my assistant?

MR SHERIDAN: It's all in hand.

BENCH: Okay. We'll run the tape.

MR SHERIDAN: Might I ask that the witness can stand there beside-----

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BENCH: Yes, I'm happy for that. Just - I just raise an issue as to - having played the film, what's intended to be given to the Court?

MR SHERIDAN: It is an indication - as we've had quite a large number of photographs from the complainant this morning, this is before and after. It's in a similar vein-----

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BENCH: Yes. No, in simple terms. It's not a DVD, obviously, because he's holding a camera.

MR SHERIDAN: No, it's video he took on the subject land before he undertook-----

BENCH: So you're-----

MR SHERIDAN: -----development.

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BENCH: -----going to give me a video.

MR SHERIDAN: Sorry, your Honour?

BENCH: You're going to give me something that I'll be - mark as an exhibit in the proceedings? That's why-----

WITNESS: It's available-----

BENCH: -----I raise it.

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WITNESS: It's available on YouTube.

MR SHERIDAN: It's available - that's not much good. No, your Honour, it's just on the camera. I understand your Honour's question now. No, it's not on-----

BENCH: Yes.

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MR SHERIDAN: -----a DVD that we can tender to the Court and mark as an exhibit.

MR KELLY: Well, I'd object, your Honour. It's not admissible, in my submission.

BENCH: It's all right for me to see it but somebody else might want to see it after I've finished?-- Well, it - both-----

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So-----?-- Both clips are on uTube. I've got the addresses for them.

MR SHERIDAN: Yes, but it's got to be tendered before the Court. You should have them on DVD. Yes, sorry, your Honour, about that. It's - yes, we've been a bit.

BENCH: It seems to me that experts in the area of-----

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MR SHERIDAN: Yes.

BENCH: -----film, et cetera, could probably take it from the camera and put it on a DVD, say.

MR SHERIDAN: Certainly could, your Honour.

BENCH: But that might take a little bit of time.

MR SHERIDAN: Well, it would, and I wouldn't-----

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BENCH: I don't know-----

MR SHERIDAN: -----suggest you'd stand the matter down-----

BENCH: -----whether Charleville's full of such experts.

MR SHERIDAN: I wouldn't suggest we stand the matter down to do that, but that is - that there's a problem and I understand where your Honour's coming from now. If there's a problem with it we could - I mean, we're not going to live or die on it-----

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BENCH: Well, just pause. I might just ask Mr Kelly's view. If it were a CD - or a DVD, should I say - would you still maintain your objection?

MR KELLY: No. No, I wouldn't. No.

BENCH: All right.

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MR KELLY: But for obvious reasons, it needs to be in a form that can be tendered to the Court-----

BENCH: Yes.

MR KELLY: -----and it can't at this stage.

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BENCH: Sure.

MR KELLY: I don't know - I haven't played this other one. I don't know if that helps my learned friend. That was the video that I didn't tender in relation to Sargent's property. Perhaps that-----

BENCH: Yes.

MR KELLY: -----could help my learned friend.

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MR SHERIDAN: It might if it - does it have after?

MR KELLY: It's a fairly special report done on - in May 2010. So that's effectively what my learned - I'm quite happy to tender that. I refer to it in my submissions and it was dated on the 26th of May 2010, so it's afterwards, so that may well be the-----

MR SHERIDAN: It may well, your Honour-----

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BENCH: What I'm-----

MR SHERIDAN: It may well. I mean, the purpose of this is to show that, you know, Mr Hindman's video he took himself before - the turkey bush before the treatment and the same landscape after it. So I mean, it's-----

BENCH: Well, that's the difference between the film on the camera and the film that Mr Kelly has.

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MR SHERIDAN: Yes.

BENCH: Mr Kelly's is after but not before. Yours is both before and after.

MR SHERIDAN: Yes.

BENCH: Look, what I might do; because it's just after 2 o'clock, I might just stand down and you might make some inquiries as to whether you can - it's possible to get that done in a DVD form overnight or between now and tomorrow morning, because if it is, you - it might take you 20 minutes to make those phone calls and if you get results where you can speak to the person in town who would do that, I'm happy to proceed on the basis that the DVD will be procured overnight and admit it into evidence. So-----

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MR KELLY: In view of my learned friend's indications to play this DVD, I should formally tender this DVD of the field inspection report done by Cameron Sargent on the 26th of May 2010 and which I refer to in my submissions, your Honour.

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BENCH: Yes, well - all right. I'm happy for you to do that.

MR KELLY: And we could perhaps in the intervening period play this and it may be of some assistance also to my learned friend.

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BENCH: I'm happy to do that, but do you need to - just a little bit of a timeframe when I'm not sitting here to enable those inquiries to be made?

MR SHERIDAN: Well - yes. Not - being a lay person in that regard, too, your Honour, I'm not sure how simple it is but I understand it's quite simple to simply burn it, but as to whether it can be done by anyone and anyone in Charleville I'm not sure.

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BENCH: Yes. The registry staff are very knowledgeable about the people in Charleville and the resources that are available, so you might - I might just allow those inquiries to be made so that we can have some confidence that this is all-----

MR SHERIDAN: Yes, your Honour.

BENCH: -----a viable alternative.

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MR SHERIDAN: I apologise for that, your Honour. I just hadn't thought of that and we've been - well, Mr Hindman's brought that yesterday when he got into town.

BENCH: Yes.

MR SHERIDAN: So, that's my oversight, but it wasn't-----

BENCH: It might be - it's not in a cassette?

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MR SHERIDAN: It's not in a-----?-- It's on the hard drive of the - the computer.

There's a heap more on there, isn't there?-- I could - that's correct.

All right?-- Those - those two - those two could be burnt quite - quite easily.

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Right.

BENCH: Well, just - I will stand down and just make - if you just make some inquiries.

MR SHERIDAN: Yes, your Honour.

BENCH: And if we know that they can be transferred to a DVD

then we might proceed that way.

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MR SHERIDAN: Yes, your Honour.

BENCH: And I think it's wise that we also play-----

MR SHERIDAN: Yes.

BENCH: -----the DVD that Mr Kelly has referred to.

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MR SHERIDAN: Yes, it's been disclosed and I think it was referred to in Mr Kelly's bundle of - so there will be no objection, your Honour. I mean the idea of it is to get as clear a picture in your Honour's mind as possible, without physically going there, what's gone on. And if that assists, that certainly would and there will be no objection from me.

BENCH: All right. All right, well, I might just stand down to make - for those inquiries to be made.

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THE COURT ADJOURNED

THE COURT RESUMED

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TRENTON ALEXANDER HINDMAN, CONTINUING:

EXAMINATION-IN-CHIEF:

BENCH: Look, I'm sorry for coming in a bit unannounced, I understand that steps are being taken to-----

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MR SHERIDAN: The disc is on-----

BENCH: -----get some technology-----

MR SHERIDAN: The disc is on its way, your Honour.

BENCH: All right. Does that mean the camera is gone, or is the-----

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MR SHERIDAN: No, the camera's here.

BENCH: The camera's still here.

MR SHERIDAN: Those - I'm told those two videos are actually posted on YouTube, so we rang an office here and said, "Go to YouTube, download them on a disc and bring them here."
So-----

BENCH: Okay.

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MR SHERIDAN: -----rather than see-----

BENCH: Yes.

MR SHERIDAN: -----them on the camera, you will be able to have them on a disc which will be able to be tendered.

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BENCH: Yes.

MR SHERIDAN: But, there's another technological glitch with my learned friend's disc.

MR KELLY: Yes, well, this one plays on the computer-----

BENCH: Yes.

MR KELLY: -----but it doesn't see to be compatible with the courtroom DVD system.

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BENCH: Okay, well-----

MR KELLY: But could I tender it anyway, your Honour?

BENCH: Yes, sure. If you're - if everybody's happy, I'll look at it on my computer.

MR KELLY: Yes.

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BENCH: Because - unless there are any questions arising out of it?

MR SHERIDAN: I-----

BENCH: I'm happy to look at it-----

MR SHERIDAN: I don't think either of us has seen it, but-----

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MR KELLY: I've seen it briefly, it's really - it's a collection of the photographs, basically, as he's driving along and holding a camera and he's - and he's pointing out-----

BENCH: I can well imagine-----

MR SHERIDAN: It will - as I understand it-----

BENCH: I can well imagine what it - what it says, so I'll look at it on the - on my computer.

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MR SHERIDAN: Yes, as I understand it, your Honour, it is a movie of the photographs that are before the Court at Exhibits 3 to 3.16, and on that basis I've got no objection to it being tendered.

BENCH: All right, just give me a moment, I'll just - all

right, so this - I guess it's a CD; is it? Data disc, will be admitted and marked Exhibit 8.

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ADMITTED AND MARKED "EXHIBIT 8"

BENCH: And, if you like, I'm happy to play the video now, so we're not waiting, on the basis that the disc will be - will turn up and the disc will be tendered. If, for some reason, at the end of the day the disc - it cannot be or is not tendered, then I will simply have to disregard what I'm seeing.

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MR SHERIDAN: Yes, your Honour.

BENCH: I'm happy to proceed on that basis.

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MR SHERIDAN: I'm happy to proceed on that basis.

MR KELLY: Yes, I have no objection to that, your Honour.

BENCH: All right, so we can get underway.

MR SHERIDAN: Okay. Now, Mr Hindman, if you could just stop that for a second. Now, this - just - who - we're about to see a video that was taken by you; is that correct?-- That's correct.

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When was it taken?-- I'll just find the date for you, can I?

That's on there? Now, hang on, where was it taken?-- At Alpha Station.

All right. It was taken by you, are you going to tell us what the date is and it's on the subject property?-- It's on the-----

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Okay, now does it have comments on it, or are you going to-----?-- There is - there is commentary in the first one.

Okay?-- And if you want me to talk about it, I can do so.

Well, it might be self explanatory.

BENCH: So just-----

MR SHERIDAN: Just a minute.

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BENCH: If I - I just want to make sure I got this, did you ask him when he took the film?

MR SHERIDAN: Yes, there's a-----

BENCH: And he just - he said he doesn't know?-- I do know, it's - I'll just get the date of the - the-----

Get a date of the-----

MR SHERIDAN: Yes.

BENCH: Okay.

MR SHERIDAN: It will be dated.

EXHIBIT 8 PLAYED

MR SHERIDAN: Leave that going - let it go?-- No, that's just - that's the cattle, next one.

What's that?-- This is the - this is the - now, this next video is of-----

All right, so that's the first one is that-----?-- That's a before treatment.

That's a before on the - is that before - was that landscape that just - was just depicted on that video, was that subsequently treated, or is that-----?-- That's untreated.

That's untreated?-- Yep.

Right, so now what we're going to see is the same landscape that's been treated, or similar, nearby?-- It's - that - that shot was taken in the five mile paddock, which is the same paddock where the treatment was undertaken.

Right. So, now what we're going to see is what?-- This is the - similar country in the five mile paddock that was stick raked and ploughed and then received rainfall to-----

So, this is a video of land that's subject to these proceedings?-- After - after the treatment.

After the treatment. What date? Still 22nd of-----?-- Same date.

Right, same day.

EXHIBIT 8 CONTINUED TO BE PLAYED

MR SHERIDAN: Is that the end of it?-- That's the end of it.

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Right, and there's no more? I just wanted to ask you-----?-- I've got - I've got - I've got a lot of stuff on there. I just really wanted to pick out a before and after to show the difference in the vegetation on those sites.

Right. Very well, that's the end of that, your Honour; well, for that. That's the end of the video.

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BENCH: Yes.

MR SHERIDAN: All that for that?-- I can't really show any others because they're not on - they won't be burnt.

Right. Okay. Okay. Now-----?-- Any questions about that video at all? I'm - sorry.

Not from me; there might be from Mr Kelly.

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BENCH: We've got a process here-----?-- Sorry.

-----Hindman, which-----?-- Sorry.

MR SHERIDAN: If your Honour has questions, I'm happy for your Honour to ask them now.

BENCH: No.

MR SHERIDAN: Okay. Thank you. Okay. Now, I want you to - if the witness could be shown this document please? Could you identify that document? Could you identify that document please, Mr Hindman?-- I - I - I - I searched on the UQ Library and I - and I found this - this document.

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Yes, what is it?-- It's been published by the CSIRO.

Yes?-- It's - the title of the - of the paper is - it's - was published in 2011, so it's very current and it's titled as, "The Temporary Cropping in Semi-Arid Shrub Lands Increases Native Perennial Grasses, a peer-reviewed journal article."

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Okay. Now, could you just by way of the abstract, could you just tell his Honour what that paper's about, what the results-----?-- It's very- very - very refreshing to find this paper. I was - at the time, I'd been - we're in this process with DERM and it - it - it - it uses in - as references, many authors that I'd - I'd read and the abstract basically is showing that the thickening of native shrubs is a major problem in many semi-area woodlands. The significant increase in shrub density is often negatively correlated with avacious vegetation and leads to reduce post-production in soil erosion."

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And what was the aim of this project that was undertaken by CSIRO?-- They're basically saying that temporary cropping is very adventitious to the stability of perennial grasses in - in the - in the environment. The state that people achieve by

some mechanism disturbance of the soil really allows the grass to be a stable state in the environment.

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And what is the relevance of that research to the development that you undertook?-- The work I did on Alpha basically mimics this CSIRO publication. It - it is - it is - this is - this is research I've done and the - the work that I've done is - basically - is testament to this research in a practical sense.

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If I could just take you over to page 75 of that paper?-- Yes.

The second-last - it's the third-last - page 75, the third-last. Just down there at the bottom left-hand, it's the last paragraph beginning with, "Total ground cover." If you could just read that out from the top?-- "Total ground cover was influenced by the proportion of perennial grass cover which was in turn determined by the grazing management system, Murphy and Lodge '02. Recognised ground cover - ground cover, either living plants or plant litter as a key indicator of range land's sustainability and several reviews in the semi-arid woodlands have emphasised it's importance for the control of infiltration, run-off and soil erosion; eg: Hodgkinson and Freudenberger - restoration of native - restoration of native perennial grasslands can thus be expected to improve ecological processes resulting in more productive and resilient landscapes."

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I tender that document, your Honour.

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BENCH: That will be admitted and marked "Exhibit 9"

ADMITTED AND MARKED "EXHIBIT 9"

MR SHERIDAN: Your Honour, I was just going to question Mr Hindman about his capacity to pay whatever fine your Honour might impose, and this morning he had emailed some figures from his account which I have temporarily misplaced, but-----?-- They're here-----

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Oh, you've got them? Excuse me, your Honour. Oh, there they are. Can the witness be shown this document? Could you identify that document please, Mr Hindman?-- Yes.

I need you to identify the document?-- I - I-----

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What is it?-- It's - it's a summary of my Hindman Family Trust which is our - our family trust. It-----

Now, when did you receive that document?-- I received that this morning.

And David White Proprietary Limited, they're your accountants, are they?-- Rosy Caswell is my accountant from Brisbane.

Rosy Caswell signed the bottom. Now, can you explain for his Honour what this means insofar as your financial position?-- There's a couple of things there; the - all - all my enterprises are - are primary - primary production exposure. I have exposure of primary production, and-----

Just a minute, Mr Hindman?-- Sorry.

Your Honour, it might be useful if I tender that document now and I'll give Mr Hindman a copy. My learned friend has a copy there and I can share that.

BENCH: Thank you. Well, this document will be admitted and marked Exhibit 10.

ADMITTED AND MARKED "EXHIBIT 10"

BENCH: Yes.

MR SHERIDAN: Yes, Mr Hindman, could you explain that to his Honour? What does it show?-- Just to explain, Hindman Family Trust has - has - has got all - all - basically all its exposures is primary production, and in the - and - and in this year 2011, we're expecting a loss \$230,000 for 10/11.

Yes. Now, if you go down to the next - if you're looking in the column "2011 estimated," that 230,500, is that a \$230,000 loss?-- That's correct. We had a - we started with a \$300,000 loss-----

Hang on, we start at the bottom of this; do we?-- We start at the bottom. I'm sorry-----

Okay?-- -----about - she's - she's got the - it's quite confusing, but it's easily explained.

Righto. Explain-----?-- So we start with a \$300,000 loss in the Hindman Family Trust.

Yes?-- It gets a distribution from my retail operation, Go Farm, of \$60,000-----

Yes?-- -----and it gets a - a Kirra interest - flood grant there for \$9,500 leaving it with a loss of \$230,500.

All right. And does that way, where you work from the bottom to the top, is that held for all of those years from 2007 to 2009? Do we read it from the bottom-----?-- That's-----

-----to the top?-- That's correct, yes.

Okay?-- She's got the wording around the wrong way, but that is - that is actually the mathematics of it.

Okay.

BENCH: Well, I must just butt in. Why doesn't the closing figure for 2007 equal the opening figure for 2008 and so on through the following years? I might ask that of the witness?-- You mean "carried forward losses?"

Well, if you like, you say you started the year - the financial year, whatever, starts with a loss of 300,000; that doesn't come out of the air; that comes from the figures from the previous financial year, 2010; isn't that right? Is that right?-- No, that's just showing the profit and loss for the year. It's showing that we lost \$300,000. At the - at the end of those calculations, it's showing that we - we - we're in for a loss of \$230,000.

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Okay. So these are just profit and loss figures?-- Yes.

With no carried forward loss?-- No, that's right.

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MR SHERIDAN: Unless your Honour has any questions, that's the evidence-in-chief of Mr Hindman.

BENCH: Yes. Mr Kelly?

MR KELLY: Thank you, your Honour.

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CROSS-EXAMINATION:

MR KELLY: So, what is your current financial position, Mr Hindman?-- My - my financial position is that I have - I have very little funds available personally.

Well, you've - as his Honour's pointed out, there's - for each year there would be a carry forward loss for each year except 2008. Where is that shown? What accounts do you have to show what your current - what's your current situation?-- My current situation is in - in this year, 2011, we've had a considerably bad year in our - in our rural enterprises.

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What you're - I'm not so much worried about this particular year, what's your overall carry forward situation?-- Well, I - I haven't got my balance sheets here to show you that unfortunately.

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Okay?-- This is just a summary from my accountant.

So, this is just - what you've given you us here is income and loss for particular years since 2007?-- That's right.

All right. You can't advance it any further than that?-- Well, I - I could get you - would you like to see full financials?

Well, it's a matter for you what you produce before the Court, but what I'm saying to you and you seem to accept is that you're not able to produce for his Honour a full balance sheet of what your current situation is?-- Well, I could - I could get-----

Assets, liabilities, et cetera?-- I could get that if you request it.

Well, it's a matter for you, you know, really, but you bought the property in mid-2006; is that right?-- Correct.

How much did you pay for it?-- It was \$560,000.

All right. Okay. And was that part of other properties that you had as well at that time?-- I have a - I have a loan with Rabobank which covers-----

No, other properties? Did you have other-----?-- I have - I do own another property at Dulacca.

All right. And is that also a grazing property?-- It's a farming - it's a farming property. A grain - a grain - a grain producing property.

All right?-- And - or it's a - it's a grazing and farming property.

And you obtained your Bachelor of Science in 1987 from Gatton University?-- That's right.

And you were an agronomist and a landowner. You've been a landowner for how long?-- Since the family owned country at Yuleba and - and they've - they've owned that for - early 1900s, but-----

All right. And what sort of property is that?-- It's a cattle cropping property.

All right. So, it's fair to say you come from a land, you've been involved in the land all your life and - and so has your family and generations before them?-- That's correct.

And you went to - and to further that, you went to Gatton and obtained a degree to assist you further I guess in pursuit of your land pursuits?-- Well, that's right. I mean, you - you have a passion for agriculture-----

Sure?-- -----and the environment and the resources, so-----

You obviously have that passion for it?-- I do, yes.

And-----?-- It doesn't always come out in the figures but, the financial side of it-----

No?-- But, you know-----

No. What do they say; what comes on - what goes on the swings you can pick up on the roundabouts?-- Mmm.

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You take the good with the bad; drought and wet and so on. That's the life on the land, isn't it?-- That's right.

The - when you bought the property you also - soon after that you obtained a couple of permits for fodder; is that right?-- Yeah. Interesting you say that because I - I - I went through the process of getting a fodder permit when I was in Roma at the time.

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Well, can I just interrupt you there?-- Mmm-hmm.

It's just that the title deeds - that's what the title deed shows, that there was fodder permits applied for in 2000 - in fact, the 1st of December 2006 it started, and the 20th of December 2007 the second started?-- Yeah, yeah. No, that - that's interesting you say that because from an environmental point of view I - I - the plan was to put stock on the property after I bought it and I was - I - by getting a fodder permit, if things got very tough on the property you would pull the - you would pull the mulga that - where that fodder permit was over on the property.

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Sorry, look, I don't really mean to unnecessarily interrupt you, but my question was: you obtained two permits after you bought the property; is that right?-- I never - with the - with the fodder permit, I never used it, I never pulled it over.

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No, no, no. My question is: you obtained two permits?-- Oh, that's correct. I - I obtained-----

That's all I want to know?-- But the other - the two permits, one was a fodder permit-----

Look, can I just interrupt you again?-- Yeah.

If you want to expand on that, my learned friend can ask you that again in re-examination, but my question is, and you've answered that; after you bought the property you obtained two fodder permits?-- No, one - one fodder permit.

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Sorry, one fodder permit and one Great Artesian Basin Sustainability Initiative permit; is that right?-- That's correct. I - I obtained a fodder-----

Okay. Thank you?-- -----permit which I didn't use.

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Thank you?-- And a GABSI permit was used to pull the scrub-----

All right?-- -----for the pipeline.

Thank you?-- Yeah.

Now, when the investigator went on to the property, the first

inspection on the 11th of November, you went with him,
2009?-- He requested for-----

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And you had a conversation with him?-- Yes.

You told him about what you'd been doing?-- I actually had a
conversation with him several days - at least a week before he
turned up on the property.

By telephone?-- Yes.

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Yes?-- Yeah.

And you don't deny that the photographs show that basically
you left mature trees and removed a majority of the
understorey and the shrub layer of native vegetation; is that
correct?-- That - I - what I said to him at the time was
that-----

No, no, sorry. Again, I don't want to
unnecessarily-----?-- Yeah.

20

-----interrupt you, but my question is: you left the mature
trees, removed the majority of the understorey and shrub layer
of native vegetation?-- Yeah. The word "majority" is a little
bit tricky there because you - if you see it now there's-----

Well, we've seen photographs-----?-- When you're saying -
what-----

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You don't-----?-- What-----

Sorry, but you don't-----?-- Is that a percentage?

You don't dispute the photographs that have been taken, do
you?-- The word "majority" I - I disagree with because it-----

Well, the photographs and your video and the other video
that's been tendered basically - as they say, a picture tells
a thousand words, doesn't it?-- The theme permit that I
applied for the other day-----

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Well, we're not here to talk about other
permits-----?-- Right.

-----that you've recently applied, but the fact is, isn't it,
you removed the majority of the understorey and shrub layer of
native vegetation by leaving the larger trees - and leaving
the larger trees standing?-- Yeah, I - I disagree with that
word "majority". I think it's somewhere between - it's not -
it's not really the majority of the - of the - of the
understorey.

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All right. Well, when - you've given an explanation here that
you did this rising out of best practice if you like. When
the officer came around and spoke to you in November
2009-----?-- Cameron Sargent?

Yes, did you have any discussion with him about why you were doing this?-- Well, he didn't even know what turkey bush was.

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But you did - did you have any discussion with him about the sort of clearing that you'd been doing?-- They turned up on the property, pulled out two silver badges with "Native Vegetation Investigation Unit" on it.

Yes?-- Tape recorded me, and when I asked him what turkey bush was - I - I did not say - I put the plant in front of him and said, "Do you know what this is", and he did not know what it was.

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All right?-- I felt at the time he had no credibility in talking about the - the resource or the environment.

But, Mr Hindman, you had an officer representing the Government-----?-- Correct.

-----who was going to do an inspection on your place. You knew why he was there?-- Yes.

20

And you chose not to speak to him about this?-- Well, he obviously didn't have the-----

Because you thought he had no credibility in your eyes?-- He had no credentials at all.

But he was in a position to influence you. I mean-----?-- Oh, I - I - I agree. I - I - on the phone - on the phone call the week before I said, "Yes, that's right, we've done some clearing there. We've - we've renovated the native pasture." I explained that all to him on the phone. What - did you want me to have a discussion with him about the environment?

30

No, I'm just saying to you-----?-- You know, well-----

-----there was an opportunity for you to speak to him there about what you were doing and you chose not to?-- No, I tried to help him, I did, but he - he was not - he was not-----

40

Well, it's not a question of helping him, it's helping yourself, isn't it?-- Well, I - helping-----

He's there investigating you for an offence. You knew that, didn't you?-- I did - I did not know that.

You knew that he was there investigating you for an alleged offence?-- He - he was - he-----

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No, didn't you? You knew he was there investigating you for an offence?-- That's what he said he was there for.

All right. And, what, you didn't believe him; is that what you're saying?-- Well, as - as I - as I-----

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"He didn't have any credibility, so why should I talk to"-----?-- No, I - when I say about his credibility, in understanding the landscape and the environment and the people and how - how the system operates. He was not - that wasn't - his job was just to - to come out with a SLAT's image and say, "There's something going on here."

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There was rake and burning, disc-ploughing and sowing sorghum and grass seeds; is that - would you agree with that?-- When you say "grass seed", what - what are you talking about?

The - look, I'm afraid I - you might have me there, but the type of grass seed that we've seen on your video?-- Let me explain that to you. There's native grasses and there's introduced grasses. A - a red loam soil with four and a-half to five and a-half pH with a 25 per cent aluminium percentage will not sustain buffel grass. Is that the grass you're referring to?

20

I'm talking about buffel grass, yes?-- Yeah. No, some people have commented about that, but that soil type and that soil environment will not sustain buffel grass.

Well, can I suggest to you that you did plant some buffel grass? Whether it worked or not, you planted buffel grass?-- Let me suggest to you that most - that buffel grass is viewed from some as a weed and it does spread by itself on vehicles-----

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Did you plant any-----

BENCH: Mr Hindman-----

MR KELLY: -----buffel grass?

BENCH: Mr Hindman, you're not used to a Court?-- Yeah, sorry.

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The way the system works is this: that you're asked questions and you answer the questions. So the question was, I guess, in simple terms: did you plant buffel grass? The answer to that is fairly simple and brief. You don't need to tell us the pH of the soil again?-- Right.

If there are issues that arise, Mr Sheridan will be able to ask you other questions to enable you to give a more complete answer. So just - otherwise we'll be here all day.

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MR KELLY: Thank you, your Honour. So the question is: did you plant buffel grass?-- We - we planted some buffel grass.

All right. Now, you did that, of course, to - for pasture, didn't you? It was for pasture purposes that you were doing this for?-- The renovation of the-----

Look, sorry-----?-- Yes.

You did it for pasture purposes?-- Yes.

Yes, thank you. Now, there were two clearings; one almost - about two years apart. I think you've agreed to that already?-- Yes.

And you mentioned this report. Exhibit 5, I think it is, by Andrea Bull. At page 3 of the report, when it speaks about best practice management for native shrubs, it says, "Before treating thickening native species it is best to contact the Department of Natural Resources to determine if a vegetation management plan is required under the Vegetation Management Act or Land Act." When you did this, did you go to the department and ask for a permit to do what you were going to do?-- No.

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Right. Now, you say in that video that was at the - excuse me for a moment, your Honour - that was at the Five Mile Paddock, that video that we've seen?-- That's correct, yes.

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It's not representative of the whole property, is it? It's just representative of the Five Mile-----?-- Five Mile Paddock-----

-----Paddock-----?-- -----that's correct, yes.

-----before and afterwards. Yes, okay. And - see, I suggest to you, Mr Hindman, that a person with your experience would have been well aware that you would have needed a permit before you encountered or undertook any type of works on this property that was contemplated by you. You knew that you needed a permit?-- I knew I needed a permit-----

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And you didn't-----?-- -----if I was to-----

You chose not to get one?-- No. I - I knew I needed a permit if I was going to string a chain between two dozers.

I suggest to you that that's not correct. I suggest to you that you knew you needed a permit to do the type of work that you were doing but you, regardless, chose not to do it?-- No, that's - that's not correct.

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Well, I suggest that's not true and you're not being truthful. I have no further questions, thank you, your Honour.

BENCH: Yes. Yes, Mr Sheridan, re-examination?

MR SHERIDAN: Yes, your Honour, just one matter.

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RE-EXAMINATION:

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MR SHERIDAN: Mr Hindman, you've just been asked about your knowledge as far as permits go. Why did you think that the works that you undertook did not require a permit?-- It - basically, when I - when I did that, the - the work that I was doing was in tune with the environment. I wasn't - I wasn't upsetting it. I - I wasn't going to pull the big box - the big eucalypt trees over and destroy the environment. What I was doing was to enhance the environment, the landscape, by doing the treatment that I did, and I did not get a permit for that but I have got permits for all the other requirements. I've got a fodder permit, I've got a GABSI permit, and just recently I got a thinning permit for the adjoining paddock. I went through the process of getting a thinning permit.
Now-----

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Is that permit going - has that been granted yet?-- For the last two years and through this process - I don't know whether I'm a slow learner. I - a slow learner on - I then realised that I - to do this sort of work you need to - it basically sort of falls in a category that DERM decides a thinning permit and I've recently gone through discovery on that because it's - it's not a very simple process. The paperwork is quite extensive on it, and I submitted it the other day and - yeah, I understand thinning permits now.

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MR KELLY: Your Honour, it hasn't been granted yet.

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WITNESS: Shame it's - it hasn't been granted. The-----

BENCH: Well, just-----?-- It hasn't been granted.

No, no, re-examination, of course, arises out of matters arising in cross-examination.

MR SHERIDAN: Yes, your Honour. My learned friend questioned Mr-----

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BENCH: Yes.

MR SHERIDAN: -----Hindman about his knowledge of permits and questioned him extensively on his application and grant previously of-----

BENCH: Okay. I'll let you go-----

MR SHERIDAN: -----two permits - yes.

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BENCH: -----but if there's any issues that Mr Kelly feels needs the-----

MR KELLY: Well, I've given my friend a fair bit of leeway on this, your Honour. He - the question of permits was raised in evidence-in-chief and that's why I cross-examined him on it - on that.

BENCH: Well, look, I'll-----

MR KELLY: As to whether there's any issues arising going back and-----

BENCH: To be - I-----

MR KELLY: -----introducing new issues is not really permissible, in my submission.

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BENCH: Evidence has been given that he's got permits in the past and he's applied for this thinning permit. Do you wish to go down that track further?

MR SHERIDAN: No, your Honour, I was just re-examining Mr Hindman-----

BENCH: Yes.

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MR SHERIDAN: -----following up what my learned friend had asked him about his knowledge of permits and his grant of previous permits, and it seems as though-----

BENCH: Okay.

MR SHERIDAN: -----the track my learned friend is taking with Mr Hindman is that he knew he should've had a permit and he knew the process and he acted in deliberate defiance of the rule. I'm just trying to explore that for your Honour. I won't - don't want to-----

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BENCH: Yes.

MR SHERIDAN: -----ditch over it. If your Honour doesn't need to hear any more on it, then I shan't pursue it.

BENCH: Well, it's really - if I sit outside the adversarial process, it's not for me to argue one side or the other, so it's a matter for you as to how you present your client's case, as it is for Mr Kelly to present his client's case.

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MR SHERIDAN: Yes, your Honour. I'll ask one more question and I'll leave it and there will be nothing more. This application for the thinning permit that you have put in, if it is granted, do you expect that it will allow you to do the same work that you have carried out?-- That's correct. It's exactly the same type of country that we've done the work on and I'm - and I genuinely made a blunder and mistake by not getting a permit on it but now they're going to grant me a permit adjoining it, I believe.

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Nothing further, your Honour.

BENCH: All right. Okay. Yes, thank you, sir. You may go back to your seat at the Bar.

WITNESS STOOD DOWN

BENCH: Yes, Mr Sheridan.

MR SHERIDAN: Thank you, your Honour. Thank you for your patience today. There's been a few false starts.

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Now, Mr Hindman's pleaded guilty to the complaint and summons in the particular as amended by the prosecution. It is - there are two counts, offences of undertaking assessable development without a development permit which is the clearing of native vegetation. Now, there are - we'll just go through all these reports. Now, the objection that I had to the valuation report was foreshadowed, but it is basically that this report, if I can take your Honour to page 3 of that report, it is at tab 17 of my learned friend's folder.

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BENCH: Yes.

MR SHERIDAN: Page 3 of that report that's the valuation review. There's a disclaimer there above the signing panel. And you'll see that's a fairly extensive disclaimer and I objected on the basis that this report, there is no suggestion that this valuation was undertaken for these proceedings, and if your Honour's against me on that, I'd just like to point out a - make a few points on that which will probably go to the weight that your Honour gives it.

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The first point is that Mr Ralph, the valuer, determines that the development results in an increase in carrying capacity of 29 head, but as far as I can see we're not enlightened in the report that it's 29 head of what? There is some comparative sales evidence, but in my submission the comparison of the three properties that he's listed on page 2, the analysis of the land types in those three properties, there's no resemblance to the subject land. But I would note in the comments of Ardga Station which is the top sales comparative, he does refer to a heavy turkey bush infestation over 50 per cent of the property and talks of that property being at the lower end of the market range. It's of similar size but as to what the land types are in these three properties, we don't know.

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There is a breakdown on the top of page 3, but those breakdowns of percentage of the land types don't correspond with any of the evidence before the Court today about the regional ecosystems. So it's almost possible for your Honour to make any objective comparison of this report and the land in question. But your Honour may - as I said, if your Honour's against me on that objection then I'll direct those submissions to the weight that your Honour might give it.

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BENCH: Could I just ask, should I know what "WARLUS", W-A-R-L-U-S, stands for?

MR SHERIDAN: Sorry, your Honour, where is that?

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BENCH: Well, property details, the last line of the box on page 2. It is broken down into, I guess it's pronounced "Worless" - land systems as per the attached sketch, and the attached sketch is shown-----

MR SHERIDAN: I think that's the one valuation - the multicoloured one that I have?

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BENCH: Yes.

MR SHERIDAN: I can't help you there, your Honour, at all. I have no idea. But it doesn't appear to be - no, sorry, your Honour, I can't help. As I say, there's nothing in evidence today that, unfortunately, enables us to determine what WARLUS is. Perhaps it appears to be another land classification system. It's certainly not mentioned in the Vegetation Management Act.

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MR KELLY: Perhaps if I can assist you there, your Honour-----

BENCH: Well, this is my interpretation of it, that the coloured map has a coding down the bottom-----

MR KELLY: That's so, your Honour, yes.

BENCH: -----which for example if I select H4, it's purple - a purple sort of colour, and on the - on page 3 of the valuation it seems to say that H4 is hard mulga and is 5,554 hectares.

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MR KELLY: That's so, your Honour. That's-----

BENCH: And that's - so that's where it is relevant because-----

MR KELLY: Yes.

BENCH: -----that seems to classify the vegetation on the land.

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MR KELLY: Yes. And that's how it's broken down and that seems to be what he refers to as a "WARLUS" system; exactly what the acronym stands for, I'm not sure. But it - in my submission, it doesn't - it matters not, because one can see how he has actually classified them anyway, whether he refers to a "WALRUS land system as per the attached sketch" or any other land system doesn't really matter. But one - because one can clearly see what he's driving at when one refers to it in the way your Honour has picked up on it.

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He's breaking it down to clay pans, Gidgee flats, soft mulga and box, hard mulga and sandy Spinifex and silver leaf ironbark, and gives it a numbering classification which they seem to give. As Mr - as our botanist has broken down the RES into different numbers and so on, comprising of different types of vegetation, the land valuer seems to have broken them

down into land types or soil types.

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BENCH: All right. Okay. Well, I'm considering your objection, Mr Sheridan, so you had said - have you finished your - what you had to say?

MR SHERIDAN: Yes, your Honour, those are my submissions. As I said, if your Honour's against me, the submission that I made on admissibility-----

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BENCH: Yes.

MR SHERIDAN: -----as far as the disclaimer, that's the basis of my objection. And if your Honour's against me on that and admits it into evidence, then my submission - the submissions that I made further about the difficulty your Honour might have using that as some sort of objective measurement, either the increase in the carrying capacity - and it says "head". Do we know they're sheep or cattle or not? We don't.

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And the classification that he's used, even though my learned friend's attempted to assist your Honour in deciphering it, doesn't - it's unknown by the Vegetation Management Act and these properties that he's compared it with don't seem - we don't seem to be able to get any objective measurement as to the likeness of the properties that the valuer has compared.

BENCH: Okay.

MR SHERIDAN: And it's not known whether the increase in \$30,000 is - there doesn't - there's no indication there whether an inspection's been carried out. How he-----

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BENCH: Well, indeed it says there's no - been no inspection.

MR SHERIDAN: Mmm; and in those circumstances, having never seen the development, it's impossible for him, in my submission, to then form any sort of an objective view of the value of that development being at increase. And given the intention that tendering this sort of material is to influence the Court in imposing a fine part of which might be determined to negate that \$30,000 gain, in my submission-----

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BENCH: All right. Okay. Mr Kelly?

MR KELLY: Yes, thank you, your Honour. He seems to have done the valuation by way of comparable sales and sales evidence. My instructing solicitor instructs me that she's spoken to a Mr Tom Johnson, who's the general manager of the company that Mr Ralph works for, she's spoken to him about that and informed - of the valuation. He can be called by telephone if your Honour so desires. He says that, whilst there was that disclaimer there, it's to be read, according to him, in the light of being used outside of Court proceedings and it was prepared in the knowledge that it was being used for Court proceedings. So, whilst there is that disclaimer, it's to be read in that light.

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When he talked about third parties, he speaks of third parties outside the Court proceedings, that's his interpretation on it. He can be called if your Honour has some concern about that. The sales evidence, quite clearly it seems to be on comparable sales and it may well be that if there had been an on site inspection, that the works that have been carried out by the defendant may well be that the property would be worth in excess of - of that comparable sales figure, it seems to be. But, I'm in your Honour's hand there if your Honour requires telephone evidence to-----

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BENCH: I mean the expert evidence, in order to be admissible, must comply with certain standards and one of those - one of those things that have - boxes that need to be checked is that the method by which the expert reached the conclusion should be transparent, those are my words, but it's my recollection of some of the cases. I have some reservations about the transparency of the methodology here, but my - what I propose to do is admit the valuation, but - and the reason why I'm admitting it is because the basis of the objection relates to the disclaimer and the disclaimer, really, is a contractual document, which deals with valuation evidence often with the use to which a third party might use the document and limitation of liability in a commercial context, where, for example, a valuation is given to a bank and somebody else relies upon it, the valuer is expressly saying that they won't be held liable for any use that a third party might place upon that valuation evidence. But, I'm going - I'm going beyond what I need to. It seems to me that the disclaimer itself doesn't make the report inadmissible, however, as I say, because of some reservations about the methodology, the weight to which I place upon the report will be - will be tailored accordingly.

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I guess, Mr Sheridan, the bottom line is this, your client doesn't deny the fact that his property has increased in - certainly in usability, he's improved the property, that's his strong theme and I would be very much surprised if the property that hasn't been - hasn't been improved in the way that he has isn't worth more. I don't know whether you can get around that argument.

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MR SHERIDAN: No, your Honour, and don't intend to.

BENCH: But, for the purposes of this - for ruling upon your application-----

MR SHERIDAN: Yes, your Honour.

BENCH: -----I'm not going to exclude it, it's going to be included, but there are - I'll apply appropriate reservations.

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MR SHERIDAN: Yes, your Honour.

BENCH: Thank you.

MR SHERIDAN: Thank you. There's no - there's no issue here that the property has been cleared, there's no issue here that

it was done without a permit and there's no issue that, given the nature of the legislation, Mr Hindman should have had a permit.

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Now, it is true that Mr Hindman is an educated man and has degrees - or has a degree in agricultural science and that education leads him to understand, perhaps more than the average landholder, if you will, the nature of soils and plants and processes that go on upon it.

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Now, it is perhaps - and it's been sought to be followed by my learned friend that, because of that level of education, Mr Hindman's activity is a deliberate defiance of the law and in his evidence he goes, in my submission, somewhat to answering that. It is probably tweek for me to say that everyone knows that to clear trees on freehold land, remnant vegetation, you need a permit and, if I could go one step further, if we say "clear", it means get a chain between two bulldozers and knock it down, it's probably safe to say that everyone knows that. But the intricacies of what is termed remnant vegetation, non remnant vegetation and even clear, the definition of clear, are somewhat murky and we saw how murky that is today when Mr Franks gave his evidence and when I asked him would he be allowed to burn it? And Mr Franks couldn't answer because he didn't know that, until I told him and read this definition of clear, that clearing includes burning.

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So, few people would know - perhaps if one looks out to the north and sees that pall of smoke that's currently rising from the horizon, that if that was deliberately lit and it was freehold land and it was remnant vegetation, the person who, if it could be established, lit that fire may well be fined - find themselves in this place charged with the same counts that Mr Hindman finds himself, because in the definition of Vegetation Management Act, clear is defined, "Remove, cut down, ringbark, push over, poison or destroy in any way, including by burning, flooding or draining, but does not include destroying standing vegetation by standing stock or lopping a tree." They are the definitions of clear.

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So, Mr Hindman, in his evidence, when asked on a number of occasions why he did it without a permit, was to the effect that he knew that if he were to get a chain between two bulldozers, then that would be unlawful, but it was his view that what he was doing was not clearing.

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Now, that's not to say we have a lack of remorse. As Mr Hindman made clear in his evidence, this process that he has been put through in the last year plus has had a great toll and he has now gone to the length or chosen in somewhat, a lot perhaps, to apply for a permit from DERM to the same development that he now finds himself before the Court for.

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Now, the difficulty your Honour has - and it's not all that easy from this end of the bar table either your Honour, in trying to work out what sort of a penalty, is that I've been involved in a number of these matters over the last decade and I'm not sure if there's been one of its like in the State

before. Usually matters of tree clearing are those which, for want of a better word, we say are the classic tree clearing cases, where a landholder gets to the bulldozer and puts a chain between them and flattens everything with predictable results. Mr Hindman, in his evidence, said that he'd seen that happen on neighbour's places where that had been done under a permit and the same problems remain.

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It has, in that Exhibit 5, "Best practice native shrub management manual" - it does go through the problem of thickening native shrubs, which is apparent on the subject land, but it does, at page 3, advise landholders to contact the Department of Natural Resources to determine if a permit's required. There is no issue that one should have been sought, but one was not sought.

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Mr Franks provided a report and in cross-examination admitted that it was somewhat rushed and he only had a couple of days to do his inspection and prepare his report. Admitted that his instructions were to - and I don't want to misquote him, so I'll get the report.

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His instructions were to do an inspection and prepare a report on the regional ecosystems to - that occur on the property to make sure they were all right. As it turns out, his inspection and assessment found that the map was not correct and it was amended by Mr Franks and as we know, what the map is, is the law. It matters little what is actually on the ground. The regional ecosystem map determined the classification of vegetation. That much is set out in the Vegetation Management Act. That's how vegetation is easy to find. It is what the map says it is and for those who say that it's just a matter of consulting the Act, this Act came into being in 1999. By my last count, it had over 400 amendments; 190 of those were retrospective, so it is quite a difficult task to determine exactly what is lawful and what is not, but I'll repeat, everyone knows that to put a chain between two bulldozers and run over remnant vegetation, is an offence, and we'd step down to a level of complexity where how do we determine remnant vegetation; if the map says it's remnant, it's remnant. Then you have Mr Franks talk about the 70 per cent canopy, the 70/50 rule and it descends into a level of hellish complexity.

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Now, what Mr Hindman understood, and here is the tension and the difficulty for us on this side and your Honour as well, is determining an appropriate penalty Mr Franks wasn't instructed to - well, certainly he didn't do any sort of a pasture count or any analysis on what native grasses now exist on the cleared land. There's no question that this land was cleared for cropping. The grass that was planted was done and I can direct your Honour to the CSIRO paper which came out earlier this year, and your Honour, we're fortunate in one respect; we have that best practice shrub manual which came out in 2002, long before Mr Hindman undertook the clearing and we have the period where Mr Hindman undertook the clearing and we have two favourable seasons which has encouraged the return of native grasses, then we have the CSIRO peer-review paper

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that came out earlier this year.

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So - an again, not trying to diminish the fact that Mr Hindman has operated outside the law, because he should have had a permit, but where the tension is and where we see it, is the level of environmental harm, if any, that has occurred. Now, Mr - there is a tension and your Honour's got the documents before you between the two arms of Government. One is DEEDI or DPI and one is the prosecuting authority that's in this matter today. And it is, in any event, a perverse outcome when one department seeks the Court to impose a fine in excess of \$100,000 and where another department of the same Government seeks to use the result of that as some sort of a demonstration site to other landholders to renovate degraded land. And I don't think it's in issue here that that land is degraded and why. And it was said from Mr Hindman's evidence, he spent the money buying the property, over \$300,000 of his own money getting rid of bore drains which the Government has contributed perhaps half a-million, but we didn't have an exact number, and then there's the cost of Mr Hindman's treatment and the cost of his involvement in this process thus far and the cost of a fine that your Honour will impose on Mr Hindman today.

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And I distinguish what's gone on at Alpha with perhaps all of these other matters that - and they're not just the ones that my learned friend seeks to rely on. He's not - there's been no selectivity on my learned friend's behalf at all and I don't criticise him at all, because they are the matters that have been recently before the Court. Now, a number of years ago, the matter - the penalty guide - the section 60(b) penalty guide started being used and it was used in a way that, in my submission, creates a false context if you will for the sort of penalties that are being imposed. Now, the maximum penalty for count 1 - because the penalty units of \$65 is \$124,875. The second count which was supposedly a separate offence, it was - it took place during or after the penalty units were lifted to \$100.

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Now, what's been done, and if you notice - and it's in my learned friend's submissions that it's been put before the Courts for [indistinct] is that using the penalty guide, prosecutions multiply the area for each regional ecosystem and come out to an astronomical figure, \$2 million or more, so then that creates a false context because if you have a look and you say, "When using the penalty guide, this is what we get to, \$2 million." An absolute crushing figure. That then makes the maximum fine, say 166,000 look completely reasonable and in my submission, it isn't. If the parliament had decided, and they've had a number of years and as I said, it's not as if they've been shy about amending this Act; if they had a mind for Courts to impose those sorts of figures then, they would have amended the Act or amended the Integrated Planning Act because the Vegetation Management Act because the Vegetation Management Act links in a number of important, but most importantly for penalty to the Vegetation Management Act because it is an offence under - it's the Sustainable Planning Act now, but at the time of the offence under the Integrated

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Planning Act, which has a maximum penalty.

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If we're in a criminal matter and the maximum penalty is specified of 10 years, then no-one would stand up and say, "Well, you've got 10 counts of that so you're looking at 100 years so 10 years being the maximum for one offence," looks reasonable; it doesn't. And I notice in - I think it's the Scriven matter, this notion that we start at the maximum fine and work our way back, even though it's been applied, it's - and it's been criticised in Scriven, I don't - that's not binding on your Honour. In my submission, your Honour shouldn't follow it.

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BENCH: All right.

MR SHERIDAN: Okay. Now, with regard to environmental harm that's been caused. Now, Mr Franks has - Mr Franks, in evidence, uses a State and regional and local contacts to determine the environmental impact of this clearing. Unfortunately he didn't descend down to the actual landing question; it's - and I - I was going to say, it's criticism on his, but that's exactly what I'm doing I suspect. It is fine, of course, to use the clearing that's taken on in the State context and perhaps even in the regional context, but the numbers in his report, the areas in this Mulga bi-region have been cleared, are very low. It was - and it is curious to me that even though he has admitted that this land is degraded, it has been degraded over a long period of time by overstocking and mismanagement, that somehow this degraded state is the best state that it can be in. I don't think that follows. It can't. One would have thought if a landscape is degraded and it's possible to rejuvenate it, then it ought be rejuvenated if at all possible and I think that's where the tension in Mr Franks - that came out of Mr Franks's evidence when I discussed the tension between he and DEEDI and he said, "Well, we're ecologists and we look after the environment and DPI look after production or activity.

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And I thought that was a very telling admission, because one would have thought that the State, to the extent that they seek to manage land, should at least be seeing off the [indistinct]. And there's also - Mr Franks' report, as far as his area of expertise, his evidence is, and he holds it strongly, that there has been - that it'll take a long time for this - because of this clearing activity, for the land to regenerate and get back to its - whatever its natural balance - resting state is.

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If I could just take your Honour to the bundle of documents tendered by my learned friend at tab 13, Exhibit 4 I think it was - no, the emails are 13. Did - I don't want to confuse you. If you just go to tab 13, it's the report of Jeremy Anderson.

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BENCH: Yes.

MR SHERIDAN: At page 7 of that report, line 282.

BENCH: Yes.

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MR SHERIDAN: Mr Anderson there is discussing the second clearing event, which apparently during that any area that was cleared - an area that was cleared during the first clearing event was re-cleared during the second clearing event. If you look at line 282, Mr Anderson, his opinion is, "Western and southern parts of the area subject to the first clearing event appeared, for the most part, to have returned to a condition comparable with the pre-clearing condition by the time the second clearing event reaches the eastern boundary of the first clearing event.

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The time between the end of the first clearing event and when the second event overlapped the extent of the first event is almost two years; one year, 10 months, 25 days. And I take that to mean, and I can't understand how it can be interpreted any other way, that the land - a portion of the land that had been cleared in the first clearing event, even though it had been cleared by Mr Hindman, had actually reverted comparable with the pre-clearing condition, in one year, 10 months and 25 days. In such you form part of count 2, because he re-cleared it. So, that there to me would be at odds with any notion that the clearing that took place is somehow irreversible or will take a long time if left to regenerate.

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Now, your Honour, if I can just take you briefly to the environmental impact report, which was at tab 18 of my learned friend's bundle. I'll take you first to page 7 - the top of page 7. I won't go through this line by line, but this report as well looks at the possible environmental impacts and it is a - again, a desktop analysis from what is known from databases of what might be the impact of this activity on the state and the regional [indistinct].

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Unfortunately again, it doesn't come down to the local level and it makes - and invites the Court to make inferences based on, again - and in - on page 7 the reports relied upon. Second paragraph, "Examined photograph showing the cleared vegetation of Cameron Sargent, the complainant, in October 2011, and this field inspection conducted by Sargent, the complainant, and an Andrew Radke", who I assume is another employee of the department.

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It - at page 8 the experts or the federal preparing this report consult the WildNet Database and they find that as far as their databases are concerned there are no protected animals on the subject land, but interestingly, even though that the regional - the database doesn't produce any evidence, they invite your Honour to infer that perhaps there is. One wonders how they have it both ways. If there was something on the database that indicated evidence that these animals may have occurred - these protected species may have occurred on the cleared land, well that would be one thing. It would be another thing if they went out there and found them, but it is another thing entirely to infer evidence by the absence of it.

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And then at page 10 of that same report, "Cleared area A",

which we assume is the land subject to the first count, "there are no significant values specifically associated with the regional inconsistency cleared in Area A identified by the" - "Mulga lands biodiversity planning assessment." I'm unsure as to what - that's not mentioned in the Vegetation Management Act at all. I'm not sure what relevance it does have, but give that an expert report has been prepared. Cleared area A has no significant values. Cleared area B has special values, but we're told that in the last sentence that a total of .4 of a hectare was cleared of that. The - both of the cleared area A and B, again, .4 of a hectare was cleared of that.

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If we have a look at page 11 of that same report. The first sentence, "The Mulga lands bioregion is widely recognised and the most extensively degraded landscape in Queensland." I don't think that's an issue there or on the subject land even. I think from memory Mr Franks admitted that it was degraded in its current state.

I won't go through that in any further depth, your Honour, suffice to say that even though it's the work of learned people, indeed some highly qualified departmental people, it suffers from the same flaws that the other expert reports do, apart from Mr Franks's.

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Other expert reports look at a desktop analysis and then try and draw some threads from that analysis to argue that the clearing is an environmental disaster, if you like, or of great environmental damage. Mr Franks at least went there, but he was there to check the regional ecosystem out which he found to be in error.

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Now, if Mr Hindman had gone with two chains - two bulldozers and a chain between and flattened the lot, then obviously I wouldn't be making these submissions, as Mr Hindman's evidence was the large trees, which were not and deliberately not cleared, are an integral part of the landscape and the whole ecosystem. Without them you have the same problem. He's seen it on the place next-door that's been under permit. Turkey bush is the problem, not the trees. The turkey bush has been suppressed and the native grasses, from the seed bank that's been lying in the soil, have re-emerged. DPI said this is a good thing; DERM says it's a bad thing because he - without a permit.

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It remains to be seen now and it won't be for your Honour to determine today whether the clearing permit, which Mr Hindman has now applied for, to do exactly the same thing that he's before the Court for, whether it is in fact approved and whether, in the fullness of time, Mr Hindman's able to conduct that same operation but within the law and whether it has the same result.

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Now, you've seen, even though - and I must admit that Mr Hindman's - the information that came from his accountant this morning is somewhat confusing, but the bottom line and the top line in my submission are what tells the story. This year he estimates to lose - and depend on how you analyse the figures

- between 230 and 300 thousand dollars. So I find the magnitude that the prosecution seeks will be crushing.

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BENCH: Well, I guess it would be crushing for the average person, but if he is independently wealthy it may not be crushing, and that's, I guess, the unanswered question.

MR SHERIDAN: Yes, your Honour; I understand that. But I'd ask your Honour to infer from those figures that he isn't - those losses, those anticipated losses, if he were independently wealthy those losses perhaps - and I understand your Honour's reticence because you can say: well, that will improve your tax position out of sight, if you own half the Gold Coast. But-----

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BENCH: Well, I guess ordinary people can't sustain losses like that-----

MR SHERIDAN: No.

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BENCH: -----for five years, the way he has.

MR SHERIDAN: No.

BENCH: So, I don't know-----

MR SHERIDAN: Not far-----

BENCH: I just don't know.

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MR SHERIDAN: Mmm; not far to go. Every year - I think the saying is, your Honour: every year the back paddock gets closer to the front gate.

BENCH: Well, we just don't know how far it is from the front gate at this point in time.

MR SHERIDAN: Yes, your Honour.

BENCH: This is your-----

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MR SHERIDAN: No, we don't.

On the question of costs then-----

BENCH: Yes.

MR SHERIDAN: -----I see that my learned friend makes an application for costs, but I would be - in my submission, I'd oppose any costs after the matter was set down for trial for the simple reason that at the telephone mention, I think it was the 19th of July, the defence and the Court were told that the brief had been provided last year. And since then any inspections and further evidence and expert reports and anything else that was done to produce evidence - and I will note that these expert reports were disclosed to me by email between 6 o'clock and 7.45 last Friday night, which is only this Friday just gone. In those circumstances it was

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impossible for the defence to either get an expert to counter them, which is why - one of the reasons why Mr Hindman gave evidence today. We were subjected to a creeping barrage of disclosure and it's-----

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BENCH: Sorry-----

MR SHERIDAN: Yes?

BENCH: I think you mentioned legal cost - did you mention legal costs?

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MR SHERIDAN: No, I didn't, your Honour.

BENCH: So you're referring to the investigation costs?

MR SHERIDAN: The investigation costs, and especially anything that happened after that mention date when it was set down. The time between-----

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BENCH: Well, can you make any submissions as to how much of that would be there?

MR SHERIDAN: I'm not sure because it's not dated.

BENCH: No.

MR SHERIDAN: I assume Cameron Sargent, but that then he conducted another inspection on the 11th and 12th of October, so I'm not sure how much - if we look at the top, the appendix, how much of that \$1700 is the first or second. Bruce Matthews, I understand that he was there first and maybe wasn't there second. Radke, I think he was there second. Terneman, I don't know when he was there. Andrew Franks, we've got 105 hours. I understood that his first involvement was in October and shortly after in the preparation of that report. The statement of Healy, another remote sensing scientist, from memory - and only from memory and I'm happy to be corrected - her involvement was not - the 17th of October we were advised by Mr Lichte that there would be - the witnesses would be Cameron Sargent, Jeremy Anderson, and a final report to supersede that of Patrick Halloway which had been disclosed to us previously. Then Al Healy, then Andrew Franks.

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So at least the initial brief, from memory, was Halloway, the remote sensing scientist, and it would seem that - as though Jeremy Anderson's report was commissioned after we apparently had the brief.

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MR KELLY: Excuse me, your Honour, I may be able to assist my learned friend here. But we're not asking for the full 16; we're asking for 10. Your Honour, I concede what my learned friend's saying. It's a question of working out what that would be and that was - in my submission, the \$10,000 that we're asking for is consistent with what my learned friend's submission is, when one cuts that out. In my submission, the \$10,000 that's being asked for is reasonable and consistent

with what my learned friend's asking for.

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BENCH: Well, Mr Sheridan, do you agree with that?

MR SHERIDAN: Well, if it's been pointed out that way, yes; your Honour, if the - I mean I'd hate to think that - especially after we were told in July that the brief had been provided and then-----

MR KELLY: It's-----

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MR SHERIDAN: -----we're up to these other-----

MR KELLY: It's an argument-----

MR SHERIDAN: -----[indistinct] of costs.

MR KELLY: -----that I won't get into. I concede the argument. But in conceding the argument, the figure of \$10,000 is reasonable, in my submission.

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BENCH: All right. So what - if we start, Mr Sheridan-----

MR SHERIDAN: Yes?

BENCH: -----as I see this, this is the list which seems to - seemed to - seems to calculate a figure of 16,000-----

MR SHERIDAN: Mmm-hmm.

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BENCH: -----without details of dates, but it gives a number of hours and an hourly rate. So if your main argument is that those hours were probably spent, those rates are probably reasonable, but-----

MR SHERIDAN: Yes.

BENCH: -----some of those hours were at the wrong time; others were at the right time.

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MR SHERIDAN: Yes.

BENCH: The next question is: does 10 out of 16 represent the appropriate discount-----

MR SHERIDAN: Where-----

BENCH: -----to reflect the argument that you're raising?

MR SHERIDAN: Yes, your Honour. And if I look at it now after my learned friend's assistance, if we - indeed, if it's - the total's 16 and they're seeking 10, then if you take everything below Al Healy down, which is two - rough number - round numbers, Healy at 2,000, Goulevitch at 1100, that's 3100; Anderson at four, which is seven, eight - it's pretty close. Yes. We cut Anderson. And if we cut - as my learned friend's pointed out-----

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MR KELLY: And Goulevitch was always involved in that.

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MR SHERIDAN: Yes, and there's been two inspections by Sargent, two by Radke, if we split - absent the dates and if we split it the way that my learned friend's suggesting and 16 becomes 10 and then it probably is, then I'd concede that is reasonable.

BENCH: All right.

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MR SHERIDAN: When it comes to the fine, what I've tried to do today is point out to your Honour that - and I've said it, it is a difficult task that your Honour has. If this was a straight faced clearing with chains and it was \$1400, it would be pretty easy - 1400 hectares, it would be pretty easy to compare it with - like with like.

BENCH: Yes.

MR SHERIDAN: Here it isn't. However foolish or however ignorant Mr Hindman may have been in not applying for a permit, he - there is no question that he should have. He did not, so he's in breach of the law. Now, the penalties are quite severe, but it has been our consistent task today to point out that this is a different set of circumstances than one that the Court has probably seen before and certainly your Honour has.

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BENCH: All right, can I just ask you whether you have - you have - do you have any submissions as to what I should fine him? If you don't, it doesn't matter, but I just thought I - the day is late and we just want to get on, I want you to-----

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MR SHERIDAN: Yes, your Honour.

BENCH: -----complete your submissions in a timely way.

MR SHERIDAN: Right, I'll start with my most outrageous, is that he be convicted and not further punished. And I don't expect your Honour to entertain that at all, but I certainly don't go anywhere near, or think it's anywhere near just, given the circumstances, what my learned friend is seeking. I understand the rationale, the way he's calculated it, that is fine, but I think, even though it's a late plea of guilty, he has pleaded guilty. Even though this has taken all day, I think it's been very important that your Honour be fully appraised of the circumstances behind this case especially.

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BENCH: All right.

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MR SHERIDAN: There is a tension between - there is a tension about the environmental damage and there is also, as your Honour's seen by the photographs, what we had was a very degraded piece of land that may well receive a permit for doing exactly the same thing in the future. I mean I won't be surprised at all if the result of these proceedings that Mr Hindman's application for a permit's dealt with severely perhaps, I don't know, but we'll meet that as it comes.

BENCH: I guess it's somewhat speculative of me to-----

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MR SHERIDAN: It is.

BENCH: -----take that into consideration-----

MR SHERIDAN: No, I'm not asking you to-----

BENCH: -----sentencing for past behaviour.

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MR SHERIDAN: -----in the penalty, your Honour. I'm not - if - and we tried to get it approved before today, but it just wasn't possible.

BENCH: No worries.

MR SHERIDAN: If we'd had the permit approved for exactly the same activity, then we would have come along to Court today and we would have asked your Honour to take it into account, but, at this stage, it's been - the application has been made and that's all we can say. But we do say that there is another arm of Government that thinks that it wasn't that bad at all. So, I don't - your Honour, I can't assist - and not because I don't want to, but I can't assist your Honour on what sort of a fine your Honour should impose, suffice to say, this should be much lower than what the prosecution asks, given the circumstances.

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BENCH: All right.

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MR SHERIDAN: Unless I can assist your Honour any further?

BENCH: Well, there's the issue of the film, do you have that now?

MR SHERIDAN: Do we have that DVD? Yes, we do. My learned friend's - you've got it - if you're going to look at it on the computer, we're happy with that. This one here's the-----

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BENCH: Well, I've seen it. I've seen the film in Court, as you have.

MR SHERIDAN: Yes.

BENCH: And you're tendering that, that's a DVD of the film that I've seen.

MR SHERIDAN: Yes.

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BENCH: I'll take the trouble - I will take the trouble to make sure of it.

MR SHERIDAN: Do you want me to - I won't mark it, I'll let your Honour just mark it with an exhibit number.

BENCH: Yes. Yes, that will be good. So, that will be admitted and marked Exhibit - what are we up to? Exhibit 11,

are we? Now, what I'll also do, for the sake of completeness, is appendix 1 and 2, I'll admit them - I guess I should admit them as - collectively as Exhibit 12.

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ADMITTED AND MARKED "EXHIBIT 12"

BENCH: Now, have you finished, Mr-----

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MR SHERIDAN: Yes, your Honour, unless I can assist any further or if your Honour has any questions?

BENCH: No, no.

MR SHERIDAN: Those are my submissions.

BENCH: Do you have matters in reply?

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MR KELLY: Yes, there are a couple of matters, your Honour, very briefly. My learned friend mentioned Mr Franks having some difficulty with burning and so on, he's a botanist, of course, that's outside his expertise. There was also some mention that he did a rushed report, but, in my submission, it was still a comprehensive report and certainly comprehensive report enough to change the RE for the particular area. And, on that, the RE maps, of course, include, not just turkey bush, but other items of botanical matters. The defence seem to be focusing on the taking away of the turkey bush, but there were other matters which fell within that RE classification 6.5.3 and 6.5.10. So, it's not just turkey bush we're talking about here.

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The - that's probably the only issues I'd really mention to your Honour.

BENCH: All right.

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MR KELLY: Except to impress upon your Honour my submission, that it's the classification that we're looking at, which is the offending under the Act, under the legislation 6.5.3 and 6.5.10.

BENCH: Yes.

MR KELLY: Thank you, your Honour.

BENCH: Okay.

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MR KELLY: My flight is - flights - respective flights aren't until 2 p.m. tomorrow, so I understand your Honour will need some time to look at the issues.

BENCH: Yes, in an ideal world-----

MR KELLY: Would be reserved judgment.

BENCH: -----but I'd like a bit of time, but, I guess, your client's from - well, yourself, Mr Sheridan, are from - where is your office?

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MR SHERIDAN: I'm practising in Victoria now, your Honour, I was at the Bar in Queensland up until six months ago.

BENCH: Okay, so you've come from Victoria and Mr Kelly's come from Brisbane.

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MR SHERIDAN: And Mr Hindman is-----

BENCH: And Mr Hindman's come from-----

MR SHERIDAN: -----harvesting wheat at Yuleba, but also Rockhampton, his home, yes.

BENCH: Yes, all right.

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MR SHERIDAN: I don't need to have a decision - we don't need to have a decision by the time we fly out tomorrow.

BENCH: Look, what I'll do-----

MR SHERIDAN: Because the issues are quite complex-----

BENCH: Yes.

MR SHERIDAN: -----and the technical evidence is somewhat complex and-----

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BENCH: What I'll do is I'll list this for further mention at, shall we say, 11 o'clock tomorrow.

MR SHERIDAN: Yes, your Honour.

BENCH: I may have a trial tomorrow, I don't know. There's something listed for 9 o'clock, so I'll list this for 11 and, by that stage, if I feel comfortable giving a decision, I will give it and if I don't, then I won't. I've learnt that lesson in my time that I should make sure that I give myself time to consider matters that really do need to give some consideration. So, I'll adjourn the matter until 11 o'clock tomorrow morning. I think your client's at large-----

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MR SHERIDAN: Yes, your Honour.

BENCH: Well, he's allowed at large-----

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MR SHERIDAN: Thank you, your Honour.

BENCH: He is at large; isn't it? Or is his bail - is he on bail?

MR SHERIDAN: He should - no, I think-----

BENCH: No, he is on bail.

MR SHERIDAN: I'd ask it be enlarged.

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BENCH: Yes, bail's enlarged.

MR SHERIDAN: Thank you, your Honour, thank you for your patience in this.

BENCH: Yes, so - just give me one moment and I'll take these things in. Yes, thank you.

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THE COURT ADJOURNED

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