

TRANSCRIPT OF PROCEEDINGS

O/N 2878

FEDERAL COURT OF AUSTRALIA

TASMANIA DISTRICT REGISTRY

MARSHALL J

No TAD 17 of 2005

ROBERT BROWN

and

FORESTRY TASMANIA and OTHERS

HOBART

9.15 AM, FRIDAY, 12 MAY 2006

Continued from 11.5.06

DAY TWENTY SIX

**MS D. MORTIMER SC appears for the applicant,
with MR P. TREE SC and MR T. MITCHELL
MR D. GUNSON SC appears for first respondent, Forestry Tasmania,
with MR A. ABBOTT and MR C. GUNSON
MR N. O'BRYAN SC appears for the Commonwealth,
with MR A. BROADFOOT and MR I. TEMBY
MR P. TURNER appears for the State of Tasmania,
with MS K. GANLEY**

Copyright in Transcript is owned by the Commonwealth of Australia. Apart from any use permitted under the Copyright Act 1968 you are not permitted to reproduce, adapt, re-transmit or distribute the Transcript material in any form or by any means without seeking prior written approval from the Federal Court of Australia.

HIS HONOUR: Yes, Mr Gunson?

MR D. GUNSON: Your Honour, I think I can report that we are very close to the finalisation of the form of the undertaking that would be suitable to the applicant and to the respondent.

HIS HONOUR: Yes.

MR D. GUNSON: It needs fine tuning. There was an exchange of emails and discussions last evening between counsel. In each case, of course, it was necessary for instructions to be taken from affected clients. That is continuing at the very moment. It is fine tuning in the terms of a few words at the moment.

HIS HONOUR: Yes. Well, it is important that it be precise and that the process not be rushed. I thought it was prudent to just come on and get a report from you, but it is probably best if I leave it on the basis that you contact my staff when you are ready rather than set any particular time.

MR D. GUNSON: I think that is the desirable course, your Honour.

HIS HONOUR: Yes, all right.

MR TREE: Might I inquire of your Honour whether it would be of assistance to provide your Honour with a copy of the final version of it prior to your Honour resuming, so that your Honour has a chance to consider it?

HIS HONOUR: Do you have any objections to that?

MR D. GUNSON: Not at all, your Honour.

HIS HONOUR: It is probably a good idea.

MR D. GUNSON: We will send one through to you, yes.

HIS HONOUR: Yes. And Mr Temby, welcome on board.

MR I. TEMBY: Thank you, your Honour.

HIS HONOUR: Yes. We will adjourn on the basis I previously identified.

MR D. GUNSON: Thank you, your Honour.

45 **ADJOURNED** **[9.18am]**

RESUMED **[10.39am]**

MS MORTIMER: Your Honour, we have reached agreement on a form of an undertaking and I believe your Honour has been supplied with a copy of that.

5

HIS HONOUR: I have. From the Weinberg school of excessive commas may I suggest that a comma go after "the construction" in (a)? So it is "the construction" comma "for on-site preparatory works for the construction" comma because when I first read it I thought it should be an "of" rather than an "or" and then I realised no, it is an "or" and just query if there is a comma.

10

MS MORTIMER: Well, spotted, your Honour. Yes, yes, your Honour is correct.

15

HIS HONOUR: And also in (b) it should read "the harvesting" comma "or on-site preparatory works for harvesting" comma.

MS MORTIMER: Yes, if your Honour pleases.

20

HIS HONOUR: Sir Roger Casement would roll in his grave.

MS MORTIMER: And, your Honour, my learned friend, I think, wants to place some matters on the transcript and we have asked in particular that he place some matters on the transcript for the record in relation to paragraph 4.

25

HIS HONOUR: Yes.

MR D. GUNSON: Yes, I am happy to do that, your Honour.

30

HIS HONOUR: Mr Gunson?

MR D. GUNSON: For the purpose of the transcript, the three plantation coupes WT010B, 044A, and 009G are all, as I have said, plantation coupes. 10B was planted in 2002 with eucalypts, 44A planted in 1997, similarly with eucalypts and 9G also with eucalypts in 2004, and all activities insofar as the planting process, that is, the initial removal of trees and the planting are now completed, but the sort of activities that are contemplated that will need to be carried out in which Forestry Tasmania may need to engage in are such matters as pest and pathogen control, particularly in the youngest coupe, pruning and thinning of trees as they grow to maturity and other incidental works to ensure the continuing health and viability of the plantations. And that is what is contemplated by the sort of work that is needed to be done in those coupes, your Honour.

35

40

45

HIS HONOUR: Yes. Thank you. Does anyone else want to say anything else by way of explanation?

MS MORTIMER: No, your Honour.

HIS HONOUR: All right. Could a revised copy of the undertaking be prepared and filed?

5 MS MORTIMER: Yes, your Honour.

HIS HONOUR: Yes. And that undertaking is given by Forestry Tasmania?

10 MR D. GUNSON: That undertaking is given by Forestry Tasmania, your Honour, in substitution of the undertaking that was previously given.

HIS HONOUR: Yes. Thank you. What is the next step in the proceeding?

15 MR D. GUNSON: The next step, your Honour, is to call Mr Jonathan Rudd to give evidence. Mr Rudd, would you go across to the witness box, please?

<JONATHAN LEWIS RUDD, AFFIRMED

[10.42am]

<EXAMINATION-IN-CHIEF BY MR D. GUNSON

5

HIS HONOUR: Yes, Mr Gunson?

10 MR D. GUNSON: Could Mr Rudd be given Court book number 9,
please?---Thank you.

HIS HONOUR: 2866?

15 MR D. GUNSON: That is correct, your Honour.

If you turn to page 2866, please, Mr Rudd? Do you have that?---I have that
page.

20 Thank you. Mr Rudd, you are Jonathan Lewis Rudd and you live at 17 Lewis
Avenue, Seven Mile Beach in Tasmania; is that correct?---That is correct.

And your current position with Forestry Tasmania is senior forest officer, sales,
with the Derwent district; is that correct?---That is correct.

25 Yes. And before you do you have a copy of your affidavit sworn on 7 April
2006 in these proceedings?---Yes, I do.

And is that affidavit true and correct?---It is true and correct.

30 Thank you. That is the evidence of the respondent.

HIS HONOUR: Yes. Thank you, Mr Gunson.

35 **<CROSS-EXAMINATION BY MR MITCHELL**

[10.44am]

40 MR MITCHELL: Mr Rudd, can I start by asking you to turn to page 2869 of
Court book 9, paragraph 13 of your affidavit?---Yes, I have that.

You will see at the end of that paragraph that you have referred to the Forestry
Commission, Tasmania, technical bulletin number 5, silvicultural
systems?---That's correct.

45 HIS HONOUR: Sorry, Mr Mitchell, what page was that again?

MR MITCHELL: 2869, your Honour.

Could the witness be shown this document, please?---Thank you.

You have the document in front of you now, Mr Rudd?---Yes, I do, yes.

5 And do you recognise that as being the document that you - or an extract from the document that you refer to in paragraph 13 of your affidavit?---Yes, I do.

10 Can I ask you to turn to the second page of what I have just handed you and there we see, do we not, a series of illustrations of pre-harvest and post-harvest graphical representations of silvicultural systems?---Yes, that is correct.

15 So to start with - at the top of that page - we see an illustration of clear fell, how a forest looks before it is clear felled, and to the right of that how a forest looks after it is clear felled?---It is a representation of that, yes, that's correct.

Yes. And we see in the description below that, that in order to comply with what is suggested for clear fell:

All trees greater than five metres tall are felled.

20 So all live trees greater than five metres tall are felled?---I'm sorry, could you repeat the specific question?

25 In order to comply with what is suggested there for clear felling, all live trees greater than five metres tall should be felled?---Certainly that is what is suggested there, yes.

30 If we look at the second example which is called Clear Fell with Retention?---Yes.

The example that has been provided is a graphic representation of seed-tree retention, is it not?---The reference to clear fell with retention I understand does not have a graphic representation in the document.

35 I see. So seed-tree retention is something different to clear fell with retention?---That is correct.

40 If we move on to seed-tree retention then we see in the graphic representation that after harvest one tree remains?---That is what is represented here.

And the description below those paragraphs show that seven to 12 well-spaced trees per hectare should be retained?---Again that is what is suggested here, correct.

45 Yes. Is it your understanding that the retention of those seven to 12 well-spaced trees is to facilitate seeds falling to the ground to regenerate the next generation of eucalypts in that area?---In most cases that is the case.

I suggest to you that would be in all cases the reason for retaining seed trees?---Yes, yes, that would be fair comment.

5 Thank you, Mr Rudd. If I can ask you to move on to the - turn to the third page of the document that I have put in front of you, we can see that the first illustration is of advanced-growth retention?---That is correct.

10 Is it your understanding that the purpose of advanced-growth retention is to retain future growing stock for future harvesting?---It is my understanding that that may be a purpose for advanced-growth retention.

15 What other purposes are there for retaining that advanced growth?---There may be some other reasons such as aesthetic purposes or advanced growth may be retained to supplement reservation areas or something along those lines.

Can I ask you to have a look at the second line of the description below advanced-growth retention where it says that:

20 *All mature trees are harvested other than young stems that have potential for further value increment.*

25 Now, would you still suggest that advanced-growth retention as a silvicultural system has other purposes than the retention of growing stock for future use?---In some circumstances, yes.

Okay. Can I ask you to look then at the bottom illustration on that page, the fourth one which is called selective logging?---Yes.

30 Selective logging, it says, is generally applied to open, multi-aged stands with an adequate stocking of saw logs. Selected, merchantable trees are logged within that environment and other growth is retained?---That's what's stated, yes.

35 So is it your understanding in cases where selective logging is practised, that all that is taken are the trees which are or merchantable quality, and everything else is left standing? It is picked almost on a tree by tree, or stand by stand basis?---In most cases that is correct.

40 Now, would you agree with me that looking at the post-harvest depictions, in all eight depictions on the document that you have in front of you, that if we consider what is left of canopy cover after harvest the only depiction which shows a remnant of the original existing canopy cover is the final one, selective logging?---Is that from all eight - - -

45 Yes, from all eight?--- - - - processes described? No, I disagree. I believe that the shelter wood description does indicate - - -

Sorry. I apologise. The shelter wood description - shelter wood is not applicable to the Wielangta area, is it?---No.

No. Okay. Well, let us exclude shelter wood, and look at the remaining seven.

5

MR D. GUNSON: I don't like to be unduly difficult, but I think my friend may, in the asking of this question, not have appreciated that if one looks at page 6, under pre-harvest, there is clear fell, and therefore clear fell retention, but clear fell with retention doesn't have a picture associated with it.

10

MR MITCHELL: The question that I have asked the witness is based on the seven depictions, not including shelter wood.

HIS HONOUR: The seven drawings?

15

MR MITCHELL: Yes. So I am not asking the witness to comment on clear fell with retention.

HIS HONOUR: Yes?---And the specifics of your question again, please?

20

MR MITCHELL: Would you agree that in the seven depictions, not including shelter wood, the only one which retains a semblance of canopy cover is the final one, being selective logging, a semblance of the original canopy cover?---No. I believe seed-tree retention also shows a resemblance of canopy cover also.

25

So the seven to 12 well spaced trees per hectare you suggest is canopy cover?---Seven to 12 well spaced trees is a guide, as per this technical bulletin. In practice that may vary, the spacing of the number of trees retained, and certainly a seed-tree retention operation may well have more or less trees than that.

30

And if you were to look at the description of clear fell with retention, that provides that less trees are retained per hectare than seed-tree retention, doesn't it? It is only five to 10 trees per hectare?---That is what's indicated there, yes.

35

Yes. And this is a technical bulletin which is distributed by Forestry Tasmania?---That's correct.

The purpose of the bulletin is so that foresters will comply with what is suggested to be - sorry, with what is prescribed in the bulletin, in the carrying out of forestry operations?---The bulletin is provided for foresters and practitioners in the field of forestry to - as guidance, and to give assistance in determining appropriate prescriptions for management of the forest.

40

45

Yes. So it is only a guide, is that what your evidence is? A forester looks to this, obtains a guide, and then makes their own decision about how they should carry out a prescription?---This document is used to assist in the determination

of an appropriate prescription, and the recommendations, or the guidelines that are specified are followed in a general sense.

5 But only in a general sense?---The harvest prescriptions specified are a guide to how prescriptions should be applied, and they are followed generally as described, yes.

10 Okay. So to take it back a step, if I am a forester and I have in front of me a Forest Practices Plan, that Forest Practices Plan prescribes advanced growth retention, am I right in saying that the first place I should look on how to carry out an advanced growth retention process is this technical bulletin?---No. Generally a Forest Practices Plan would prescribe with some detail what would be required as far as achieving the harvest prescription of advanced growth retention.

15 Okay.

HIS HONOUR: That is dated 1994. Is it still current in that form?---Your Honour, I do not know.

20 MR MITCHELL: Your Honour, the copy I have, this was provided by Forestry Tasmania pursuant to a request, the copy I have been provided with does specify inside the cover that it has been updated, I think as at 2003.

25 HIS HONOUR: I see. It is a bit like legislation, the Conciliation and Arbitration 1904 doesn't mean that it wasn't amended.

30 MR D. GUNSON: Your Honour, the document itself as opposed to the couple of sheets that are now before the witness shows that it was printed first in 1994 and it has gone through subsequent reprints in 1995, 1998 and 2003.

HIS HONOUR: Yes, thank you.

35 MR MITCHELL: Yes. Your Honour, I tender that.

HIS HONOUR: I think we are up to BR, is that right?

MR D. GUNSON: BR, yes, your Honour.

40

**EXHIBIT #BR EXTRACT OF PAGES FROM FORESTRY TASMANIA
TECHNICAL BULLETIN**

45 MR D. GUNSON: It does need a little bit of amendment, your Honour, because if I ask your Honour to look at page 7 of the document, at the bottom of the right-hand side of the page you will see that the photocopier has not made a very clear copy. And the words that should be there in that last line are

"generally applied to open multi-aged stands with an adequate stocking of sawlogs." Add the word "only", so it then reads "only selected merchantable trees are logged" etcetera. And the final word is "disturbance".

5 HIS HONOUR: Thank you.

MR D. GUNSON: With those amendments, we have no objection.

HIS HONOUR: Yes.

10

MR MITCHELL: That is the case the case and I apologise for the poor photocopy quality.

15

Mr Rudd, can I ask you to turn to Court book page 2866? You have stated at paragraph 3 there that as part of your work you visited coupe 17E on two occasions while harvesting was being conducted?---That is correct.

20

At what stages of the harvest process did you inspect - sorry, did you attend?---On both occasions it was while active harvesting was occurring.

And you have also stated in your affidavit that you attended on 8 March 2006, which was after harvest had been completed? I refer you to paragraph 23 on Court book page 2871?---That is correct.

25

Are they the only three times that you have attended coupe 17E?---No.

Could you inform the Court what other occasions you have attended coupe 17E, please?---I attended coupe Wielangta 17E some years ago prior to any harvesting occurring there - - -

30

Yes?--- - - - and possibly on two or three occasions around that time.

Several years ago?---That is correct.

35

So is it safe to say that in the last 18 months you have only been to the coupe on three occasions?---That would be a fair assessment, yes.

40

Twice while harvesting was under way and once after harvesting had been completed when you inspected the snig track coverage and other coverage on the ground?---That is correct.

You weren't present at the site when the start-up briefing was conducted?---No, I was not.

45

You weren't present at the site while the roading was under way?---No, I was not.

Now, at paragraph 2 of your affidavit you say you have been asked by Forestry Tasmania's general counsel John McDonald to provide an account of how partial harvesting of dry forest is carried out?---That is correct. I was actually asked by Maree Yee on behalf of John McDonald.

5

Okay. Did you read through your affidavit before you swore it to confirm that you were happy with its contents?---Yes, I did.

10 So you are satisfied that with the exception that you have just identified, being that it was Maree Yee rather than John McDonald, that everything else contained in the affidavit is correct?---Yes, I believe so.

15 Just that one mistake?---I am not certain that it is actually a mistake. If that's how you see it - - -

HIS HONOUR: By that you mean that John McDonald asked you, but through Maree Yee?---That is correct, your Honour.

20 MR MITCHELL: Now, was that all that Maree Yee asked you to do; just to provide an account of how partial harvesting of dry forest is carried out?---Possibly not.

25 What else were you asked?---At the time when I was asked to provide some information for this Court, a number of things were discussed in relation to partial harvesting of dry forest.

Were discussed by whom?---By Maree Yee and myself.

30 And just the two of you; no one else was present?---No, there's - other people were present.

Who else was present during those discussions?---Mr Craig Patmore.

35 And who is Mr Patmore?---Mr Patmore is the senior sales officer for Derwent district.

So he is your boss; is that right?---That is correct.

40 Yes, and who else was present?---In regards to determining what the information is required for this affidavit, no one else was present.

Okay. So there was one meeting or more than one meeting?---I believe there was one meeting only, yes.

45 Okay. So there was one meeting which Maree Yee, Craig Patmore and yourself attended. At that meeting Maree Yee asked you to provide an account of how partial harvesting of dry forest is carried out, and you said there may also have been other things that you were asked. Can you recall what they

were?---There was a requirement to make some reference to Wielangta 17E as well.

5 So how partial harvesting of dry forest was carried out in Wielangta coupe 17E?---No, not necessarily. How partial harvesting occurred in dry forests generally but with some references to Wielangta 17E.

10 Yes, I understand. And was the reason that you attended Wielangta coupe 17E twice during harvest so that you were able to inform the Court of how the harvest was carried out?---No, not at all. The visits to Wielangta 17E during harvesting were before I was aware of the need to provide anything for the Court.

15 Right. Then would it be correct to say that the reason why you are the person put forward by Forestry to give evidence about this coupe and harvesting in this coupe is because you were there to see it happening?---Partly, I would say, yes.

20 Did you draft the affidavit yourself?---Yes, but with some assistance.

Who provided you with assistance?---Mr Craig Patmore again.

Yes?---And Sandra Roberts.

25 Yes. Are you able to say which parts of your affidavit Mr Patmore and, I think it might be Dr Roberts, assisted you with?---Not specifically.

30 General assistance as you drafted it, is that the case?---After the initial request from Maree Yee, Craig Patmore and myself together put the initial draft together.

Right, so the first draft was a collaborative effort between yourself and Mr Patmore?---That's a fair comment, yes.

35 Yes. Were any of the parts of your affidavit which refer to the logging process at coupe 17E, were you provided assistance on any of those parts by Mr Patmore or Dr Roberts?---No.

40 So that was all based on your own observation?---That is correct.

You prepared a first draft, then what did you do with that first draft?---The first draft was provided to Dr Sandra Roberts for comment.

45 And in what form was that provided to Dr Roberts?---In the form of email.

So you emailed a draft to Dr Roberts for comment?---I believe so, yes.

Did you receive any comment from Dr Roberts?---Yes.

And what form did that comment take?---I can't recall in relation to specifically the first draft but do you require how the comment was received in relation to other drafts?

5

I will get to that?---Right.

Starting with the first draft, do you know whether you received an email, an amended email version of the draft back or whether there were handwritten comments on a version that was provided to you or in some other form?---I can't recall specifically.

10

I call for production of the draft that was sent to Dr Roberts for comment.

15 HIS HONOUR: Mr Gunson?

MR D. GUNSON: It is noted, your Honour. We don't have it at the moment.

HIS HONOUR: Yes.

20

MR MITCHELL: Shall we move on to the second draft? Sorry, before I do, I withdraw that. The first draft, was that only sent to Dr Roberts?---I believe Craig Patmore was also given a copy.

25 And it was the same version that was sent to Mr Patmore and Dr Roberts?---That is correct.

For comment. Do you recall receiving any comments or any feedback from Mr Patmore in relation to your first draft?---No, I don't recall any.

30

If we move on to the process of the second draft of the affidavit, were changes made to the second draft on the basis of comment or feedback that you received?---Yes.

35 But you don't recall the form that those comments took?---That is correct.

Did you send the second draft to anybody, whether in email or in hard copy form, for further feedback or comment?---Yes. Yes.

40 Yes. Who did you send the second draft to?---I recall a number of people that may have received a copy of the second draft.

Yes?---Dr Sandra Roberts.

45 Yes?---And possibly Maree Yee.

And the purpose of sending Dr Roberts and Maree Yee - you say you're not sure; if you did send them to Dr Roberts or Ms Yee, that was again for the

purpose of receiving comment or feedback on what was contained in the draft?---Yes, that is correct.

Yes. I call for a copy of - production of a copy of the second draft.

5

MR D. GUNSON: The call noted, your Honour, we don't have the documents and will take necessary steps.

HIS HONOUR: Thank you.

10

MR MITCHELL: And what feedback did you receive from Dr Roberts and now Dr Yee?---I can't recall specifically what the feedback comments were.

Do you recall the form that the feedback took?---Not specifically, no.

15

You don't recall whether it was email or handwritten?---No. It may have been either or both.

Do you have copies of documents - have you retained copies of documents which incorporate that feedback?---Yes.

20

I call for production of the documents with feedback from Dr Roberts or Dr Yee. Do you have those documents with you, Mr Rudd?---No, not right here today.

25

MR MITCHELL: Again, your Honour, we note the call and we will deal with it.

HIS HONOUR: Thank you.

30

MR MITCHELL: Having received the second round of feedback and comment, did you then produce a third draft?---Yes, I believe I did.

Was that the final version of the affidavit at that stage or were there subsequent drafts?---I can't recall specifically.

35

Do you recall sending a copy of the third draft of your affidavit to anyone?---It would have - yes, yes.

40

And to whom?---Dr Sandra Roberts.

Not Dr Yee?---No, I don't think the third draft went to Ms Yee.

And not Mr Patmore?---No.

45

Again, I call for a copy of the third draft.

MR D. GUNSON: Again it is noted, your Honour and we will adopt the same process with respect to the first and second.

HIS HONOUR: Thank you.

5

MR MITCHELL: Do you recall receiving feedback from Dr Roberts in relation to the third draft?---Yes, I did receive feedback.

10 Perhaps I can short cut this process slightly. Might I call for production of all drafts and all comments and feedback in the preparation of Mr Rudd's affidavit?

15 MR D. GUNSON: We will do that with the exception of such affidavits ultimately found their way to Mr McDonald for legal - for comment because obviously there will be a claim of legal professional privilege, but with that exception, your Honour, we will do that.

HIS HONOUR: Yes, thank you.

20 MR MITCHELL: Now, Mr Rudd, you have said today that it was about two or three years ago - sorry, that it was about two years ago, I think, that you attended Wielangta coupe 17E. Was that to assist you in preparing the forest practices plan for the coupe?---No, no, it wasn't.

25 Were you involved in the preparation of a forest practices plan for the coupe?---No, I wasn't.

30 Can I ask you to turn to the second page of your affidavit at paragraph 5, where you begin to discuss roading? Now, as I understand it, and please correct me if I am wrong, the description in paragraph 5 is a general description of how roading occurs in dry eucalypt forest?---Yes, that's a fair comment.

35 And would you also agree that - sorry, is it your evidence that the roading in coupe 17E was carried out in accordance with how you have described that roading is carried out in dry eucalypt forest?---Generally yes.

HIS HONOUR: Well, that is what is said at paragraph 6.

40 MR MITCHELL: Yes, thank you, your Honour.

When marking out the path that the road will follow what equipment do the people on the ground who are carrying out that task use?---I'm not involved in that task myself, as part of my role.

45 So you don't know?---No, that's not the case. I do know, yes.

You do know? Well, could you please answer my question then?---Okay. Generally a variety of survey equipment is used, and also tapes and occasionally paint may be used to identify the location for the road.

5 Would the person marking out the road have GPS equipment to determine the exact location that they are at?---Certainly generally they would now, yes.

Yes. When would that have started to be the practice?---It may have been within the last few years.

10

Three years, five years, 10 years? Are you able to give an indication?---Possibly three to five years.

15

Yes. So you would expect that the person marking out the road within coupe 17E would have had access to GPS equipment to enable them to do that?---No. I wouldn't have expected. It wouldn't be up to me to determine how that is carried out.

20

Well, Mr Rudd, you are the person who has been put forward by Forestry Tasmania to describe how these processes are carried out. Are you saying you are unable to assist the Court in answering this question?

25

MR D. GUNSON: Could I put the question in this form, your Honour? Mr Rudd has been put forward as a person who has described the various processes that are used to harvest dry forest. He said at paragraph 6, the road was built by Gunns Forest Products Pty Limited. Now, he is being asked about whether or not people building the road or surveying the road would or would not have used particular equipment. It wasn't built by Forestry Tasmania, it was built by an independent contractor. He is not possessed of the knowledge to say what they did on the ground. He wasn't there.

30

HIS HONOUR: Mr Mitchell?

35

MR MITCHELL: Your Honour, the question I believe was, would you expect that that person would have access to GPS equipment to enable them to carry out that task. That is a question which is put in a general form, and deliberately so, because I understand that the witness wasn't present at the time that the roading was carried out.

40

MR D. GUNSON: The question can only be based on the witness' knowledge. He should be asked, do you have any knowledge as to whether or not Gunns and their personnel had access on that particular site to GPS equipment. Otherwise the answer to the question is completely worthless. He has no knowledge.

45

HIS HONOUR: Mr Mitchell?

MR MITCHELL: I will rephrase the question, your Honour.

In order to comply with a forest practices plan the contractor, or the employee who is constructing the road needs to do so accurately, don't they?---They need to do so as required by the forest practices plan.

5

Yes. So the road, as marked on the forest practices plan, which is certified, must be the road which is constructed on the ground, in order to comply?---The map which indicates a location for the road, as part of the forest practices plan, is an indication of where the road would be.

10

Is it no more than an indication?---The map doesn't necessarily show a final surveyed road.

15

Is it then the case that whichever person it is that is constructing a road in a Wielangta coupe, pursuant to a forest practices plan, need only refer to that map as a general indication of where the road should go?---The person constructing a road would be following the marked road line indicated in the bush, in the field.

20

I will take you back one step then. The person marking the line along which the road will be constructed, we have that person in mind, is it the case that that person need only use the forest practices plan as a general indication of where a road should be?---No. The road location process is generally done as part of preparing the forest practices plan prior to the final plan being completed.

25

HIS HONOUR: Please ask the question again, Mr Mitchell. Mr Rudd, please carefully concentrate on the precise question asked, and attempt to answer it as directly as possible?---Yes, your Honour.

30

MR MITCHELL: Is it the case that a person marking the line along which the road will be constructed need only use the map that is annexed to a forest practices plan, as a general indication of where the road should be constructed, or should be marked?---My response to that question I guess is that the map that is attached to a forest practices plan generally would not be in existence when a road line is marked.

35

40

In the case where a road lining is marked after a forest practices plan is certified is it the case that a person marking that road need only use the forest practices plan map as a general indication of where the road should be?---Again, the map is - for the forest practices plan is determined from the road location so it is unlikely that the forest practices plan map would be used to determine the road location.

45

HIS HONOUR: So the road is already in there before you've got a plan?---Your Honour, for the - to determine where the road is to be located the marking of, in the bush.

Yes. That is already done before a forest practices plan exists?---The marking is, yes.

Yes?---In most cases.

5

Yes.

MR MITCHELL: Let us refer specifically to coupe 17E. Was the road and the entirety of the road that was constructed pursuant to or purportedly pursuant to the forest practices plan for coupe 17E, was that all marked before the forest practices plan was certified?---I don't know, I was not involved in that at all.

Okay. What I am trying to establish, I would like you to address your mind to the question of circumstances when a road is marked and constructed after the certification of a forest practices plan?---Yes.

Now, is it the case that the person on the ground marking the road line along which the line will be constructed, is it the case that that person need only rely on the forest practices plan as a general indication?---I find it difficult to answer your question because the location - the preparation of the map for the forest practices plan is from the work that is done to locate the road.

So it is your evidence, is it not, and correct me if I am misstate you, that the road line will be marked before a forest practices plan is certified and the map which is generated and annexed to the forest practices plan uses the actual road marking on the ground in order to determine where the road should be placed on the map. Is that the order of events?---That is the order of events but the degree - the road shown on the map is from - yes, is from the road location work that has been completed.

The maps which are annexed to forest practices plans have a scale marked on them, don't they, or a grid marked on them?---That is the case, yes.

And that grid provides GDA co-ordinates of the areas within that particular forest practices plan?---That is the case with more recent mapping.

Yes, and that is the case with 17E, isn't it?---I don't know.

Turning away from roading for a moment. What about harvest boundaries, are they marked indicatively on the ground before they are put into a forest practices plan?---In some instances they are but not always.

Is that because a contractor or an employee of Forestry Tasmania goes down on the ground, selects an area and just assumes that that will be certified?---No, that is not the case.

So are you aware of any circumstances in which either a road or a harvest boundary has been marked out with tape and has then had to be altered because a forest practices plan of that shape wasn't certified?---I'm sorry, can you repeat that question?

5

Are you aware of any circumstances in which a person on behalf of either a contractor of Forestry Tasmania has marked out either a road or a harvest boundary with tape as prescribed in the code, and has then submitted a forest practices plan or then a forest practices plan has been submitted for certification and has been refused and the boundaries or the road line have had to be changed as a result?---I'm aware that that can occur, yes.

10

Are you aware that that has occurred?---Yes, but I can't be specific as to a specific circumstance.

15

Was it a road or a harvest boundary?---No, again, I can't be specific. I'm aware that it has occurred, that's all.

Okay, you don't have any first-hand knowledge of it having occurred?---No.

20

Okay. Now, do you know who marked the harvest boundaries in coupe 17E?---I'm aware of a number of individuals that were involved in the marking of the Wielangta 17E harvest boundaries.

25

Yes, who were they?---A contractor for Forestry Tasmania was involved, Mr Tony O'Malley. I believe one of our staff, Mr Alec Dean, was involved.

Yes?---And also I believe Mr Frank Bishop, another one of our staff was involved also.

30

Yes. And are you aware whether the harvest boundaries were marked before the forestry practices plan was certified?---No, I'm not aware.

Not aware. Do you know when the harvest boundaries were marked?---No.

35

HIS HONOUR: Does Mr O'Malley have some connection to Gunns?---Sorry, your Honour?

Does Mr O'Malley have some connection to Gunns?---Yes, he does do sub-contract work for Gunns as I understand it, your Honour.

40

MR MITCHELL: Does he do contract work for anyone else?---He certainly does contract work for Forestry Tasmania.

45

Anyone else?---Not that I'm aware of.

Now, could the witness be shown a copy of exhibit 6 to the second affidavit of Dr Grove, which is in Court book 9, although it is a map, I'm not sure whether the map has found its way into that Court book.

5 HIS HONOUR: 2853 is the affidavit.

MR MITCHELL: Does your Honour have a copy of that map available? I have a spare copy.

10 HIS HONOUR: If you have a spare, that is probably an easier and shorter way of dealing with it. Thank you.

MR MITCHELL: Now, Mr Rudd, if I can ask you just to look at the legend at the bottom of the map which has various shadings being provided as
15 inaccessible, unloggable, non-commercial, re-gen problems, steep etcetera?---Yes.

Are you familiar with a type of map that has that legend on it?---Yes, I have seen similar maps with a similar legend.

20

Yes. Are they categories in the MDC system?---I'm not aware of that.

Do you know whether these categories are categories that are either contained for the whole of Wielangta in a general database or whether they are classified
25 by people on the ground and just relate to individual coupes?---No, I am not aware.

You don't know?---No.

30 In paragraph 12 of your affidavit you have stated that the start-up briefing was conducted as above by Gunns. You weren't at the start-up briefing, were you?---That is correct.

35 So you actually have no knowledge of whether it was conducted - in what manner it was conducted or in fact whether it was conducted at all?---I have been told that it had been conducted.

You have no personal knowledge that it was conducted though?---No, that is correct.

40

If we can turn the page in your affidavit, please, in fact turn to page 5 of your affidavit where there is a picture of a skidder at the top of the page. That is a caterpillar skidder, isn't it?---I believe so. That is what's indicated on the picture.

45

Yes. And you have stated in your affidavit that the type of skidder for coupe 17E, and this is at paragraph 22 of your affidavit, was a John Deere grapple skidder?---That's correct.

5 Can the witness be shown these documents, please? They are, are they not,
pictures of a John Deere grapple skidder, or in fact two different John Deere
grapple skidders?---Certainly the larger picture has an emblem shown on it that
does represent John Deere company.

10 Yes. And the term "grapple skidder", grapple because it has a hydraulic
grappling clamp at the top to grab the logs; is that the case?---That is correct,
yes.

15 Yes. And "skidder", is that because it drags the logs skidding along the ground
behind it?---Presumably so, yes.

15 Yes. I tender those documents, your Honour.

HIS HONOUR: That will be unfortunately marked exhibit BS.

20 **EXHIBIT #BS PHOTOGRAPHS OF JOHN DEERE GRAPPLE
SKIDDER**

25 MR MITCHELL: Can I ask you to turn to page - sorry, to paragraph 20 of
your affidavit?---Yes.

Where you say that:

30 *The monitoring of compliance with silvicultural prescriptions at 17E
involved informal visual assessments by the Gunns harvesting
supervisor and Forestry Tasmania officer and were noted in forest
harvesting monitoring reports.*

?---That is correct.

35 Is it the case that there was more than one harvest monitoring report that was
created during the logging of coupe 17E?---Yes.

40 And you have exhibited the final harvest monitoring report to your
affidavit?---I believe so.

HIS HONOUR: 2876.

45 MR MITCHELL: I call for production of all other forest harvest monitoring
reports for coupe 17E.

MR D. GUNSON: And we note the call, your Honour. If they exist, we will
produce them.

HIS HONOUR: Yes, thank you.

MR MITCHELL: Now, you believe, Mr Rudd, don't you, that the road at 17E was constructed as prescribed in the Forest Practices Plan?---I believe so, yes.

5

And you also believe that future roading into coupe 19D will be carried out, and I will use your words here, "in the same manner" as WTO17E? That is at paragraph 7. Do you still hold that view?---My intent with that paragraph was that roading, any future roading into Wielangta 19D would be carried out in a similar manner to the roading description in this affidavit.

10

In 17E - sorry, in - - -?---To a similar manner to the roading as described in this affidavit.

15

I see. So when you said "in the same manner as 17E", what you in fact mean was "in the same manner as I have described in paragraph 5"?---Generally in that manner, that is correct.

20

Thank you. I am sorry to keep moving around the affidavit. Could I ask you to turn again to the exhibit to your affidavit, being the forest harvesting monitoring report?---Yes, I have that.

Now, that is dated 16 August 2005?---That is correct.

25

Is it safe to assume that all logging operations had ceased by 16 August 2005?---That would be a fair assumption, yes.

30

So what this report represents is a final survey of all of the criteria which are provided in it, and ticking or crossing whether they have been complied with?---Yes, it's a final judgment or assessment that the points listed are shown as indicated, either with a tick or a cross, that is correct.

35

Yes. And would you agree with me that of all of the questions for which a tick or a cross can be placed next to them, and excluding the ones which are not applicable, which I presume is what N/A means, would you agree that there is only one cross; there was only one problem identified on the final report out of those questions? I think you will find at 1.3?---Yes, that's what is indicated on this report.

40

And then there are two additional matters noted near the bottom of page 2; one additional culvert needed to be installed and one tree was accidentally felled over the coupe boundary in the north-west of the coupe?---That is correct, that is what is described at the bottom of the second page.

45

So then it is fair to say based on that harvest monitoring report that the only three problems that were identified at the completion of the logging operation were the cross next to 1.3, which appears to relate to I think the first of the additional matters, the culvert, and the single tree which was felled over the

coupe boundary?---At the time that the report was prepared, that was the judgment of the people that prepared that report.

5 Yes. So if we were to - and I ask you to assume that that is absolutely correct, you would have to say that that was a fairly successful - sorry, I withdraw that. That was a harvesting operation which was carried out almost entirely appropriately?---I don't see any evidence to suggest otherwise here.

10 Yes. So the person who has signed this form off has said you have done a good job, effectively?---Basically satisfied that most of the points listed have been completed.

15 Yes. Could the witness, please, be shown Court book number 3 at page 891 - or I might begin at page 890, being the start of the document?---Thank you.

HIS HONOUR: Do a Mr Tree.

MR MITCHELL: One must learn from one's leaders.

20 Can I ask you first just to turn to the very bottom of page 890 and read out to me who the plan was prepared by?---The plan was prepared by F. Bishop.

Yes?---A. Dean.

25 Yes?---A. O'Malley.

Yes?---J. Rudd.

30 Yes?---B. Haywood.

Yes. J. Rudd is you, isn't it?---That is correct.

35 Now, I think it was your evidence earlier that you had no role in the preparation of this Forest Practices Plan. Has somebody been inserting your name on forms where they shouldn't have or did you actually have some role in preparing it?---I don't recall any specific role in preparing this plan.

40 Can you explain why your name ended up on the Forest Practices Plan if you had no role in preparing it, or is it just that you can't recall having a role in preparing it?---That is the case, I cannot recall a specific role in preparing this plan.

45 One of the contributors to the preparation of the plan, if we can believe the form, was B. Haywood?---That's what is written there, yes.

And can you read out the name of the person who certified the plan, please?---Haywood, B.P.

And there is only one Mr Haywood - Mr B. Haywood who is a forest practices officer?---As far as I'm aware, yes.

5 Yes. You have no reason to think that that might be two separate people, do you?---No.

If I can ask you, please, to look at section B of the Forest Practices Plan which begins half-way down Court book page 891?---Yes.

10 At B(1) we see that approximately one-and-a-half kilometres of class 3 Forest Practices Code standard road will be constructed as part of the plan and the construction and maintenance will be carried out by Gunns, that is right, isn't it?---That's what it says there, yes.

15 Yes. At B(2) when we talk about location of the road in the Forest Practices Plan the direction is that Gunns will mark the centre line of the approximate position of the proposed road with red-flagging tape, that is right, isn't it?---Again yes, that is what is written there.

20 Is there any reason why I shouldn't read that as meaning that both the marking and the construction of the road will be carried out after the certification of the Forest Practices Plan?---It could be read that the road centre line would be marked with red-flagging tape, possibly with that occurring prior to the certification of the plan.

25 So it is possible that they have used loose language by using the future tense, Gunns Limited will mark the centre line, when what they actually meant was Gunns Limited have marked the centre line. Is that your explanation of what might have happened?---No, it's not an explanation of what might have
30 happened, it's an explanation of what is possible to have happened or what possibly could happen - could occur.

HIS HONOUR: Do you know what actually occurred here?---Sorry?

35 You don't know what actually occurred here?---No, I don't, your Honour.

MR MITCHELL: Then if I can ask you to turn to Court book page 893, section C, harvesting of timber?---Yes, I have that.

40 At C(1) for boundaries, we have:

The external harvest boundary -

again will -

45

be marked in the field with blue-flagging tape by an FT forest officer.

Forestry Tasmania forest officer?---That is correct, that's as written.

The next bullet point there:

5 *That trees will not be felled across the blue-taped line unless
authorised by a Forestry Tasmania forest officer.*

?---Again that's what is written there, yes.

The third point:

10 *Machinery will not cross the blue-taped without the permission of a
Forestry Tasmania forest officer.*

?---Yes, again that's as written there.

15 Yes. And then we see that:

*If a tree falls over a boundary accidentally, a decision will be made on
the required course of action.*

20 ?---Yes, it actually states that, will be made by an FT forest officer.

Yes?---Correct.

25 And presumably that is what the final matter on the forest harvest monitoring
report was referring to, there was a tree that was felled over the coupe
boundary and then a decision was made on the most appropriate course of
action. Can we presume that that is what has happened?---Yes, I think that's
probably a fair assumption.

30 Perhaps I might ask you to turn to first of all Court book page 902. That is a
map depicting the area covered by the forest practices plan for coupe
WTO17E; is that correct?---That appears to be the case, yes.

35 Can I ask you to keep that page open, and have a look at the - in the bottom
right hand corner there is a class 4 road, and a proposed road. Have you found
the proposed road?---Yes, I have found a line on the map that is indicated by
the legend as being a proposed road.

40 Yes. And the date of the certification we can find on the next page. I
apologise, the page after. Court book page 904, certified by - it looks like
BPH, 28 January 2005, name Bruce Haywood?---Yes, that's what's shown
there, yes.

45 And am I right then in reading this map as indicating that as at 28 January 2005
it was proposed that a road would be built along that dotted red line?---The

- - -

MR D. GUNSON: I should make an observation, your Honour. I don't think the witness actually has before him, I stand to be corrected, the actual colour map, which he does need to answer this?---I do have the coloured map.

5 Do you? Thank you?---But thank you. Yes.

MR MITCHELL: Would you like to re-put the question, Mr Rudd?---Thank you, yes.

10 Is it the case, or can I understand this map to mean that as at 28 January 2005 it was proposed that a road would be constructed along that dotted red line?---Not necessarily. It is indicated by the map that a road would be constructed as - basically along the proposed road line as shown.

15 Basically along the line?---That's right. Due to the scale of the map, and possibly site conditions, it may not be possible to show precisely where the final - or where the road would go finally.

I see. Then the person who - and I will ask you to assume that the road line
20 was marked after this map was prepared, if you can just assume that for the purpose of this question?---Yes.

The person on the ground with a copy of this map, how are they to know
25 exactly where to put the road? Do they just use this as a guide?---No, not at all. There's a whole range of factors that may determine where a road can or cannot go, and they all have to be considered in determining that location.

If on the ground the person marking the road decides that there are some of
30 these factors which prevent him or her from marking a road line as marked on this map, is the person marking the road line entitled to mark a different road line as they see fit, or do they need to get formal approval before that happens?---There's no requirement, as far as I'm aware, for formal approval as such, but certainly any change to the indicated road line on the map would require that map to be reviewed as a result.

35 So if we want to change the indicated road line we need to have it certified, but if we want to change the actual road line we just go ahead and do it?---No, not at all.

40 So perhaps I misunderstood your evidence. What certification or authorisation process is required to be followed for a person on the ground marking a road line to change that road line from what is marked on the map?---If the change is significant, that it would be apparent on the map - - -

45 Yes?--- - - - and that the FPP, the forest practices plan, has been certified - - -

Yes?--- - - - then the forest practices plan would have to be formally varied.

Before that change on the ground could occur?---Not necessarily, but it would have to occur to account for that change.

5 So a contractor, or an employee of Forestry Tasmania, can put a road somewhere else? It has to be certified, but it can be done after the road has been constructed; is that your evidence?---No, not at all. The location, if the location is changed - - -

10 Yes?--- - - - then that has to be approved by a variation, if the forest practices plan has already been certified.

15 Okay. Assume we had a forest practices plan that has been certified, assume the road is going to be put somewhere different to where it has been marked proposed on the certified forest practices plan. Now, I understood your evidence, and I may have been mistaken, I understood your evidence to be that it has to be certified at some point, but not necessarily before the change is made. Am I mistaken?---No, not - we are referring to the road line location only, the marking of the road line?

20 Right?---Yes. Your statement is correct in relation to the marking of the road line only.

25 Right. So if we need to put the road line somewhere else we will mark it. We won't construct it, we will mark it, get certification for a variation, and in accordance with that variation we will then construct a road along a new road line? Is that the sequence?---That is correct, yes.

30 Can I ask you to keep your finger in page 902 of the Court book, the map that we have been looking at? That forest practices plan was varied on 18 May, and I will ask you to assume this is the case. If you could turn to page 917, and just keeping in mind that that small piece of road that we have just been talking about, or proposed road I should say, the way I read the map, and please correct me if you think this is not the case, the way I read the map that section of proposed road is located in the same spot, and is still a proposed road as at certification on 18 May. Is that your reading of the map also?---Yes. The proposed road as shown on both maps, at the point that we are referring to?

Yes?---With the south east corner of the map?

40 Yes?---Appears to be the same.

45 Thank you. That is my reading of the map. If I can now ask you to turn, please, to Court book page 909, and just keep your finger in one of the other two maps, given that the road is in the same spot, whatever is convenient. It might be convenient to have 909 and 917 to compare next to each other. Have you got those two maps?---Yes. Pages 909 and 917?

Yes?---Yes.

And if we compare that same section of what was proposed road, and which is now marked as road class 1 to 3, which goes through the protection forest, we can see that they run along different lines, don't they?---There appears to be possibly some very slight difference between the two.

When you say very slight, I will just remind you that each grid square is 1000 metres by 1000 metres?---Yes, I stand by my previous statement referring only to the section in the south-east corner of the map.

Yes?---The locations are similar.

They are not the same though, are they?---They're not identical, no.

The road line will have been marked along a different route, is that correct?---I don't know.

Well, road isn't built without first being marked out, is it?---That is correct.

Well, it follows, doesn't it, that for the road to follow a different line that the road markings must also have followed a different line?---Yes, that is correct what you're saying.

Thank you?---But I'm not - - -

What I - - -?---Sorry, go on.

Sorry, did you want to go on?---Oh, I was just going to say that I'm not sure that the map on page 909 necessarily represents a changed road location.

It is in a different spot on the map, isn't it?---Yes, there is a slight difference there.

And I would like to - or I will ask you to assume that there are no variations between the May variation on page 917 and the June variation on page 909 for the purpose of this question. Is it your understanding that a change of this nature doesn't need to be certified?---I believe a change of this nature is probably considered to be border line as to whether it would need to be certified and I'm only referring to a small section of road in the south-east corner on the map.

Okay. Let us go back to page 902 then, please, and this time I will ask you to look at the road in the north-west corner of the harvest area which is marked as a class 4 road; is that correct?---Yes.

It seems to run from landing three up to the - and actually through the protection forest?---Yes, that is what is indicated on this map, yes.

And it probably looks like it runs either along the edge of the skyline management zone where that meets the coupe boundary; is that right?---Yes, that is how it is depicted.

5 Now, just before I go any further with that, can I ask you to just keep your finger in that page, but turn to page 1109 of the Court book?---Yes, I have that page.

10 You will agree that in the north-west corner of the map coupe WT019D is indicated?---On page 1109?

1109?---Yes, that is the case.

15 Immediately to the east of that coupe is coupe WT019E?---There is some lettering on the map that indicates that that is - - -

Yes, well, I will ask you to assume that they represent the coupes as marked?---Yes.

20 And then directly south of coupe 19E is coupe WT017E, which is the coupe we have just been talking about, it is forest practices plan?---Yes, that is what is indicated, yes.

25 You would also agree that it is indicated on that map that there is no intersection or - sorry, coupe 17E and 19D are not at any point touching, they are not adjacent?---It doesn't appear as though they are touching as per this map.

30 Yes?---Assuming - this map is only black and white that I have.

And as is the case with mine. Would you also agree that at all points of what I will call the northern boundary of WT017E, sorry, the north-west corner - north of the north-west corner of 17E you run into coupe 19E, you can't go directly into 19D if you were to be walking through there?---Yes, that seems to be what is indicated on this map.

35 Are you aware of whether there is a forest practices plan for coupe 19E?---No.

40 The applicant has been provided, under a discovery process, with what Forestry Tasmania says are copies of all forest practices plans, if we haven't been provided with a copy of 19E, you wouldn't tell me that there is a forestry practices plan for 19E, would you?---No, I don't believe I would.

45 Are you able to check whether there is an existing forestry practices plan for 19E?---That could be done.

Thank you. I ask you to do that before returning to Court after lunch. Will you have time to that over the lunch break?---I will have time to - - -

Or ask somebody to undertake that task for you perhaps?---Investigate whether one exists?

5 For 19E, thank you?---19E, yes.

Now, if we can turn back to coupe 17E on page 902 and the road that we were - the class 4 road that we were talking about in the north-west corner of the coupe?---Yes.

10

Now, what I would just like to do is walk through with you and have you confirm the variations as they took place step by step because there's - we've been provided exhibited to Mr Haywood's affidavit, which is what you're looking at at the moment, three variations in addition to the original forest practices plan. Unhelpfully, the first variation is at page 917 because they are not in order, but what I would like you to do for me is to compare the two maps and the section of class 4 road that we are talking about.

15

HIS HONOUR: Sorry, which two?

20

MR MITCHELL: Page 917 and page 902, your Honour?---Yes, I have both of those now.

Would you agree that the road line looks to be the same on those two maps?---Yes, the road line depicted in the north-west corner of the maps do appear to be the same.

25

Okay. If you could turn back to page 915 to look at the description of that variation? We don't need to concern ourselves with point 2 for present purposes, but for point 1, the variation was to extend the class 3 road 300 metres from landing number 3 on coupe WT17E to allow access to the next coupe, WT19D, as per attached map. If we look back to the map on page 917 - have you found landing number 3?---Yes.

30

And it seems to be consistent, doesn't it, with that description that the road heads north west from landing number 3 along the coupe boundary?---Yes, the map appears to show a road as you describe.

35

I can't see why that is a variation, can you, in relation to that point, it seems to be the same feature on both maps, to my reading of them?---The reference on page 915 is to a class 3 road.

40

Yes?---And it is indicating an extension of that road beyond landing number 3.

Am I reading the map wrong or is it marked as a class 4 road on the map?---From the map I have here, it does appear - actually looking more closely there does appear to be some red markings on this map.

45

Yes, that is a proposed road marked alongside the class 4 road?---That's what it appears to be, yes.

5 And so that runs up to the - along the coupe boundary up to the north-west corner where that meets the protection forest, that is the red dotting - - -?---That's how it appears on this map, yes.

10 So the certified variation is, it appears, to put a class 3 road, to all intents and purposes, next to a class 4 road?---It may well be an intent to actually use the class 4 road to create the class 3 road.

Right. And that is an upgrade of the road, is it?---Generally, yes.

15 Yes. Now, I should ask, when one of these variations is submitted for certification the map is attached to it, isn't it?---Yes, generally.

Well, doesn't it always have to be?---Well, it does depend on the context of the variation. Not all variations require a map.

20 Right. So in the context of a variation which has a change to the map - so you have got a feature on a map being marked differently surely it must be the case that the map would be attached to the variation request?---Yes, that would be the case.

25 Otherwise you wouldn't have a proper basis for certifying it, would you?---That is correct.

30 Now, if you can retain page 917 - and I think the next variation map is shown on page 909. And again if I might do a Mr Tree and ask you to turn back to the start of that document at page 907? The first point there:

A class 4 stream has been identified in the south-west section of the coupe.

35 So some five months after the original plan was certified a class 4 stream has been identified and as a result that has been varied and included as part of the plan?---Yes, that appears to be what is described there, yes.

40 If we can skip over 2, 3, and 4, and down to number 5:

The variation map shows the actual location of the newly constructed road rather than just the planned road as shown on the original FPP map.

45 ?---Yes, that's what is written there.

Can you see any other explanation than a road has been built, that road wasn't in accordance with the plan, and after the road has been built it has been

retrospectively certified?---No, not necessarily, it may well be that when the plan was certified the planned location for the road was indicated on the map and now that the road has been built some months later the Forest Practices Plan is varied to indicate the actual location of that road.

5

Yes, that is exactly right. There isn't any other explanation, is there?---Sorry, explanation for what?

For why it would be in these words:

10

...showing the actual location of the newly constructed road rather than just the planned road as shown on the original FPP map.

?---Not that I can think of.

15

No. If we look at the map which shows the actual location of the newly constructed road, that crosses the harvest boundary for quite some distance, doesn't it?---Whereabouts on the map are you referring to?

20

If we take the road extending - sorry, the class 1 to 3 road which extends from landings 3 and 5?---Yes, from landings 3 and 5, the map indicates the road crossing the harvest boundary.

25

And that is in coupe 19E, isn't it, which we just looked at on the previous map?---Can I have a look at that map again?

Certainly?---Which page is that on?

30

I will just find the page number for you. I seem to have lost my mark.

HIS HONOUR: 1109?

35

MR MITCHELL: Thank you, your Honour?---It appears as though that possibly that road could be shown as going into 19E.

Well, that is exactly what it shows, isn't it, Mr Rudd?---Well, with the detail on the map on page 1109, it does get a bit complex with the number of lines and things there to show, but it does appear that that is the case.

40

And let me ask it this way. If, as is indicated on page 909, that road crosses the coupe boundary, there is nowhere else it could go other than coupe 19E, is there?

45

HIS HONOUR: I am going to give the witness a little bit of homework for lunch time. Have a look at this map, and then you can answer Mr Mitchell's question at 1.30.

MR MITCHELL: If the Court pleases.

ADJOURNED

[12.28pm]

5

RESUMED

[1.42pm]

10 **JONATHAN LEWIS RUDD:**

HIS HONOUR: Yes, Mr Gunson?

15 MR D. GUNSON: Several short matters, your Honour. First, we apologise for the delay in recommencing. Unfortunately, Mr Rudd had gone back to Forestry to extract the documents. Unbeknown to him, they had already been prepared, they were in our room. He was frantically running material off until a message was sent to him to - - -

20 HIS HONOUR: That is right. I might be able to make up the difference by sitting a little bit longer but not later than 3.15.

25 MR D. GUNSON: Yes. That is the reason, your Honour, it was no disrespect intended to the Court.

HIS HONOUR: No, none taken.

30 MR D. GUNSON: The second thing I can tell your Honour is the undertaking has been filed.

HIS HONOUR: Sorry, no disrespect taken.

35 MR D. GUNSON: I was going to move on to the undertaking, and yes, I take your Honour's point. The undertaking has been filed, your Honour.

HIS HONOUR: Thank you.

40 MR D. GUNSON: And the third matter is, in accordance with the call for documentation to be produced. We produce this bundle to my learned friend's - could you pass that round, please? Thank you.

HIS HONOUR: Yes, Mr Mitchell?

45 MR MITCHELL: And just a fourth housekeeping matter before I continue with the witness. The document that was marked MFI F we now have a complete copy of that article which we can tender.

HIS HONOUR: Yes, thank you, that will be exhibit BT.

**EXHIBIT #BT COMPLETE COPY OF ARTICLE PREVIOUSLY
IDENTIFIED AS MFI #F (MISHEARD, AND APPEARS IN
TRANSCRIPT ON 9 MAY AS MFI #S)**

5

MR MITCHELL: Now, I think just before we adjourned for the luncheon
break, his Honour asked you if you could have a look at the map. I think it was
10 in KN20, if I am not mistaken, your Honour?

HIS HONOUR: This one here, yes.

MR MITCHELL: And see whether you could identify from that map whether
15 the road that transgressed the northern boundary of coupe WT17E - whether
that in fact went through into coupe 19E?---Yes, from the maps that I have
been shown it's not 100 per cent conclusive, but it's probably fair to say I
believe that yes, it may well enter Wielangta 19E, that road.

20 Then I will ask the question that I did ask before lunch. If it didn't go into 19E
what coupe is it in? Can you identify any coupe on that map that it may be in
if it is not in 19E?---It may be possible that - from the last map I was provided
with, it may be possible that it follows the northern boundary of Wielangta 17E
before turning northward into Wielangta 19D.

25

Well, if I can ask you to look at page 909 from the Court book again? Do you
stand by your statement that that is possible?---From page 909, it certainly
appears as though the road from landings 3 and 5, it's indicated that it's located
north of Wielangta 17E after it's crossed the boundary.

30

Yes. And if we turn back to page 907, the notation in relation to that was:

*The variation map shows the actual location of the newly constructed
road rather than just the planned road.*

35

Doesn't it?---Yes, it does.

40 So on that basis we would expect that an official document, being an
application to vary a Forest Practices Plan, when it refers to an actual location
of a road that that actual location of the road would be correctly
marked?---Yes, that's correct.

45 Yes. Were you able to ascertain during the lunch break whether there is a
Forest Practices Plan for coupe 19E?---No, I conducted a search of our filing
system within the district and can find no record of a plan for Wielangta 19E.

You would agree then that undertaking roading inside the boundaries of coupe
19E when there is no Forest Practices Plan in force in respect of that coupe is

unlawful, isn't it?---No, no, it is not. Roding activity is required to be covered by a Forest Practices Plan and in this case the roding activity proposed or intended is covered by the Forest Practices Plan for Wielangta 17E.

5 Well, let us just take it back a step, shall we? If we look at point 5 on page 907, the variation shows the actual location of the newly constructed road, there was no certification of a variation to permit the road to go there until after it was constructed, was there?---I would need to refer back to the original Forest Practices Plan to confirm - - -

10

Yes. You have that in front of you?---Yes.

Would you take your time to do that and just satisfy yourself that that is the case?---Do you know which page that the Forest Practices Plan is on?

15

The commencement of the plan is at page 890.

MR D. GUNSON: Your Honour, I rise to take the point that I would submit that my learned friend ought not to be putting these questions to this particular witness and I do so on the basis - if I could ask your Honour to turn to Mr Bruce Haywood's affidavit?

20

MR MITCHELL: Perhaps, your Honour, I am guessing at where this may be headed, this might be best conducted in the absence of the witness?

25

MR D. GUNSON: Yes, I think that is very proper, your Honour.

HIS HONOUR: Mr Rudd, do you mind just waiting outside for a moment and don't go too far away?---No, that's fine, your Honour.

30

MR MITCHELL: And not in the next room perhaps, your Honour?---Most certainly. Okay.

HIS HONOUR: True. Thank you.

35

<THE WITNESS WITHDREW

[1.49pm]

40 MR D. GUNSON: Mr Rudd's affidavit starts at 862, book 3, your Honour.

HIS HONOUR: Sorry, Mr?

MR D. GUNSON: Sorry. Haywood.

45

HIS HONOUR: Haywood. Yes. Should I have the original perhaps for this or is it sufficient to go to the - - -

MR D. GUNSON: Yes, your Honour, yes, you will need the original affidavit.

HIS HONOUR: Yes.

5

MR D. GUNSON: Are the maps coloured in the book you have?

HIS HONOUR: I am not sure. Which particular exhibit?

10 MR D. GUNSON: Page 913, your Honour should turn to.

HIS HONOUR: You want me to go to the book?

MR D. GUNSON: Yes, I am sorry.

15

HIS HONOUR: It is the one I had out before. Yes.

MR D. GUNSON: Now, it is my submission that the questioning of this witness is, to put it bluntly, unfair in these circumstances. If you look at the legend you will see the first item is the Forest Practices Plan boundary. Does your Honour have that in the legend? The bottom left-hand side of the page.

20

HIS HONOUR: Yes, I do.

MR D. GUNSON: And if your Honour looks carefully at the map you will see that that red line which is the Forest Practices Plan boundary runs right around that area, all through the grids.

25

HIS HONOUR: Yes.

30

MR D. GUNSON: And where of course 19 - sorry 17E, the coupe, is within the middle of that entire area. Now, what my friend is pressing this witness to say is that there was no Forest Practices Plan in existence for the whole of that area. But if you look carefully you will see, with the exception of the right-hand side, along the bottom of the map - along the left-hand side of the map, at the top of the map, it is all in red, then it comes down at the top right-hand side and runs in at an angle, running down that black-and-white line, or the dotted black line as well. So it is my submission that what you have is evidence already before the Court showing that whole area is covered by a Forest Practices Plan and not just 17E per se. I am sure it is a case of inadvertence.

35

40

MR MITCHELL: Not at all, I am well aware of that, your Honour. There are other prescriptions in the plan which provide that machinery shall not cross the harvest area boundary - - -

45

HIS HONOUR: Yes. Didn't you ask the witness whether it was illegal for the road to go into - - -

MR MITCHELL: Yes.

HIS HONOUR: Is that a proper question to the witness?

5 MR MITCHELL: No, it is not, your Honour, and I will withdraw it.

HIS HONOUR: And isn't that how this started and led to the objection?

MR MITCHELL: Yes.

10

HIS HONOUR: Yes. Do you want to have another go?

MR MITCHELL: Thank you, your Honour.

<CROSS-EXAMINATION BY MR MITCHELL

5

HIS HONOUR: Yes, Mr Mitchell?

10 MR MITCHELL: Mr Rudd, if I can ask you to have both page 917 and 909 open in front of you, and we will continue discussing that same section of road in the north west corner of the harvested area?---Yes, I have both of those.

15 Now, I think we have already been through the parts I will do again for completeness. It is correct to say, isn't it, that the forest practices plan, as varied, that was in force at the time that this section of road was constructed, was the forest practices plan varied as at 18 May?---I would have to assume that from - - -

20 From the documents?--- - - - from the documents, yes.

Yes. And that version, or that forest practices plan as varied showed the road, the section of road that we are talking about either on or within the harvest boundary?---Yes. The map indicates both a class 4 road, and a proposed road on the harvest boundary, yes.

25

Yes. And a road was then constructed outside the harvest boundary?

30 HIS HONOUR: You mean extending from within the harvest boundary to its exterior?

30

MR MITCHELL: Yes, your Honour?---Yes, that I believe is the case, yes.

35 And then an application was made for that to be retrospectively certified?---I'm not sure where you are referring to that.

35

Perhaps I can point you to page 907 at point 5?---My understanding of this variation is that it is to show the actual location of where the road was built.

40 Yes. Thank you. And so the answer to my question is yes?---I'm not sure about your reference to the plan being retrospectively certified.

The road location being retrospectively certified?---Oh, sorry, yes.

45 Yes?---The road location, yes.

45

And as we have already been through in the forest practices plan, page 893:

The external boundaries to be marked with blue flagging tape in accordance with the code. Trees are not to be felled across the blue tape line unless authorised by a Forestry Tasmania forest officer.

5 ?---Yes. That is correct. That's what is written there.

Then if I can ask you to turn to page 913 of the Court book?---Yes, I have that.

10 And if you undertake a comparison between that map and the map on page 909 it is quite clear that the coupe boundary has changed in relation to the road, hasn't it?---Yes, the map indicates that, yes.

And when we look to the application for variation on page 911, how it is stated is:

15

The variation map shows the actual GPS coupe boundary, rather than the planned coupe boundary, as shown on the original FPP map.

Yes, that is what's stated there.

20

25 So would you agree with me that what has happened, in effect, is the road has been located outside the coupe boundary, whether by mistake or otherwise, and then somebody realised that it shouldn't be there, and they have applied to have the coupe boundary amended?---What appears to have occurred here, in my opinion of it, is that as further information became available related to the actual location of the road, and the harvest boundary, that was then set in place by use of this variation.

30 Right. So they didn't bother getting the information right when they certified the original plan, or the first or second formation?

MR D. GUNSON: I object to the form of the question, your Honour. It implies a deliberate attempt - - -

35 MR MITCHELL: Withdrawn, your Honour.

MR D. GUNSON: Yes.

40 MR MITCHELL: They must then have failed to obtain, as you say, the proper or correct information before the original forest practices plan, or the first, or the second variation was certified?---I believe that as more information was available that a variation was then prepared to reflect the knowledge of that.

45 Yes?---From what I can read here.

So the information only became available later. It was not information that was within the scope of the people preparing the first forest practices plan, or

the first or the second variation? Is that your explanation?---Yes, it wasn't - that information was not brought to a variation until this stage. That is correct.

5 The third one, yes. You will forgive me for being cynical but would it not be possible for those conducting forestry operations on the ground to put a road or a harvest boundary wherever they like, ignoring what was in the certified forest practices plan and then seek a retrospective certification of where it is saying they have now found new information?---No. The intent is quite clear in the forest practices plan as to where the boundaries and the road are to be located
10 and every effort is made to place them as per that plan but sometimes when further work is conducted, such as use of survey tools, it is found that there are some variances and they can be then picked up and shown in a variation to that plan if necessary.

15 And a possible consequence of not having accurate information at the beginning is one that we see here in that a road can be constructed extending into old growth forest and that not being within the scope of what has been certified as a forest practices plan?---Certainly that would never be the intent. The intent is always to construct the road or to place harvest boundaries as per
20 the forest practices plan.

I am not asking about the intent, what I am asking is about the effect. That is a possible effect of not obtaining accurate information in the beginning, isn't it?---Yes, it may well be possible.

25 And not even just possible, it is an actual effect as we can see looking at the variations to coupe 17E in this forest practices plan?---I'm not sure. You made a reference to old growth forest. I'm not sure what you mean there in relation to the mapping.

30 Are you aware that the road that - not the one that I am currently talking about, but the road I was discussing earlier in the south-east - sorry, the south-east corner of the map, the effect of the road not being located as proposed but where it was actually constructed, the effect of that was to cut down 17 trees
35 which have been described as swift parrot nesting habitat trees?---I was aware of that, yes.

40 Could the witness be shown map NKM20, please? You still have a copy of that in front of you?---I assume this is the one that you are referring to.

45 Are you able to confirm for his Honour please, the road which extends from the north-west corner of coupe WT017E is the same road marked on that map which runs through the area shaded green?---I can confirm that there is a road or a track - yes, I can confirm that this map does indicate a road. It approaches Wielangta 17E from the north-west through that patch of green, yes.

Yes, and that, I would suggest, if we are looking at the final certified version on page 913 of the Court book by comparison, that is the dotted class 4 road?---Yes, that appears to be the case.

5 But a road which doesn't appear to be marked on the larger map is the one that extends from the north-west boundary that we have been discussing both before lunch and since the adjournment and that road, if marked on this map, would also go through the green shaded area, wouldn't it?---It's possible that that is the case.

10 Well, looking at page 915 that has been described as a road to allow access to the next coupe, WT19D. It would be a long way round not to go through that green area, wouldn't it?---Yes, it would certainly - it would certainly require a longer road - - -

15 And that road seems to be aiming fairly directly towards 19D rather than taking some other circuitous sort of way of getting there round the green shaded area?---It appears on that map as though it is heading in that direction but without having Wielangta 19D on the map on page 913 it is not 100 per cent certain.

20 Yes, I understand, thanks. Did you talk to anybody at lunch time about the evidence that you've been giving today?---No.

25 Okay. I just want to return to the tree felling process?---Okay.

Now, you have said in your affidavit that almost all, I think, of the trees in 17E were felled by hand, by chainsaw?---That's right.

30 The trees, I guess, when they are felled, there is a direction in which they are intended to be felled?---Yes.

35 For safety and for not knocking down other near by trees and other reasons?---That's right.

40 And is the purpose of that also to assist in the snagging process or is that not considered when trees are being cut down?---The primary consideration is safety, being able to put the tree on the ground safely. If that can be done, and also facilitate ease of snagging then that may well be done that way.

But the primary concern has to be safety, doesn't it?---That's correct.

45 When the trees have fallen they obviously don't fall and stop, they'll fall and quite often bounce?---Yes, that can occur.

Yes. You have said that after the tree has been felled, in paragraph 15, the logs are trimmed of branches and cut to a size suitable for dragging? That is done

by people going in with chainsaws to cut off branches, is it?---Normally it's done by the person that's felled the tree.

5 Felled the tree, yes?---He would then trim the limbs or branches off for that purpose.

Okay. When constructing roads it is important that the roads are level as they go through the coupe so if there is a slope on the road you might excavate to remove some of the soil from one area and put it into another area and level up the road?---Yes, if the road is traversing around the side of a hill, that would be the most common example of what you are referring to, yes.

15 Yes. After the trees have hit the ground they have to be dragged through the forest to get to a snig track?---Generally - generally the trees would be very close to a snig track, so they - - -

20 So a snigger sitting on the - the vehicle sitting on the snig track is able to just pick them up from wherever they sit, is that right?---In most cases that is correct. It may be either a skidder or an excavator to lift those trees and place them on the track ready for the skidder.

And an excavator runs on tracks doesn't it, generally?---It does, yes.

25 So they might enter into the forest away from the snig track, pick up logs, take them to the snig track, is that what you were describing?---Generally the excavator would be on the snig track and most often they will be able to reach - the boom of the excavator reach out and pick up those logs and place them on the side of the track.

30 Now, after harvest there's often a prescription, isn't there, that the remaining forest be burnt?---Yes, there is.

35 And in circumstances where there is a prescription that there be a burn carried out, there is also often a prescription, isn't there, that there be a mineral earth boundary that is created around areas that should be protected from burning?---Yes, there is often a requirement to have a mineral earth boundary, yes.

40 It is not always the case though, is it, around say, wildlife habitat clumps and strips, you don't always have to have a mineral earth boundary, do you?---No. It does depend on the type of burn that is proposed and the vegetation that is being dealt with.

45 Yes. Now, you have provided, in paragraph 23 of your affidavit, an estimate of the amount of ground that has had either a snigging machine driven over it or else is - comprises of landings. By my calculation you have said 35 per cent of the harvested area is either covered by - sorry, 30 to 35 per cent either covered by major snig tracks, minor snig tracks or landings?---That's a general

statement that can vary depending on the site and the shape and design of the harvest.

5 Yes, so for 17E your estimate was between 30 and 35 per cent were covered by those three things?---In a general sense, yes. It's very difficult to determine.

Yes?---Obviously it is - but as a general estimate that is what I thought may apply.

10 And then you have gone on in that paragraph to say that generally it will be less than 50 per cent of the harvested area?---That's right.

15 So does that mean that 17E is probably at the lower end of the scale for snig track and landing coverage?--- It's difficult to determine really. That was just an assessment that I did at the time.

20 Yes?---Certainly there are a lot of areas that I would probably consider where that figure would be lower but likewise, you know, there's some that are around that figure as well.

Although that figure only includes snig tracks and landings, doesn't it? It doesn't include, for example, mineral earth boundaries?---That is - - -

25 Is it included or not?---No, no, it doesn't include any mineral earth boundaries.

Disturbance from falling trees, is that included in those figures?---No. I was only looking at snig tracks.

30 That's right, I am just making sure - - -?---And I only - - -

- - - just making sure what the figure relates to. It also doesn't cover roads, does it?---No.

35 And it doesn't cover drainage works that have been carried out?---Most, if not all drainage works are conducted on snig tracks anyway or landings or on the roads.

40 Although to construct a drain you can't just sit on top of a snig track and dig, you have to do it from the side, don't you?---No.

No?---No. No, drains can be constructed either in front of the machine that is doing it or behind if using an excavator.

45 And how about excavating to level off the road, say, if it was traversing a hill as you discussed earlier? The ground disturbance from that excavation wouldn't be included in your figures there either, would it?---No, it's not.

No. No further questions, your Honour.

HIS HONOUR: Thank you, Mr Mitchell. Mr Gunson?

MR D. GUNSON: It may well be - - -

5

MR MITCHELL: I apologise. There may be something that arises out of the documents that have been provided pursuant to the call.

HIS HONOUR: Yes.

10

MR D. GUNSON: I should say something, your Honour, about the documents that were produced in accordance with the call. Your Honour observed I did hand over a bundle of documents that had a large clip on them. These were returned to me almost immediately, your Honour may not have noticed, by Mr Tree when he realised that I had inadvertently given him a bundle of privileged documents. And I place on the record my appreciation on that, and something other than what I would have expected. Having said that, there are some other documents that Mr McDonald produced to me which I haven't looked at and which I think answer part of the call for some forest harvest monitoring reports. I haven't had a chance to look at those. They came into Court whilst the witness was being cross-examined, so I also would like to have a look at those before I hand them to my learned friend.

15

20

HIS HONOUR: All right. Is there another witness available this afternoon?

25

MR D. GUNSON: There is, your Honour.

HIS HONOUR: Yes.

30

MR D. GUNSON: But I think if we could finish this witness it would be desirable.

HIS HONOUR: And you just need - - -

35

MR D. GUNSON: I don't know how long my friends need. I probably need no longer than about 10 minutes maximum just to go through these.

MR MITCHELL: Perhaps if we could adjourn for 15 minutes, your Honour?

40

HIS HONOUR: Yes, until 25 to 3?

MR D. GUNSON: Yes.

MR MITCHELL: I think that should be sufficient.

45

HIS HONOUR: All right, we will do that.

ADJOURNED

[2.18pm]

RESUMED

[2.35pm]

5

MR MITCHELL: Mr Rudd, can I ask you to look at the bundle of documents that have just been handed to you?---Certainly.

10 Are they the forest harvesting monitoring reports that you produced pursuant to my call earlier today?---Yes, they certainly appear to be all forest harvesting monitoring reports for Wielangta 17E.

15 Thank you. I tender that bundle, your Honour.

HIS HONOUR: Those reports will be exhibit BU.

20 **EXHIBIT #BU FOREST HARVESTING MONITORING REPORTS
FOR WIELANGTA 17E**

MR MITCHELL: No further questions, your Honour.

25 HIS HONOUR: Yes, Mr Gunson?

<RE-EXAMINATION BY MR D. GUNSON

[2.37pm]

30

MR D. GUNSON: Yes, thank you, your Honour.

35 This morning you were asked some questions by my learned friend, Mr Rudd, about what factors might influence or determine where a road may or may not go. Do you remember being asked that question?---Yes.

What are those factors that may influence where a road may or may not go? Can you identify them?---I can certainly attempt to identify some of the, yes.

40 Yes?---The amount of rock that may be encountered, the slope and the difficulty of the terrain in general, so there may be large exposed or sheet rock areas that may be difficult to locate a road.

45 All right. And when a road is actually being built, in your experience what happens or what may happen when those circumstances such as sheet rock are encountered?---A number of options are looked at, but often the road may have to be moved or the location may have to be moved to avoid those areas.

And what is sheet rock?---Exposed surface rock that is solid and unbroken in one single piece.

Yes, thank you. And is that suitable for roads to be built upon?---Not often.

5

Thank you. Can the witness be shown exhibit BR, please? That is technical report number 5. Do you recognise that exhibit that is now being shown to you?---Yes, I do.

10 Thank you. Would you have a look at this document that is now handed to you, please? Do you recognise the document that is handed to you?---Yes.

15 And what can you say as to page 6 and 7 which comprise exhibit BR? Do they come from that particular technical bulletin 5?---Yes, they appear as though they do.

Yes, thank you. And I think you said earlier that technical bulletin 5 is used by persons within the industry for guidance; is that right?---That is correct.

20 Could I ask you to look at page 27, please. Is there a heading there entitled Shelter Wood?---Yes, there is.

25 And if you would look, please, at page 29, is there a heading there Advanced Growth Retention?---Yes, there is.

Look at page 30. Is there a heading Potential Saw Log Retention?---Yes, there is.

30 Page 32. Is there a heading Thinning?---Yes, there is.

And on page 33, is there a heading Selective Logging?---Yes, there is.

35 Thank you. Are you familiar with this particular text?---I have read through it some time ago.

Yes. I tender that technical report, number 5 in its entirety, your Honour.

HIS HONOUR: Exhibit 35.

40

EXHIBIT #35 TECHNICAL REPORT, NUMBER 5

45 MR D. GUNSON: I have no further questions of the witness and may he be relieved?

HIS HONOUR: No problem about that, Mr Mitchell?

MR MITCHELL: No problem, your Honour.

5 HIS HONOUR: Mr Rudd, thanks for your evidence. You may be excused from attendance, but you may remain in the Courtroom, if you wish?---Thank you, your Honour.

<THE WITNESS WITHDREW

[2.41pm]

10

HIS HONOUR: Mr Gunson?

15 MR D. GUNSON: We call Mr Warren, your Honour. Book 5, page 2119, your Honour.

15

20 HIS HONOUR: Just while Mr Warren is coming in, there will be another matter in this Courtroom at 9.30 on Monday morning for directions. So I thought I should let you know that in case you wanted to make some arrangements about the use of the room or otherwise, or what you are left on the bar table.

MS MORTIMER: Is that an invitation for us to clean up, your Honour, is it?

25 HIS HONOUR: No, it is just a simple statement. They are industrial practitioners, they are rough and ready, they won't mind.

<JONATHAN BRETT WARREN, AFFIRMED

[2.42pm]

<EXAMINATION-IN-CHIEF BY MR D. GUNSON

5

MR D. GUNSON: If it is not there already could volume 5 be placed in front of the witness, please, at page 2119? Mr Warren, your full name is Jonathan Brett Warren?---It is.

10

And you reside at 3 Kadina Road, Cambridge?---I do.

And you are deputy district forester, planning, at the Derwent district for Forestry Tasmania; is that correct?---It's close enough.

15

And on 17 November 2005 did you swear an affidavit in these proceedings?---I did.

Do you have a copy of that affidavit in front of you?---It appears so.

20

And is that affidavit true and correct?---It is.

Yes. That is the evidence of the witness.

25

HIS HONOUR: Thank you, Mr Gunson. Mr Mitchell?

<CROSS-EXAMINATION BY MR MITCHELL

[2.44pm]

30

MR MITCHELL: Thank you, your Honour.

Mr Warren, now, before you swore this affidavit I take it that you read through it very carefully and you made sure that everything in it was true and correct?---I did.

35

Can I ask who is your immediate superior at Forestry Tasmania?---The district manager, Steve Whiteley.

40

Sorry?---The district manager, Steve Whiteley.

Steve Whiteley. And when I read documents - internal documents of Forestry Tasmania that have Brett Warren written on them, that is you, is it?---Yes.

45

You have worked at Forestry Tasmania ever since you finished your matriculation, haven't you?---Correct.

So your only employer has been Forestry Tasmania?---Has been Forestry Tasmania, yes.

5 Can I just take you to your curriculum vitae which is exhibited to your affidavit at - I will just find the page number, I am sorry, starting at page 2130 of the Court book?---Is this the Court book?

Yes?---Yes.

10 Now, on page 2131 at the top there is a heading there Planning and Management?---Yes.

And beneath that is the line, bullet pointed:

15 *Prepare tactical three and 10-year plans.*

?---Yes.

20 Could you explain to his Honour - I presume the adjective "tactical" refers to both the three and the 10-year plans; is that right?---In a sense, yes, tactical usually takes you out to a 10-year plan.

Is there something broader than tactical?---No, not really, not in a true sense, I don't think.

25 So, the planning really only goes to about a 10 year level at this stage?---Well, some decisions are made over the forest estate which I suppose you would consider tactical but coupes aren't necessarily flagged up with a year of harvest.

30 Right, but they are divided up into coupes?---Generally, yes. The State forest is divided up into coupes.

35 What is the purpose of dividing it up into coupes?---Well, put simply, it give an address within the forest and you know, basically the divisions are compartments and then coupes and so I see it as a way of actually giving a name to the parts of the forest so you can include them in either tactical or more detailed plans.

40 I understand. Areas of world heritage, for example, they are not divided into coupes, are they?---No.

It is only areas that it is planned will be harvested at some point in the future that get divided into coupes, is that fair to say?---Yes, yes, that's fair to say.

45 Now, can I ask what is contained in - well, let us start with the tactical three year plans, what sort of things are - is that the same as the wood production plan or is that a different beast?---Basically it's the same thing.

Basically, or it is?---It is.

5 It is, thank you. All right, well, we have seen a copy of that so perhaps we can
move on to the 10 year plans that you have been involved in preparing. What
sort of matters are planned in the 10 year plans?---Well, I think in the case of
10 year plans, they are not a lot different to three year plans except the
understanding of the actual coupe is not as great, so if you like, it is a bit more
of an ambit claim to an area and as you understand more about it you can sort
10 of more confidently put it into a three year plan.

15 So that 10 year plan is the ideal scenario but as you get more knowledge you
refine it down and you can do three years to predict more accurately?---Yes, in
a way, otherwise you don't get an idea of your developmental sort of process.

I see?---It doesn't always follow that coupes in 10 year plans will necessarily
be developed.

20 Right, I understand. Do the 10 year plans contain targets for wood
production?---Well, they do, because unless you have got a set target you can't
sort of decide how many plans make up that particular year's volume so in
most instances they are an extension of what you understand to be the three
year targets. Not always but that's generally the way I've handled it.

25 Right, and in your experience have you ever compared actual with what has
been planned, either at a three year or a 10 year level in your
experience?---Yes. I mean, obviously if we plan a volume for a particular year
and for one reason or another we harvest more or less, I do - I am interested to
know why, so yes, I do compare.

30 Yes, and in the past have you found that the targeted wood production amounts
are pretty close to what is actually produced or do they vary quite
significantly?---No, I think in the past you would say it's fairly close to what
we've planned to produce for the year.

35 Is it fair to say then that it is a budget as such, a requirement that certain
amounts be produced?---Well, they are a target and so in a sense it is a
requirement.

40 Yes. If, for example, there was a target to produce a certain amount of wood
and in one year the actual production fell significantly short of that amount,
would there be steps taken to try and remedy that?---I don't quite understand
where you are leading me to with the question but what are you saying, that in
any particular year if you have less sales in that year than you would expect,
45 what do you do with what is left over, is that what you are trying to - - -?---No,
let me rephrase it. If there is a target or a budget for a certain amount to be
produced and for one reason or another there isn't that amount produced, are
the people responsible for co-ordinating a supply of that wood, would they be

encouraged to make sure that they meet their budgets in the next year?---I still struggle with your question inasmuch as industry is our customer so generally they set figures or in liaison between us and industry we decide how much is to be cut in any one year and so our aim is to achieve that.

5

Yes?---Now, you have to expand on your scenario so what happens in the year that we don't achieve what we've said we are going to cut, is that because what, there's been a downturn in sales or the weather has made it hard to get the wood or - - -

10

I am looking at it as a downturn in production rather than sales. So perhaps from weather making it difficult to get the wood or any other number of reasons?---Right. Well, I don't sort of follow this but one would expect that industry would want equally as much the following year and perhaps to catch up a little bit. I don't know, I don't quite follow the question.

15

Okay. But the targets are set by Forestry Tasmania in conjunction with the industry so that you are able to have supply to meet the demand?---Well, I think in the case of industry, they would like to know at least over a three or a five year horizon what the expected wood flow is going to be and yes, we - it's our job to try and provide what we say we are going to provide for a given period.

20

Yes?---It might change though, as you know, you do the resource review, it might be a less figure, you know, after a five year period, you know.

25

Things change and there might be a lower demand in the future. So the 10 year plan would be based on an expected demand over the next 10 years; is that right?---As I said to you, I generally just use the same figure that's in the three year plan, and expand it over the 10 years, unless I'm told differently by, you know, the people that are in charge. One would expect that over the 10 years it might be a lesser figure, at the end of the 10 - you know, like, you might be working towards a lesser figure than the figure you started off with.

30

Yes. I understand. So in the 10 year plans I think you said that the coupes are marked in, or they are a part of the plan?---Well, they are identified, and included in each of the years to make up the figure that you are looking for.

35

Yes. Are there maps showing coupe boundaries also included in the 10 year plans?---Yes. Well, they are based on a coupe, and the coupe has a boundary, so, yes, that's usually the case.

40

How about projected roads over the next 10 years?---Well, we certainly do - we certainly look at detailed roading in the three years. Lesser so in the five years. I mean - and obviously beyond the five years, if you haven't proven up the coupe well, you are not going to know a great deal about the road.

45

Yes. So it is a fair thing to say that what we see in the three year wood production plans, how there are planned coupes, there will be a number of coupes listed, and various production volumes listed for each year?---Yes.

5 That is expanded out over a 10 year period in the 10 year plan; is that the case?---Yes.

But what you say is that because it is 10 years away we can't be quite so sure that it is going to be right?---That's right.

10

Now, it has been stated in evidence that there is only a one per cent chance that what is in a 10 year plan will actually be carried out. Would you agree with that?---A one per cent chance?

15 A one per cent chance?---I probably - and this is evidence that has been put forward by a Forestry Tasmania person?

It doesn't matter who it comes from. I am just asking what your opinion is of the statement?---It's a hypothetical question, sort of, like, you can't substantiate where it's come from? Like, the one per cent?

20

HIS HONOUR: Just bear with the question, please?---Right. I don't think - I think one per cent is not correct.

25 MR MITCHELL: You think that is too low?---Too low, yes.

Was it important to you, or why was it important to you to know where the question was from before you gave that evidence? Might you have given a different answer?---Well, I suppose I had a little bit of difficulty with the question in the first instance. I mean, if you do a 10 year plan, and then someone says to, you are only going to achieve one per cent of your plan, it doesn't seem to be a very - you know, the process is flawed, so I just don't follow the question.

30

35 Well, that would have been my next question if had agreed. Why bother doing them if there is only a one per cent chance they will be carried out?---All right. So, yes, why bother?

Yes. Thank you. No further questions.

40

HIS HONOUR: Yes. Thank you. Any re-examination?

MR D. GUNSON: I don't re-examine, your Honour.

45 HIS HONOUR: Thank you, Mr Warren. I take it Mr Warren can be excused?

MR D. GUNSON: Yes, your Honour.

HIS HONOUR: Thank you for your evidence. You may be excused from further attendance?---Right. Thank you.

Thank you.

5

<THE WITNESS WITHDREW

[2.57pm]

10 MR D. GUNSON: That is the only witness we have today, your Honour.

HIS HONOUR: Right. That is fairly good timing. I was prepared to make up the extra time. All right.

15 MR D. GUNSON: That may have been a reason why my friend finished his cross-examination a little earlier.

HIS HONOUR: Yes.

20 MR D. GUNSON: Well, your Honour, 10 o'clock Monday morning, or a little later?

25 HIS HONOUR: 10 o'clock on Monday morning, unless the directions hearing goes on, as some times happens when there is a litigant in person applicant. I will do my best to restrain it within the half hour. Anything to report on the likely progress of the matter, or the length of time that might be required for submissions?

30 MR D. GUNSON: My assessment, for what it is worth, is I think we will go a little bit beyond next week.

HIS HONOUR: Right.

35 MR D. GUNSON: But that may not happen.

MS MORTIMER: Your Honour, I think that is unfortunately probably the case. We may get through next week, but that might be a little optimistic.

40 HIS HONOUR: I was looking at the dates that I had, to use a favourite term in this case, provisionally given you for I think the following week, the week of 29 May, and it occurs to me then in the matter I have for directions of Monday morning, it is possible that it might - there might be an issue about order 29, rule 2. That is a separate question on an urgent issue arising in that matter, and I was wondering whether I could provisionally give some time
45 away in that week, towards the end of that week.

MS MORTIMER: I would certainly be confident towards the end of that week, yes, your Honour. Yes, your Honour.

HIS HONOUR: Yes. All right. This may be some urgency, and it might be important to the individual concerned as to their ability to afford to continue to survive.

5

MS MORTIMER: Your Honour, if we are going into that week I can't imagine us using, in terms of the evidence, more than a couple of days.

HIS HONOUR: Yes. So it may be safe to list towards the end of that week, rather than the beginning of it?

MS MORTIMER: Yes, your Honour. Yes, your Honour. We had thought that we might try and draft up a proposed time table over the weekend, and give it to our learned friends.

15

HIS HONOUR: For the - - -

MS MORTIMER: For submissions.

HIS HONOUR: Yes. And that would help me to identify in advance, before other people swallow it up in my diary, the dates to come back for a couple of days after the conclusion of that period.

MS MORTIMER: Well, perhaps, your Honour, is we all come prepared to deal with that first thing on Monday morning, in terms of fixing those two dates.

HIS HONOUR: All right. And then after that, who is the next witness?

MR D. GUNSON: Mr Ellis on Monday morning, your Honour.

HIS HONOUR: Not the Mr Ellis that appeared before Mr Heerey to explain his comment about the case not lasting a week.

MR D. GUNSON: I will if you like, your Honour, arrange for his guest appearance on Monday if you like. We have Ellis, Kelley, Laffan I think probably Monday, your Honour.

HIS HONOUR: Right, so Mr Ellis is 780 in the Court book, is that right, in book 3?

MR D. GUNSON: Just bear with me, your Honour.

MS MORTIMER: Yes, book 3, your Honour.

45

MR D. GUNSON: Book 3, 780, your Honour.

HIS HONOUR: Yes, thank you. If there is nothing else, we will adjourn now until that time. But I think Ms Mortimer's suggestion is probably a good one, that we resume and deal with that issue briefly and then Mr Ellis can give evidence immediately thereafter.

5

MR D. GUNSON: If it please, your Honour.

MATTER ADJOURNED at 3.01 pm UNTIL MONDAY, 15 MAY 2006

INDEX

LIST OF WITNESSES	Page
--------------------------	-------------

<JONATHAN LEWIS RUDD, AFFIRMED	2092
< WITNESS WITHDREW	2123
<JONATHAN LEWIS RUDD, RECALLED.....	2125
< WITNESS WITHDREW	2134
<JONATHAN BRETT WARREN, AFFIRMED	2135
< WITNESS WITHDREW	2140

EXHIBITS/MFIs	Page
----------------------	-------------

EXHIBIT #BR EXTRACT OF PAGES FROM FORESTRY TASMANIA TECHNICAL BULLETIN	2096
EXHIBIT #BS PHOTOGRAPHS OF JOHN DEERE GRAPPLE SKIDDER.....	2108
EXHIBIT #BT COMPLETE COPY OF ARTICLE PREVIOUSLY IDENTIFIED AS MFI #F (MISHEARD, AND APPEARS IN TRANSCRIPT ON 9 MAY AS MFI #S).....	2121
EXHIBIT #BU FOREST HARVESTING MONITORING REPORTS FOR WIELANGTA 17E.....	2132
EXHIBIT #35 TECHNICAL REPORT, NUMBER 5	2133

KEY WORDS	Page
------------------	-------------

NONE REQUESTED