

TRANSCRIPT OF PROCEEDINGS

O/N 2828

FEDERAL COURT OF AUSTRALIA

TASMANIA DISTRICT REGISTRY

MARSHALL J

No TAD 17 of 2005

ROBERT BROWN

and

FORESTRY TASMANIA and OTHERS

HOBART

10.02 AM, TUESDAY, 2 MAY 2006

Continued from 1.5.06

DAY EIGHTEEN

**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
MR P. TURNER appears for the State of Tasmania,
with MR M. DIXON**

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HIS HONOUR: Mr Gunson?

MR D. GUNSON: Yes, thank you, your Honour. Your Honour, could I start with some very basic housekeeping issues first of all? Could I hand up to your Honour a list of the respondent's witnesses to be called and the order in which they are to be called, but making an observation that already we are out of order, for reasons that I will explain in a moment. Today, your Honour, we will inevitably lose a little time, because of the desire of all counsel, as I understand it, to have an order of witnesses, which means that people can prepare for their cross-examination, and everybody accepted that we would probably go for two days with interlocutory applications that were dealt with in the one day yesterday.

We wished to start with Dr Dickson, because her evidence does fall at least at the commencement of a logical sequence of evidence, but she is not available until 10 o'clock tomorrow morning. We took the view, and I think it was accepted by our friends that it was purposeless to call Mr Blakesley or Dr Whittington or Mr Wilkinson, who follow the evidence of Dr Dickson, without having Dr Dickson first. So today, your Honour, we will start with Mr Neyland, who is number 10, and then we will call Mr Jarick, and that will probably be the only evidence that your Honour will hear today. I trust it doesn't inconvenience the Court, but I think my friends will be grateful for the time to enable them to prepare further cross-examination.

HIS HONOUR: Yes, thank you.

MR D. GUNSON: That has come about as a result of us all believing that probably we would spend two days on interlocutory issues.

HIS HONOUR: Yes.

MR D. GUNSON: Now, your Honour, we also wish to tender at this stage volumes 6, 7 and 8 of the Court books in their entirety.

HIS HONOUR: Do you want them marked separately?

MR D. GUNSON: I think they can probably be marked as the one exhibit, your Honour.

HIS HONOUR: Just marked as one?

MR D. GUNSON: Yes.

HIS HONOUR: So volume 6 is the Public Land Use Commission of 1996 Tasmania Commonwealth Regional Forest Agreement Background Report Part C, Environment and Heritage Report volumes 1 to 3, and volume 7 of the Court book is volumes 4 to 6 of the same document, and volume 8 of the Court book contains the Resource Planning Development Commission 2002 Inquiry

on the Progress with the Implementation of the Tasmanian RFA 1997 Fire Recommendations Report December 2002, and the final report. So does that define them all? They will be exhibit 30.

5

EXHIBIT #30 VOLUMES 6, 7 AND 8 OF THE COURT BOOKS IN THEIR ENTIRETY

10 MR D. GUNSON: May it please, your Honour. The next matter I wish to address, your Honour, is a notice to produce from FitzGerald and Browne, the solicitors for the applicant, dated 21 March of this year. That notice to produce required Forestry Tasmania to first produce a video or DVD or other recordings of regeneration burns or fires in the area known as the Wielangta Forest Block, of logging operations including roading operations in the area known as the Wielangta Forest Block, and logging operations including roading operations in coupe 17E, and I am instructed to advise that there are no such videos or DVD or other recordings of those matters addressed in that notice.

20

The second item that was requested was documents relating to proposed regeneration burns or other burns for coupe WT017E, and in accordance with that notice I produce a fire management evaluation prepared by Mr Rudd, who will be later a witness in the case for my learned friends, and I can say with respect to that there should be a map attached to that. That is being located and will be produced.

25

And the final matter that we were asked to produce is the original draft, indicative or revised versions, of the Forestry Tasmania three-year wood production plan for 2005/2007 or 2006/2008 and we produce what is known as the Interim Draft Plan for 2005/2006 to 2007/2008 three-year wood production plan in accordance with that notice. They are actually produced for my learned friend's benefit.

30

35 MR TREE: Yes. I was just thinking they may have headed in the wrong direction.

MR D. GUNSON: Yes. I think they have been slipped off to the right. They should be slipped off to the left. They are produced in accordance with that notice. Now, your Honour, I should indicate to you that I do not propose to open to the Court on the factual issues. I think they have been adequately explored over a period of about a month.

40

HIS HONOUR: Yes.

45

MR D. GUNSON: And I imagine that your Honour is cognisant of the issues at this stage, as to what they are, and of course your Honour has our written opening as to the legal aspects, and I don't pause to take your Honour there

unless your Honour wishes me to do so. That of course was filed, I think back in November.

HIS HONOUR: Yes.

5

MR D. GUNSON: The first witness we call today is Mr Mark Neyland, your Honour, and I should indicate as Mr Neyland is coming forward that your Honour will need Court books volumes 4 and 9.

<EXAMINATION-IN-CHIEF BY MR D. GUNSON

5

MR D. GUNSON: For your Honour's benefit, Mr Neyland has sworn three affidavits. The first is 17 November 2005, and your Honour will find that at page 1560 of Court book 4. There is a second short affidavit of 21 November 2005, which is found at page 1595 of that volume, and a third affidavit of 21 March 2006 which is found in volume 9 at page 2693.

Mr Neyland, your full name is Mark Neyland?---That's correct.

15 And you reside at 398 Park Street, New Town?---I do.

And you are a forester? You are a forester by occupation?---And by training.

Yes. And you are employed by Forestry Tasmania?---Yes.

20

And you have sworn three affidavits in these proceedings, one on 17 November 2005, the second on 21 November 2005, and the third on 21 March 2007; is that correct?---That's correct.

25 Are those affidavits true and correct?---They are.

Could the witness be shown, please, his third affidavit of 21 March 2006? For this he will need the original affidavit, Mr Associate. If you would just have a look at that document? Is that your affidavit sworn on 21 March 2006?---Yes.

30

Would you turn, please, to your exhibit, which is exhibit number 1? And your Honour will find the relevant page at 2713 of the Court book. And could I ask you if you would look, please, at photograph MNB3? Do you have that there?---That's the one?

35

Yes, that is the one. Can you tell his Honour whereabouts that photograph was taken?---This photograph is an easterly-facing bank in the coupe known as Snowhill 004B. It is up in the Eastern Highlands, it is to the North East of Lake Leake for those not from Tasmania. The photograph was taken in June 2002, a couple of months after a low-intensity burn had been put through the coupe.

40

All right. And there had been harvesting obviously at that site?---There had been harvesting at that site.

45

And what form of harvesting had taken place?---Without having the actual FPP in front of me, I can look at the photo and say it was a seed tree retention or potential soil-log retention harvest.

Thank you. And what we are looking at in that photograph is what is left after the low-intensity regeneration burn took place; is that right?---Correct.

5 And have you subsequently been to that area recently?---No, I haven't, but one of my colleagues has been there over the Easter break.

All right. Do you know when that was?---I can't be sure, but I think it was Thursday, Good Friday.

10

Thank you. What about the first photograph, please?---Yes.

15 Does that photograph show the same area as is depicted in photograph MNB3?---As near as possible the photograph was taken from exactly the same point and there's a number a distinguishing features that allow the two photos to be compared.

All right. And you have compared the two photographs to identify the distinguishing features?---I have.

20

Yes. And what is the difference between the first photograph and the photograph you have in front of you?---The obvious distinguishing feature is the four years of natural regeneration that's taken place subsequent to the burn.

25 Thank you. I tender that photograph, your Honour.

HIS HONOUR: Exhibit 31.

30 **EXHIBIT #31 PHOTOGRAPH OF EASTERLY-FACING BANK IN
COUPE KNOWN AS SNOWHILL 004B**

35 MR D. GUNSON: And has there been a regeneration survey stocking report prepared with respect to that area shown in that coupe?---There has.

Could the witness be shown that document, please? And is the document you are now shown the regeneration survey stocking report sheet for that particular coupe SH004B?---It is.

40

And does it record the survey date for that report as 20 July 2004?---It does.

45 Yes. And what is the stocking extent for that particular coupe following the regeneration burn and the regrowth?---The whole coupe's stocking is reported as being 87 per cent.

Thank you. I tender that, your Honour.

HIS HONOUR: Exhibit 32.

MR D. GUNSON: Thank you. I have no further questions.

5 HIS HONOUR: What should be the description of the document for the transcript?

MR D. GUNSON: Yes, it is headed - I will hand your Honour a copy. It is headed - well, it is entitled the Regeneration Survey Stocking Report Sheet
10 dated 20 July 2004.

HIS HONOUR: Thank you.

15 **EXHIBIT #32 REGENERATION SURVEY STOCKING REPORT SHEET DATED 20/07/2004**

MR D. GUNSON: Yes. I have no further questions of Mr Neyland, if it
20 please, your Honour.

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

MR TREE: Thank you, your Honour.
25

<CROSS-EXAMINATION BY MR TREE

[10.15am]

30 MR TREE: Mr Neyland, I think you have had the privilege of preparing and affirming or swearing no less than three affidavits in these proceedings?---I have been most fortunate.

35 Could I ask you - and, please, tell me if it would be more convenient for you to have a copy of your affidavit in front of you, but can I ask you in relation to your first affidavit which was sworn on 17 November 2005 how it is that you came to prepare that document?---I received a request either from John McDonald or Maree Yee - I can't tell you off the top of my head - and the request came in the form of the questions under point 8.

40 And was the request in writing or was it an oral request?---I think the request was in writing.

45 And was it by email or was it by letter? I guess within Forestry email is the invariable rule?---It's not the invariable rule. To the best of my recollection, I received a piece of paper with a list of questions on it.

And your recollection is that it either came from Mr McDonald or Ms Yee - I think it is now Dr Yee; is it not?---Yes, it is Dr Yee and I'm not certain at this time.

5 You do not have that document with you?---No.

Have you subsequently received any further communication from either Mr McDonald or Dr Yee in relation to your affidavits or reports?---In what sense?

10 Well, in relation to - let us take them one by one - your first affidavit, was there any further correspondence between you and either Dr Yee or Mr McDonald subsequent to your first engagement prior to you swearing the affidavit on 17 November between you and that person?---Yes, there was certainly some discussion. I would have to go and dig out through my files, Mr Tree, to be
15 entirely confident but I imagine it was something along the lines I was provided with a list of questions, I wouldn't have understood all the questions, the intent of all the questions, I would have sought some clarification.

I see. So you have a recollection of seeking clarification of some of the
20 questions that you were having difficulty grappling with?---Yes, if you like.

And you responded to whom, to voice those concerns?---Probably Maree.

And you would have responded in writing?---Not necessarily. I may have just
25 walked around the corner and had a chat to her.

Right. Do you remember which it is that you now did?---No.

And you are reasonable confident that in relation to that it was Dr Yee that you
30 were speaking to or communicating with?---Yes.

I call for the initial letter of instruction and any subsequent clarification.

35 HIS HONOUR: You might have to call a bit louder, like the siren at Launceston.

40 MR D. GUNSON: I just asked my friend across the bar table. Perhaps I should have said it via your Honour. Just letting you know I am taking some brief instructions. Yes, we are certainly happy to produce the document but I should make the observation, your Honour, that it has already been provided to my learned friend via Mr Roland Browne. Do you want another copy, do you?

MR TREE: Yes, please.

45 MR D. GUNSON: That is our only copy. Well, I produce the document. We can get another copy made, your Honour. Mr Browne had copies made the other day.

MR TREE: Now - - -

MR D. GUNSON: Is my friend content with that or does he wish to retain it?

5 MR TREE: I am presently hanging onto it.

Now, your affidavit was prepared by you personally?---Yes.

And by you alone?---No.

10

Who else assisted in the preparation of the affidavit?---I wrote a draft affidavit and then I sought some feedback from - certainly from John Hickey and - - -

15

Yes. Who is Mr Hickey?---Mr Hickey is Manager of Planning Branch, Forestry Tasmania. Mr Hickey was the previous incumbent of the position I now hold and I have worked closely with Mr Hickey for about eight years.

You have published a number of articles or publications in conjunction with him, have you not?---That's correct.

20

Thank you. You were giving me a list of people that had provided some feedback?---No, I can assure you that Mr Hickey commented on it and without looking at my records I can't tell you who else may have commented on it. I suspect I would have invited Dr Read to comment.

25

Thank you. Can I just deal with these individually please. Had you prepared a draft of your affidavit and was it that which you sent to Mr Hickey?---Indeed.

And as a result of that did he respond to you?---He did.

30

Did he respond to you in writing or orally?---In writing.

And did it take the form of hand notations on the draft that you had sent?---It did.

35

And have you retained the copy of that document?---I have.

You have? Do you have it with you?---I don't.

40

Well, I call for that document.

MR D. GUNSON: We don't have it.

45

MR TREE: Well, the witness has just said that he has got it so it is within your possession?---It is on my desk.

MR D. GUNSON: I think it is self-evident where it is, your Honour. We will make arrangements at some stage to try and have the document brought to the Court.

5 MR TREE: Now, I think you then went on to say that you probably provided a copy of it to Dr Read; correct?---Probably.

Yes. Now, Dr Read is of course the chief scientist at Forestry Tasmania; correct?---That's correct.

10

And the purpose of you provided a draft, if that is what you did, to him would have been what?---The same purpose as I provide drafts of almost everything I write. It's for feedback, comment, help.

15 Thank you. Were there some areas that had been inquired of you that you were experiencing difficulty in answering?---No.

Were there some areas in which you were less than strongly confident about the correctness of the answers you were proposing to give?---Not really, no.

20

The affidavit indeed deals with areas that are well within your training and experience, do they not?---They do.

And less within the experience and training of Dr Read?---True.

25

Why then would you have been seeking assistance from Dr Read in relation to matters which were more strongly within your experience and training than his?---For a host of reasons. If you look at my CV, Mr Tree, you will see I have published a large amount of material and I have always done - this is the exact procedure that I follow with everything that I have written. You can't produce a journal quality article of your own volition. It doesn't happen. You seek input from your colleagues. They offer you ideas you may not have considered. They offer you feedback on grammar, sentence structure, style, other sources of information that you may not be aware of, etcetera. It is routine business for me.

30

Do you have any recollection of receiving any feedback from Dr Read?---Only a vague one at this time. I can soon check for you.

40 Is your vague recollection of a written or oral feedback?---Probably written.

Thank you. And if that feedback had been provided to you in a written form you would have retained a copy?---I would have.

45 And you are happy no doubt to search about for that on your desk?---I can do that.

Thank you. Now, did you incorporate any feedback that you may have received from either Dr Read or Mr Hickey into your final version of the affidavit?---Almost certainly.

5 Thank you. And do you now have any recollection as to what areas - I won't be any more specific than that - that feedback that was incorporated by you comprised?---No.

10 Now, you then prepared a second affidavit which I think really did nothing more than remedy a deficiency in your first affidavit, a failure to annexe a particular report from Dr Yee. And that report was an analysis of the number, size and quality of the retained vegetation at coupe 17E?---The retained standing eucalypts, yes.

15 Thank you. The third affidavit that you have prepared relates to the use of fire in Tasmanian forestry or silvicultural practise?---Mm.

20 You were asked to prepare that affidavit I think you say in your affidavit itself by Mr McDonald; this is at page 2693 if you have got - - -?---No, I don't have that volume.

Volume 9?---Thank you. I may need that again, thanks. Yes?

25 You will see in paragraph 2 you say:

Recently requested by Mr McDonald to produce a report discussing the principal silvicultural uses.

30 Do you recollect in what form the request was made of you?---No.

It would seem, would it not, that it must have been in writing given that you have in your report - - -?---A series of questions, yes.

35 - - - identified - just wait for me to finish the question please - identified in bold Headings. So it would seem certain, would it not, that the instruction to you or request to you was in writing?---Yes.

40 Do you recollect whether it contained more than a suggested list of headings to which you might respond?---No.

I call for Mr McDonald's letter of instruction.

45 MR D. GUNSON: Well, we note that you call and we will produce the documents when we are able to do so, your Honour.

MR TREE: Thank you.

Now, did you provide a copy or circulate a copy of your proposed report which has not been appended to your affidavit of 21 March to any person?---I'm not sure, Mr Tree, but almost certainly again and probably to somebody in Fire Management Branch. I certainly discussed with people in Fire Management Branch because aspects of this would fall outside my particular area of expertise.

Well, Mr Neyland, this is not a particularly long period of time ago is it, it is 21 March that your affidavit is sworn. And you have no recollection whether you provided it for comment to other persons within Forestry Tasmania?---I said I almost certainly did and again I can consult my records.

And do you have a recollection whether you obtained feedback from those persons?---Almost certainly.

And do you have recollection as to the identity of those persons now?---I'm not sure. I'm honestly not sure.

Right, thank you. I similarly call for any feedback - I withdraw that.

The nature of any feedback you would have obtained would have again been handwritten notes on your draft?---Most probably.

Again, I call for that document and I note my friend acknowledges.

MR D. GUNSON: It is noted.

MR TREE: Now, again do you recollect whether you incorporated any of the - any feedback you obtained into your final report?---Probably.

Have you been asked to provide feedback to others in relation to draft reports for the purposes of this proceeding?---No, not to the best of my recollection.

Thank you. Not for instance in relation to Dr Roberts?---No.

Nor in relation to Mr Wapstra?---No, I don't think so.

So from your perspective it has been a one-way street, you have been seeking assistance from others by way of feedback, but that has not been asked of you; that is a yes?---Yes.

Thank you. Now, can I just explore a little bit about your background please I think that from graduation until 1995 you were an independent ecological consultant?---That's correct.

And your interests were, to say the least, diverse extending from butterflies to tree ferns I think - - -?---That's correct.

And pretty much everything in between?---Yes.

You then were involved in the assessment of Tasmanian forests for the purposes of the Regional Forest Agreement; correct?---That's correct.

5

Who was your employer at that time, was it Forestry Tasmania?---Forestry Tasmania.

It was. You were working under Mr Blakesley?---Blakesley, that's correct.

10

Who you understand to also be a witness in these proceedings?---Mm.

Was he at that time an employee of Forestry Tasmania also?---I think so.

15

And what was your role, I know you had up to 23 people under your command at various times? What was your actual role, what was the duty that you were personally fulfilling in relation to that project?---I had three major tasks, I was putting together the vegetation map of Tasmania; I was putting together the old growth forest coverage of Tasmania; and I was involved in a process known as the disturbance coverage, gathering information from a wide diversity of sources and building them into electronic coverages of the State.

20

And did that involve the use of photo interpretation or - - -?---It did.

25

That is something you personally undertook in that task, or you had the assistance of others to do that?---We brought experts in for the task.

Thank you. And you no doubt would have had access to such materials as already existed on the Forestry Tasmania database?---That's correct.

30

But that what you were concerned with was to identify initially the varying types and extent of vegetation communities?---Mm.

You then focused particularly upon old growth forests?---Yes, it was - old growth forests was a separate exercise.

35

Yes. As indeed was the first exercise?---Yes.

To get a wholesale inventory if you like of what Tasmanian forests then comprised?---Yes.

40

That was your first task, to figure out what is actually there on the ground?---Yes.

45

Your next task was I suppose a specific subset of that: where and what is the old growth forest; correct?---Yes.

Sorry, just that everything is taped, so nods of heads don't get transcribed?---Sorry, yes.

5 And thirdly you were concerned to identify the extent and level of disturbance in any type of forest including old growth forest?---That's correct.

Now, as a part of that were you concerned with the commercial usability of the areas that you were considering?---No.

10 It was purely, if you like, a botanical analysis of what was there?---Yes.

It wasn't undertaken from a commercial aspect at all?---No.

15 Did you on the other hand have access to material which suggested the commercial utility of the vegetation types that you were considering?---Where should I find the reference?

20 Just bear with me a moment. Do you still have volume 9 in front of you?---Yes.

Could you turn please to, I believe it is page 2860. Do you have page 2860?---I do.

25 Which is a document which reads:

I, Lily Burgess, certify the following map as exhibit SJG6.

?---Yes.

30 Is there in fact a copy of a map that thereafter appears in your volume?---No.

MR D. GUNSON: The witness will require the original affidavit to deal with this issue, your Honour.

35 MR TREE: I am not sure whether your Honour's Court book has it either.

HIS HONOUR: No.

40 MR TREE: Sworn 5 April. Your Honour, it may be quicker if I simply surrender my copy.

Now, you see that this is a map of two coupes - principally of two coupes in the Wielangta area, coupe 7A and 2B?---Mm.

45 And you will see that the coupe boundaries are marked?---Yes.

You are reasonably familiar with this type of mapping I assume?---I am.

You will see that the coupe boundaries are marked?---Yes.

5 And you will see that there are then a variety of colour codes which can be interpreted from the legend at the bottom of the map which deal with areas within or adjacent to the coupes?---Yes.

And for instance you will see that there are some coupes, or some areas, marked as inaccessible?---Mm.

10 Some as unloggable?---Yes.

Some as non-commercial, regeneration problems, steep streamside reserve, etcetera. You will then see that there is hashing with PI type regeneration, I assume that is an abbreviation for?---Yes.

15 And there is a variety of other features marked on the map?---Correct.

20 Firstly, in preparing the assessment for the purposes of the Regional Forest Agreement, did you have access to characterisations by Forestry Tasmania of land as, for instance, unloggable or steep or non-commercial?---No.

On the other hand you have, since your employment with Forestry Tasmania, no doubt had occasion to access the database?---Which database?

25 Well, the database which would record the presence of unloggable, non-commercial regeneration problems or steep land?---I am not sure there is such a data base.

30 Are you able to explain where it is that the information contained on this map may have been sourced from or not?---Often times information on this map such as too steep or potential regeneration problems which probably related to the incidence of surface rock - often such information is gathered during special values assessment of the coupe prior to the commencement of the harvest so it is on a coupe by coupe basis. I don't think there is a database with
35 that level of information.

So that that is manually collected and manually recorded?---Mm.

40 And it would not thereafter, on your experience, be maintained as part of the computer records of forestry?---I am not familiar with that part of the process.

I see. Thank you. That is however a process that would be required to take place in relation to the assessment of a coupe though, would it not, for the purpose of harvesting?---Mm hm.

45 So that there would inevitably be somewhere an analysis of each coupe, or each potential coupe, to determine whether it was unloggable, non-commercial, had regeneration problems or was steep or inaccessible?---Mm.

And that itself may form a basis for determining whether or not that area should be couped?---The whole State Forest has been provisionally couped.

5 Yes?---Each coupe is then, as it comes onto the three year plan, somebody goes and does a systematic assessment of the coupe on the ground, walks the whole coupe and makes decisions along the lines of inaccessible, unloggable, non-commercial, based on what they see on the ground.

10 But what you do not know is whether that material is thereafter recorded electronically in Forestry Tasmania's computer base?---That's correct. It's certainly retained on the coupe file.

15 Yes. Can you say from your experience how a map such as this would have been produced? Does it have the appearance of a computer generated map - - -?---It does.

It does? So it would seem that at least for coupe 7A and 2B there is an electronic record of that analysis of the coupe?---It does.

20 Thank you. Now, I wonder if the witness might have Court book 6 please and I might retrieve my copy of the affidavit before it disappears into the morass. It might be quickest if Court book volume 6 were passed to me and I will try and find the relevant page. Can I indicate for the purposes of my friends and
25 your Honour that it is the same or in the same vicinity of the area of this volume that Ms Mortimer was dealing with yesterday. It is behind the first yellow dividing page and it is page 45 of that annexure.

30 Now, in fairness to you this may not be a document that you are familiar with, if you flip back to the first yellow divider, I think it may be orange in your volume, you will see that this is one of the background reports which was prepared by the Tasmanian Public Land Use Commission for the purposes of the Regional Forests Agreement?---Yes.

35 Not the same, but another part of the same work that you were undertaking, the assessment process?---That's correct, yes.

40 Now, if you flip back to page 45 you will see the heading Provisional Coupe in the middle of the page?---Yes.

And you will see that there is a data-set headed Title Provisional Coupes, Prov Coupe, custodian is Forestry Tasmania?---Yes.

45 And then there is a description by way of abstract?--- Yes.

If we firstly deal with the first paragraph we can see that this is in a scale of 1 as to 25,000 the maps are digitally maintained, and then the second sentence:

Digitised coupes are used by Forestry Tasmania as the basis for integrating operational tactical and strategic wood production planning.

5 It continues:

The digital capture of provision coupes provides additional information within the areas that are operationally available for wood production by detailing operational nett areas and constraints etcetera.

10

?---Yes.

Then it continues:

15

Information for input into provisional coupes, there's a combination of factors including slope, Forest Practices Code, forestry type, block compartment, silvicultural system, management decision, etcetera. There are also areas excluded from provisional coupes including existing plantations, streamside reserves, rainforests, steep land, areas unable to be regenerated, non-commercial forests, unloggable areas, inaccessible areas, areas that are uneconomic to road etcetera.

20

?---That's correct.

25

Does that suggest to you that in fact there is a digital record of that in relation to all areas that had been considered for provisional coupling?---Yes.

30

Thank you. Now, I wanted to ask you some questions about your first affidavit if I may. Your first affidavit really deals, if I may say so, with the different types of harvesting which may be utilised in particularly the Wielangta area?---Yes.

35

And there are really two present options, that is clear felling or some form of partial harvesting?---Yes.

The clear felling, do I understand your affidavit to say, is principally restricted to wet eucalypt forest?---That's correct.

40

Would it follow then that if there are proposals to log coupes in Wielangta which identify that they are to be clear felled, you would understand those to be wet eucalypt forests?---Predominantly.

45

Thank you. Are you aware that there are indeed present forest practices plans for coupes in the Wielangta area which show clear felling is to be used?---No, I'm not.

Could the witness please be shown this document. You don't need to restrict yourself with that page to familiarise yourself with what it is, but you are

probably familiar with it. It appears, does it not, that at least in the contingency coupes for Wielangta - - -?---Yes.

- - - there is one coupe that is to be clear felled?---Wielangta 13B?

5

Yes?---Yes.

And we can identify that because on that particular document there is a differentiation between clear felling and partial harvesting, CLF is the abbreviation used for clear felling?---Correct.

10

Thank you. It is then a matter of examining any other forest practices plans as they come along to see whether clear felling is intended to be utilised as the method of harvest?---Mm.

15

Thank you. I wonder if I might have that document back. In answering my last question you were answering in the affirmative I think, were you not?---Did you want to repeat the question, Mr Tree?

20

Yes. To identify whether there is an intention to utilise further clear felling in Wielangta one would need to examine the individual plans as they are submitted?---Yes.

25

Thank you. Now, invariably as a consequence of clear felling high intensity burning will be used?---Yes.

It is impractical to use low intensity burning to reduce debris and provide seed bed on a clear felled area?---Yes.

30

Thank you. And that is for two reasons, firstly because of the volume of material which is produced by clear felling?---Yes.

And secondly because wet eucalypt tends to have a greater degree of understorey material?---Sorry, I don't follow your logic there.

35

Wet eucalypt tends to have a greater degree of understorey material, so there is a - - -?---And hence there is a larger fuel load.

40

Quite so, thank you. Now, it isn't the case though is it, that high intensity burning cannot be used on partial harvested coupes?---Sorry, it is the case?

It is not the case, that you could not use a high intensity burn on a partially harvest coupe?---Sorry, you are losing me in the negatives.

45

HIS HONOUR: Double negative.

MR TREE: Yes.

You could use a high intensity burn on a partially harvested coupe?---No, you couldn't.

Well, you could but it would destroy the purpose of partial harvesting?---Yes.

5

Thank you. The purpose of the partial harvesting is, do I understand from your affidavit, one of three things. Either to provide seed by way of standing local tree or seed stock?---Yes.

10 Secondly, to provide advanced growth retention, so that some further harvesting can be undertaken in the near future or within 80 years?---So that we retain useful existing growing stock on site alive, yes.

With an intention to harvest them in the future?---Yes.

15

Thank you. And you may also retain potential saw log trees?---In the same way.

20 That is a variation of the same theme?---It is a different size classed as growing stock.

25 That is right. Now, whichever of those three systems are used, would you agree with me that the impact of that partial harvesting is dramatically different to the ordinary stochastic events which attend upon forests?---In terms of wildfire, wind throw?

Quite so?---In the year immediately following harvesting, yes.

30 Because wind throw, if we simply focus on that for a moment, wind throw might result in a few trees being blown over, but it is unlikely to lead to the same degree of forest removal that even a partial harvesting operation does?---In the main in Tasmania that's true, yes.

35 Thank you. And similarly if we look at wildfire, the nature of eucalypts is such that they have evolved to substantially survive wildfire?---True.

40 And hence even a relatively severe wildfire is unlikely to reduce the number of live-standing trees to anywhere near the same extent that a partial harvesting operation would?---Mm.

45 Thank you. Now, am I correct in saying that the number of stems that are left standing on the site depend upon the nature of the partial harvesting system being deployed?---Which in turn depends upon the structure of the forest at the time of the commencement of harvesting.

Thank you. So that if, for instance, one were undertaking an advanced growth retention of the site or the coupe, the extent to which advanced growth was

retained would depend upon the extent to which it was there in the first place?---Of course.

5 If we go to a silly example, if there was only one mature tree and the rest of it is all advanced growth then the partial harvesting operation would simply be to remove the one large tree?---Potentially.

10 Potentially. The reality is that in mature eucalypt forest the preponderance of trees are of a mature nature; are they not?---No.

15 In mature, unharvested eucalypt forest you do not think that most of the trees are mature?---Yes, sorry, now that you qualify it. In previously unharvested forest, yes, the preponderance of trees would be mature unless that particular forest had been burnt by an intense wildfire within the last 100, 150 years.

And a wildfire of a kind which caused the destruction of standing timber?---No, of a wildfire that caused the initiation of a cohort of regeneration beneath the mature forest.

20 Yes. Thank you. Now, the nature of the partial harvesting employed on coupe 17E was - correct me if I am wrong - a mix of advanced-growth retention and seed-tree retention?---That's correct.

25 And it utilised, did it not, advanced growth for both purposes, ie, as a potential source of harvestable timber in the future and to provide seed?---The seed trees will predominantly provide the seed, you'd find that the smaller trees often don't carry - a smaller crown and they often don't have a very big seed crop.

30 I see. Thank you. But this was not a potential saw-log retention partial harvest, was it?---There's a mix in there. As I mentioned in my affidavit, often these forests are multi-aged, there's been a series of events, we know these particular coupes have been harvested in the past, there's been fires in the past, there was a mixture of size classes. There are some potential saw logs on that coupe.

35 Thank you. Now, do you have a copy of your affidavit of 17 November in front of you by any chance?---If you could give me a page number, I can find it.

40 Page 1565 is the page I wanted to direct your attention to?---Yes.

Perhaps it is fair to commence on the proceeding page at paragraph 19, you say that:

45 *Clear felling of dry forests in eastern Tasmania -*

This is the second sentence in that paragraph -

peaked at about 5000 hectares per year in the 1970s.

?---Yes.

5 And you then go on to say that regeneration problems were being experienced as a result of that?---Mm.

And that subsequent research was undertaken to develop more appropriate harvesting systems?---Correct.

10

Thank you. You then go on to say:

Similarly in low altitude, dry grassy forests -

15 and that is not what we are talking about here in Wielangta, is it?---No, I wouldn't describe them as grassy forests.

Yes:

20 *Grass invasion following clear felling sometimes resulted in regeneration failure and harvesting in these forests was suspended for a period whilst research determined harvesting methods that led to consistently successful regeneration.*

25 ?---Mm.

Are you aware of the period for which harvesting was suspended?---No, I couldn't quote you.

30 But do I understand that effectively a moratorium on logging in those areas by way of clear felling was imposed?---That's correct.

And the purpose of that moratorium was to allow a scientific approach to be formulated and adopted to ensure the preservation by way of regeneration of the forest in question?---That's right.

35

And ultimately science was able to provide an answer that was at least acceptable at that time for regeneration?---Yes.

40 Thank you. I think that was prior to your moving to Forestry Tasmania?---It was.

Interestingly though that would be your area of responsibility now, would it not, to formulate such a plan?---Were you to turn the clock back, yes, potentially.

45

You effectively are the bloke who has the responsibility in your present position for that sort of work?---Yes.

Thank you. So that similarly if there were to be required a scheme of logging which required, for instance, the retention of potential recruitment of coarse woody debris beyond a certain diameter into the ongoing future it would be
5 you who would be called upon to answer that task?---No, it's actually being run in biology and conservation at the moment.

I see?---I would liaise with those people.

10 It is something that would likely be trialed at Warra?---The Warra trial was effectively established at this point and it is more likely - there has been a little work in this regard done at Warra, it is more likely that it would be trialed further afield now.

15 Thank you. But nonetheless it simply represents a scientific challenge?---Correct.

And by no means an insoluble one, it is simply a matter of identifying an appropriate prescription for logging?---It's not a simple matter by any stretch,
20 Peter, there's a deal of work to be done in understanding invertebrate movement in these forests types, we are presented with that challenge at the moment and we're working on it, so it is not a simple question.

The challenge in relation to invertebrates which you are presently working on is, what, sorry?---I'm not working on, biology and conservation branch are
25 addressing some of these issues about how do we manage for those values as well as just the coarse woody debris. Maybe coarse woody debris is a useful de facto for managing other elements of biodiversity but we need to have some confidence in that.

30 Particularly invertebrates?---Indeed.

And you understand that that is an area of research which is presently being engaged in by officers of Forestry Tasmania?---Correct.

35 And what is your understanding of that research that is presently being undertaken, is it specific to any particular invertebrate species?---No.

40 It is generally with a view to ensuring an ongoing supply of coarse woody debris?---It is, to the best of my knowledge.

That would, no doubt, involve considerations of fire methods?---It would.

45 You say, I think it is in the concluding paragraphs of your first affidavit, that in fact a new method of harvesting in wet eucalypt forests is presently being developed?---We are exploring it, yes.

And do I understand that that sees a far greater retention of standing timber on the coupe then presently would ensure?---The target at the moment is to retain 20 per cent of the original forest within the coupe area in aggregates of between half and one hectare.

5

Now, this is a former partial logging that doesn't fit within any of the three categories we have thus far been talking about?---This is currently experimental, yes.

10 And do I understand that the experiment includes the deliberate retention of older, more mature trees?---I wouldn't say the deliberate. At the moment - you will find most coupes are relatively homogenous. They tend to have had the same fire history.

15 Yes?---Most of the landscape fires and you are only in a small part of the landscape. We have tended, because of the safety concerns in developing this technique, we have to be a little hands-off. We have to say to the contractor, "Here is a schematic of what we would like the outcome to be but the actual harvesting is in your hands. We would like to retain the coupe with these
20 patches of undisturbed forest in it," but where those patches ultimately end up is at the contractor's discretion.

Although do I understand that the intent is that there will be no more than one tree length - and I suppose from ground to roof length I guess is what we are
25 talking about - - -?---Equivalent perhaps I should say.

- - - between trees?---No, the current prescription is that the majority of the coupe, at the completion of the harvesting, will be within one tree length equivalent of a retained forest edge. That doesn't mean all of the coupe will be.
30

Yes?---It means more than half.

I see?---Yes.

35 Now, is that, do you say, the current extant prescription for partial harvesting of wet eucalypt or is this the experiment?---I don't call it partial harvesting, Peter, because that is a different structure than the partial harvesting we can do in dry forest. I make quite a distinction. We call this aggregated retention.

40 I see?---There are pieces in the forest that we retain undisturbed. The rest of the forest is harvested so it is quite different structurally than what we can do in the dry forests of Tasmania. We are restricted here by safety concerns. There is a big driver.

45 I see. And what nature of fire - what burning system is used? A high intensity burn or a low intensity - - -?---This is our big challenge. When we come to the fire affidavit we talk more about high intensity burns. We have high fuel loads now in aggregated retention coupes scattered around values that we wish to

retain unburnt if we can. It narrows the window of opportunity for successful burning.

5 Is one of the solutions to use a mineral earth barrier around the retained areas?---It is but I am seeking the input from the biodiversity specialist about beetle movement with that very question in mind.

10 Yes. Because of course that is one of the considerations to see whether or not - - -?---It is but that is why we are still in an experimental phase and it is why amongst other things I have been saying nature was probably more happy with burning a little of the aggregates but leaving the coarse woody debris, for example, running contiguously with the aggregates and I put that very question to the biodiversity specialists - get me some help here please.

15 And have you received an answer to that yet?---We are in an experiment, Peter.

Because one of the difficulties about using a mineral earth barrier or a boundary is that it is effectively a fire trial, is it not?---It is.

20 It needs to be to that standard?---This is being discussed as we speak.

25 Yes?---Yes. You do need access. We know we need access for high intensity burning, low intensity burning. We need access for control purposes. Yes, that is a given. The level of access we require, how that access is created, these are open questions with aggregated retention. We are only the learning curve.

30 Excuse me for a moment please. Irrespective of whether a partial harvesting regime or a clear felling regime is used, it is intended, am I correct, that thereafter the coupe will be subject to a silvicultural cycle?---What does that mean?

35 It is not intended that thereafter it will never be harvested again. It is intended that it will be prepared in anticipation for further harvest in the future?---That's our business.

Quite so?---Yes.

40 So even in a partially harvested coupe where there is - whichever method of partial harvesting is adopted, it is intended that the retained material, for instance, a seed tree, will ultimately be harvested?---Potentially yes.

Similarly in relation to a wildlife habitat clump or a wildlife habitat strip, they are both in the nature of informal reserves, are they not?---Mm.

45 And there is no restriction, actual or potential, upon the subsequent harvest of those in a later silvicultural cycle is there?---No, we wouldn't do it.

Well, there is no restriction on doing so?---Except mould.

Well, it may be the case, may it not, that in that 80 year period or whatever the silvicultural cycle is, that an alternative and perhaps even better clump or strip can be ascertained?---Perhaps.

5

And so it is not necessarily the case that it would never occur?---No, I certainly would never say never.

Thank you. In relation to coupe 17E which I think you have examined, have you not?---I have.

Are you able to assist his Honour as to what the likely length of the silvicultural cycle will be in that coupe?---It is a big crystal ball game, Peter, you know that. Nowadays we are a bit driven by markets.

15

Yes?---That will be a consideration. What products are we chasing? Where are those products in our estate? You are not going to be back in there inside 40 years by which time some of those poles will be telegraph poles, if I am looking for telegraph poles - - -

20

Well, we can be fairly confident that it is unlikely to be further harvested within 20 years because it is unlikely to see there would be any commercial incentive for harvesting at that time. The material would be too slender?---Mostly, yes.

25

Thirty years? I suppose it depends on what you might be harvesting and likewise if there were to be a complete absence of market for timber it may never be harvested I suppose?---It may.

But ordinarily would you agree with me that somewhere in the range of 60 to 80 years is probably an appropriate guess for this cycle?---No. It is somewhere between 30 plus.

I see?---Open-ended.

35

Now, in undertaking the low intensity burn, do I understand your evidence to be that the desire is to harm as little as possible the retained growth?---Absolutely.

And there are two types of the retained growth are there not? There are those trees that are retained in informal reserves, perhaps skyline preservation strips or wildlife habitat clumps or strips?---Mm.

And secondly there are those trees which form part of the seed trees or alternatively the advanced growth retention?---That's correct.

45

And the endeavour of low intensity burning is to restrict the damage to standing timber as much as possible?---That's correct.

On the other hand would you agree with me that the informal reserves are frequently subjected to fire even in a low intensity burn?---I have no experience of that.

5

You have no experience of it either way?---Well, I don't do the burning, Peter, I am not out there lighting the fires.

I see?---So I honestly have no experience of it.

10

Well, you do understand that you have been put forward as the expert on fire, though don't you?---I've been put forward as an expert in silvicultural use of fire. Why do we do what we do.

15

Yes?---Yes, I'm not a practitioner. I've been out there on the ground and watched some burns happen simply to - for the benefit of my experience, but I don't go out there year after year and conduct the burns, no.

20

I see. Well, your affidavit - most recent affidavit - does it not append some photographs and this morning there was a further photograph appended of burn sites?---That's correct.

Perhaps if you could look at volume 9, page 2713?---Two thousand?]

25

2713, I think it is, exhibit - sorry, exhibit to your affidavit of MNB3?---Yes.

That is a photograph is it not of the burn, a low intensity burn, I think you said at Snow Hill?---That's correct.

30

Now, I wasn't paying proper attention, I am afraid, did you yourself take this photograph or did a colleague take this photograph?---I did. No, I took this photograph.

35

You took that photograph, all right. In anticipation of giving evidence about the effects of fire, or the effects of the implementation of fire as a management technique in forests?---I use it in training courses that I do.

40

Yes, thank you. Now, can you say from your attendance at this coupe whether what we are looking at by way of retained vegetation is partial harvesting for seed tree retention or advanced growth?---We've been there, it is a seed tree/potential saw log retention type operation. It would have fallen into one of those baskets.

45

Have you, yourself, looked at the coupe plan, the Forest Practices Plan?---For this coupe?

Yes?---No.

Are you able to say whether what we are looking at there includes any wildlife habitat clump or strip?---No.

You don't know either way?---No.

5

If you look at the areas that we can see in the photograph, there appears to be aggregations of trees that have been retained, are there not?---It's a photograph, Peter, yes I give you that, but - sorry, I was just looking for - - -

10 Are you looking for page 2713?---No, no, I'm looking for the better - here it is, it's a better quality photo than that photocopy. Yes, potentially there's wildlife habitat clumps within in, but from standing here on the ending of the spur road looking up the bank, I couldn't be sure.

15 We can, however, see areas of aggregations of trees can we not? For instance in the foreground on the right hand side of the photograph - - -?---Yes, but they're all advanced growth or potential saw logs too small to be commercial at this stage, it's kind of exactly what we're doing there is trying to retain those trees.

20

But there would be no reason to suspect that a fire which spread into an aggregation of trees such as that would not also spread into a wildlife habitat clump or strip is there?---When you are lighting a fire like this, Peter, in my limited experience you've got a wider range of options than you have with a clear fell burn and sow. You can choose not to put a torch to it, you can just walk past.

25

Past the whole coupe?---No, past the wildlife habitat clump.

30 I see?---Often these fires are of sufficiently low intensity that they only burn where you initiate a fire.

I see. Well, did I not understand the affidavit that this photograph is an annexure to and some of the annexures to make it clear that even on a low intensity burn there needs to be a defined barrier between the area to be burnt and the area which it is intended not to be burnt?---This is known as erring on the side of caution.

35

No, just listen to my question, please? Is that not, if you look at page 2805 for instance?---2805?

40

Yes?---Yes.

You will see there is a heading about point 4 down the page, Boundary Selection and Placement?---Yes.

45

And boundaries have been identified as improved pasture whilst green?---Yes.

Wet type scrub or wet type forest?---Yes.

Rock screes or well-defined water courses?---Correct.

5 Unless one of those four exists then there isn't a natural boundary?---That's right.

It continues:

10 *Where a well-defined natural fire boundary does not exist the burning unit must be enclosed by roads or fire trails.*

And there are then five conditions for those?--- Yes.

15 Including:

(2) Are trafficable by four-wheel drive vehicles and can be maintained at acceptable cost without causing severe erosion.

20 ?---Indeed.

So that in order to have a fire boundary around a wildlife habitat clump within the meaning of the term boundary as used by prescribed burning low intensity, this very document you have produced, you would need to have effectively a bulldozed fire trail?---Well, you would have to talk to the practitioners here, Peter, like I said I'm not an authority on the doing. With the aggregated retention, for example, we don't always use a bulldozer we use an excavator with a rake on it so that it's not a scrape dirt, but would simply move the fuel away from the aggregate. I presume that the districts do similar work in preparing their coupes for burning.

30 It is clear is it not that the boundary is to mineral earth?---That's right, a boundary around the coupe.

35 Well, let us not get into a squabble about whether it is done by way of bulldozer or excavator or people with hand trowels, the reality is that to have an effective boundary it needs to be taken to either a natural boundary or mineral earth?---That's right.

40 Moreover, you have made it clear in your affidavit that - and I am now at page 2699 - that one of the reasons for insisting upon this boundary is at about point 5 of the page:

45 *The exposed forest edge adjacent to the coupe dries a little faster than the interior of the forest and so is a little more likely to burn should it be ignited by a spark. This effect extends only about 50 metres into the adjacent forest and typically fires which occur under these*

circumstances only extend into the adjacent forest to about this distance.

Now, that is your opinion?---Yes.

5

An opinion which you have probably had the assistance of feedback from the relevant experts at Forestry Tasmania in formulating?---And from reading the literature, yes.

10 Thank you. And that is that the drying effect - I withdraw that. That forest within 50 metres of a cleared area is likely to be drier than forest beyond the 50 metres?---That's true.

15 It would follow then that that would apply to a wildlife habitat clump or wildlife habitat strip or any informal reserve retained within the coupe also?---True.

Namely, that it will be drier than surrounding retained forest beyond 50 metres?---True.

20

Hence more likely to be ignited and burnt?---Potentially.

Your counsel this morning has produced pursuant to call, a fire management evaluation for coupe 17E.

25

HIS HONOUR: Mr Tree, do you have much longer to go?

MR TREE: Some time, your Honour, yes. If now is a convenient time, your Honour.

30

HIS HONOUR: Yes. We might adjourn now until 25 to 12.

ADJOURNED

[11.20am]

35

RESUMED

[11.41am]

40 HIS HONOUR: Mr Tree?

MR TREE: Thank you, your Honour.

45 Now, just before the break I had passed you a document that had been produced. Have you had an opportunity to consider that?---No, I should have been reading it for the last 20 minutes. Sorry. Yes.

Are you familiar with documents of that kind?---Yes.

And can I ask you where they fit into the regime of preparing to burn the coupe in question? Are they the first step towards burning?---I don't know, Peter. I think this is done at an early stage. This is a flag to raise any particular
5 problems but don't quote me.

Right. Because I am just comparing that form, for instance, with the form that you have annexed your affidavit at page 2704?---Yes.

10 Which I understood to be the document which would need to be compiled prior to the burning of the coupe.

MR D. GUNSON: Do you mean 2701?

15 MR TREE: Sorry, 2701. My friend is quite correct?---Yes.

Do I understand that that is the more intricate document that would need to be compiled prior to burning the coupe?---I think that would be the case but you would need to consult again with the practitioners.

20 I see. So in compiling your affidavit where did you obtain the information which gave rise to you annexing that document? From others, did you?---Yes.

25 Who did you obtain it from?---In fact I think that being a standard FOP has probably come straight off our SEMS.

You will have to explain that acronym for me, I am sorry?---Sorry, safety and environmental management system. It controls basically everything we do now at Forestry Tasmania. Wherever there is a standard operating procedure
30 that document sits within our safety and environmental management system. It is available for anybody to pull down and therefore use and I suspect being a standard plan that this is - in fact if you read at the bottom of the document
- - -

35 Which document, I am sorry?---Page 2701.

Yes?---Refer to the FT intranet SEMS site or the forestry operations database for the latest version of this document assures me that in fact that was the source of the document.

40 I see?---It is a part of our safety and environmental management system. They are sort of living documents that sit on the system and as required you bring them down. It ensure that we are all using the same form.

45 And in preparing to create your affidavit and to give evidence you were seeking to access the relevant forms in anticipation of burning, forms that would be - - ?---No, I was seeking to access the relevant forms in order to firstly, familiarise myself with and secondly - - -

So you were unfamiliar with them?---Yes.

5 Right. Sorry, I interrupted you. You said firstly, to familiar yourself with them - - -?---And secondly, to inform my affidavit.

I see. Well, have you considered the prescriptions imposed by the coupe plan for 17E?---Sorry, I am not - - -

10 Are you familiar with the Forest Practices Plan for coupe 17E?---Yes.

You are?---Yes, well I have read it some time ago.

15 Would you agree with me that it prescribes the burning of tops?---Yes, I think it calls for a top disposal burn.

Yes?---Yes.

20 Well, of course, the nature of fire is that you can't only burn the tops that are on the ground and nothing else?---I am sorry but I have actually seen such fires happen. Yes, it is possible so it depends - there is a million variables here. It depends on the forest type that was harvested. It depends on the structure of the forest prior to the harvest. It depends on the size of the coupe, the nature of machinery used, the way the fuel has been presented prior to the burn. It is possible just to burn the heads.

And you have seen coupe 17E recently?---Yes.

30 Since the commencement of these proceedings at any rate?---I have.

It does not present as a coupe in which one could only burn heads, does it?---There is more fuel there than in some coupes, yes.

35 And the reality is that a low intensity burn on coupe 17E will not just burn heads but will burn any flammable material that is on the ground or slightly above the ground?---Again, perhaps a question more for the practitioners than for myself and again, the actual outcomes of the burn depend on those list of factors that I have detailed in my affidavit and so I can't answer your question with any confidence.

40 I see. There is no prescription, nor is there any material in the document that is on the ledge in front of you there that has been produced pursuant to the call, which requires there to be precautions taken against burning habitat clumps or other informal reserves?---Sorry, within the FPP or - - -

45 Within the FPP or alternatively that document which you have in front of you, there is no restriction or recommendation about restricting fire from entering into informal reserves including strips or clumps?---Within the coupe?

Yes?---And again I'd have to say to you talk to the practitioners. It is not my area of expertise.

5 I see. Well, it is within your area of expertise to say that the only way in which one could provide a boundary between the area to be burnt and the informal reserves would be to have a mineral earth trap?---That certainly swings the odds in your favour, yes.

10 Thank you. You do make, in one of the annexures that you have provided, reference to the impact of burns on various species or the likely impact; is there not?---Possibly.

Well, could you turn please to page 2736?---Yes.

15

There, at paragraph 8 of the document you have annexed under the heading Effects of Fauna it says:

20

A single fire causes an initial reduction in the populations of invertebrates. Post fire recovery will depend on the initial community structure, fire intensity, percentage of area and substrate burnt and season of burning.

?---Yes.

25

Well, you are aware that this case involves one invertebrate?---Yes.

The broad-toothed stag beetle?---Yes.

30

And you would expect that even a low intensity burn would have the effect of an initial reduction in the population of that species, to the extent that it is present?---Outside my area of expertise, absolutely.

35

Although is it not directly one of the consequences of the silvicultural use and effect of fire?---As far as I understand, it depends a lot with the intensity of the fire.

40

Well, perhaps I could come back to my question. Is it not one of the consequences of the silviculture use and effect of fire?---Is not what one of the consequences of the silviculture use of fire?

The - - -?---The potential reduction in the population of invertebrates?

45

Yes?---Yes.

Well, did I not understand that the purpose of your third affidavit to be to harness your expertise in the silvicultural use and effect of fire?---That's correct.

And yet do I understand your evidence that you are not aware, and that it is outside your area of expertise, as to the effect of the silvicultural use of fire on invertebrates?---But it is outside my area of expertise to quote on what is
5 happening to the broad-toothed stag beetle. I know almost nothing about the broad-toothed stag beetle. It stands to reason that in a sweeping generalisation as is the statement here that yes, if a fire goes through there will be some reduction in invertebrates particularly those that are above the ground but as I understand it the broad-toothed stag beetle is underneath the logs so I can't
10 quote you.

Well, if you look at page 2809, which is in another of the annexures that describe the burning low intensity manual. Firstly, can I ask you whether this falls within the area in which you are responsible for training Forestry
15 Tasmania employees?---No.

It doesn't?---No.

If you look at page 2809?---Yes.
20

You will see there is a heading Timing of Burns:

*In choosing the most appropriate season to conduct a low intensity burn a number of factors must be considered (b) the known presence of
25 rare or endangered species.*

?---Mm.

Well, from your familiarity with the forest practices plan or the burning plan
30 which is before you is there any advertence to the presence of rare or endangered species in considering the timing of burns for the site?---I presume there is.

Well, can you identify it?---Sorry, you are losing me a bit, Peter, in where, in
35 the forest practices plan?

Yes?---I don't know, I would have to read it.

Well, can the witness, please, be shown volume 1? Can you turn to page 350,
40 please?---Yes.

That, I want to suggest to you, is a copy of the forestry practices plan for coupe 17E?---That's correct.

45 And you will see that the plan follows the ordinary form of plans?---Yes.

And at page 357 you will see that there is a prescription which refers to the wedge-tailed eagle and the swift parrot and there is reference to wildlife habitat clumps?---Yes.

5 If you look at the following page, page 358, you will see that there is prescriptions relating to burning?---Yes.

And again I want to ask you whether - and, please, take your time to consider the document - there is any reference you can identify there to advising or
10 prescribing that the low-intensity burn should take into account the known presence of rare or endangered species?---No, there's not.

Indeed there is no reference to timing of burns at all, am I correct in saying?---You're right.

15 So there would be nothing to prevent a fire from taking place during the time of greatest activity of an invertebrate species?---Look, again - - -

Well, just listen to my question. There is nothing in the forest practices plan or
20 in the burning document which you have in front of you which would restrict the burning of the coupe outside a period of activity of an invertebrate species?---Neither of these documents have the burning plan.

And similarly there is no prescription in relation to - or there would be nothing
25 which would prevent a burn occurring during the time of nesting of a swift parrot?---I would have to look at the burning plan to be able to answer that question.

Which?---The forest operations plan that we were looking at earlier.

30 Which you would expect to exist already?---Well, if there was a burn plan for the coupe, yes, I would.

When would you ordinarily expect a burn plan to be prepared for coupe
35 17E?---Prior to the burn taking place.

How long prior to the burn taking place?---Generally in the season, but this an operational matter and is outside my area of expertise.

40 Well, you have a pro forma burn plan annexed to your affidavit, do you not?---I do.

Can you identify for me, please, how someone preparing that would be alert to the need to restrict - or the desirability of restricting - this is page 2704, your
45 Honour. Sorry 270 - I am sorry, I have repaginated my documents, 2701?---Yes.

How would someone preparing that in relation to coupe 17E be alert to the desirability of burning outside of the period of peak activity for, for instance, an invertebrate species?---Well, they may have taken cognisance of this on page 2809 of the same Court book which says, below where we just were, that
5 relevant expertise should be consulted during the planning process to determine the appropriate timing for the burn. It may have come up within the special values assessment for the coupe and again it's not something I'm wholly familiar with.

10 I suppose the other option is it might just be missed?

MR D. GUNSON: Well, the witness is not in a position really to answer that and I object to the question, your Honour?---Yes.

15 MR TREE: Well, this is the witness that has been put forward by Forestry as being apparently the expert on fire?---This is the witness who has been put forward by Forestry as understanding the silvicultural use of fire and the difference between a high intensity and a low intensity burn.

20 But not the biological impact of fire; is that what you say?---No, that's right.

Can you identify anyone in Forestry Tasmania who has that expertise?---Biological impacts of fire?

25 Yes?---Bits and pieces of it would be scattered throughout the organisation, but it's not like we keep a, you know - the conservation biologist will have some knowledge in that matter, the recently appointed biodiversity specialist with variable retention that we talked about earlier will investigate some aspects of that matter.

30

Just excuse me a moment, please, your Honour, I have managed to mislay the only document that I need to have access to at the moment. You are, I think, a very experienced forester and have had extensive experience in Tasmanian forestry environments, have you not?---Some.

35

Well, a bit more than some?---25 years.

Yes. And that, am I correct in saying, has taken you around the whole gamut of Tasmania?---Yes.

40

And that has been the position for some years now, that you have had regular exposure to all areas of Tasmania in the forestry context?---Unbelievably, I even go bushwalking in my free time.

45 All right. And am I correct in saying that you have had occasion to observe the variation of seasons from year to year?---Indeed.

And you have had occasion to form an opinion, have you not, that at least on the East Coast of Tasmania there is a progressive drying out, if you like, of the climate, it is becoming progressively dry?---No evidence.

5 Well, that is notwithstanding whatever evidence may be, that is your opinion though, isn't it?---To the contrary, the period 1981 to the end of 1995 was a spectacularly dry period in Tasmania. During that period I worked on tree decline in the Midlands and post 1995 we have actually been running somewhat better seasons, to the point that this March's autumn break has been
10 good a season as the farming community has seen for some years.

Do you not have the view that Tasmania has been dryer in the last 25 years than it ever has been?---The '80s and the '90s were dry but the recent couple of years have been wetter.

15 Do you have the view that Tasmania has been drier in the last 25 years than it ever has been?---No.

Now, the documents which you have annexed to your most recent affidavit identify, do they not, that the potential impacts of fire extend to the removal of material on the ground which would ordinarily restrict evaporation; is that a fair analysis? You are not familiar with the document?---If you remove all the fuel on the ground then, yes, evaporation potentially will increase, evaporation from the mineral earth surface.

25 Have you read this?---Not for some time.

When was the last occasion you think you would have read it?---In the last few years, Peter, I have - I'm working familiar with all of these. This one we're
30 working on currently to revise because we acknowledge it's a little older than the others and so I have had some occasion to look at it. I haven't read it from cover to cover.

And when do you think the last occasion that you - - -?---Some years ago.

35 Yes?---Yes. It's annexed to my document because I refer to a particular statement in it, not because I claim to know it - have, you know - - -

40 HIS HONOUR: When you say this for the sake of the record what are you holding up?

MR TREE: I am talking about annexure MNZ I think it appears to have on it, but it commences at page 2715 of the Court book.

45 HIS HONOUR: MN2.

MR TREE: MN2, your Honour is quite correct, yes.

And is that the same for MN3 which commences at page 2777?---Is that the Prescribed Burning for Low Intensity?

5 Yes?---No, I've been more familiar with that because of my concerns over the risk of burning retained growing stock. I've initiated a few activities in the last couple of years including a workshop bringing the low burning - low intensity burning practitioners together in order to discuss what we might do to help us do a better job. So I've read that one more recently than the other.

10 And the purpose of that meeting has been to assist the success of the regeneration process?---No, nothing makes me wilder than seeing a clump of advanced growth burnt when we've gone to the difficulty - gone to the trouble of retaining it undamaged through the course of the harvesting, but then it gets burnt in the regeneration burn. So I've been working to assist the practitioners
15 wherever I can in achieving a good burning outcome that leaves the retained growing stock as undamaged as possible.

20 Thank you, your Honour, that concludes the cross-examination I have of this witness at the time being, but your Honour will be conscious that the call for documents has not yet been answered. I understand my friend proposes to send the witness away now, he can find those documents, bring them back and we will deal with him again after lunch.

25 HIS HONOUR: So you effectively want the further cross-examination adjourned?

MR TREE: Yes, your Honour.

30 HIS HONOUR: Yes. Mr Neyland, do you mind coming back after 2.15?

<THE WITNESS WITHDREW

[12.04pm]

35 HIS HONOUR: Mr Gunson?

40 MR D. GUNSON: Yes, thank you, your Honour. The next witness and the last witness subject of course to Mr Neyland's return is Mr Jarick. Your Honour will find his evidence in book 3 at page 1119. If Mr Jarick could be called please.

<EXAMINATION-IN-CHIEF BY MR D. GUNSON

5

HIS HONOUR: Mr Gunson?

MR D. GUNSON: Could Mr Jarick be given volume 3 please?---Sorry?

10

Just a moment, Mr Jarick, the associate will give you a volume which contains your affidavit. Mr Jarick, could you turn please to page 1119. And you now have a copy of your affidavit in front of you?---Yes.

15

Thank you. Mr Jarick, your full name is Stephen Arthur Jarick?---Yes.

And you reside at 6 Lower Jordan Hill Road, West Hobart?---Yes.

20

And you are a senior business analyst with Forestry Tasmania; is that correct?---Yes.

Thank you. And that is the copy of the affidavit that you swore in these proceedings on 17 November 2005; is it not?---Yes.

25

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

Could that be taken as read, your Honour?

30

HIS HONOUR: Yes, Mr Gunson.

MR D. GUNSON: Now, Mr Jarick, at my request were you asked to look again at the figures that are set out in paragraph 5 of your affidavit?---Yes.

35

And have you looked at those figure with a view to being able to assist the Court by telling his Honour what Wielangta's contribution to the value of the forest product industry is for the years 2002, 2003, 2003 to 2004, 2004 to 2005?---Yes.

40

What was the total production value?---The total production value or sales value was \$13.2 million which - - -

Which gives an average of what?--- - - - gives an average of 4.4 million per annum.

45

Thank you. I have no further questions of the witness, your Honour.

HIS HONOUR: Thank you.

5 MR MITCHELL: Mr Jarick, who instructed you to swear an affidavit in this proceeding; was that Mr McDonald?---Yes.

And at the time when he asked you to do that was that an oral or a written request?---I think it was an oral request.

10

And what exactly were you asked - what matters were you asked to address in your affidavit?---The financial impact of the production at Wielangta State Forest.

15 So there is no written document that was provided to you which would be evidence of that request?---Not specifically to that request. There could be emails that indicate, you know, the matter, but not specifically to that, to my knowledge.

20 When you say there could be emails that indicate the matter, could you tell his Honour what the content of those emails is?---It would only be - - -

25 MR D. GUNSON: I object to the question. He said there might be emails, he didn't seem to be terribly sure and now he is asked to state the contents of a document about which he is not certain. The question is not a proper question, your Honour, in my submission.

MR MITCHELL: I will withdraw the question.

30 Are there emails between you and - sorry. Have you received or sent emails which have related to the contents of your affidavit?

35 MR D. GUNSON: The question, your Honour, is an imperfect question it should be in respect of, first of all have you received, or have you sent is two questions. But it hasn't identified to whom they have been sent or received from.

MR MITCHELL: Nor do I have to, it is submitted, your Honour.

40 HIS HONOUR: I will allow the question, perhaps you could break it up.

MR MITCHELL: To start first, have you received emails which relate to the contents of your affidavit?---The factual content that I've put in the affidavit you're talking about?

45

Yes, or the process of drafting the affidavit?---No, not to my knowledge.

Have you sent emails of that nature?---No.

Not to your knowledge. Have there been any written communications other than email that you have sent of that nature?---No, not that I can recall at all.

5 Did you prepare a draft of your affidavit which is different to this one?---No, this is basically what I - I did maybe speak to other colleagues about it, you know, to make sure I had the facts and figures, or had covered all the reference sources and so on.

10 But they were just oral communications with your colleagues?---Yes.

Okay. Who were those communications with?---They would have been with my - the person who supervises me, basically.

15 Who is that?---Darryl Stringer.

Did you speak to Mr Stringer in order to provide the figures that you have provided just today that weren't contained in your affidavit?---Sorry?

20 Relating to the production of Wielangta in the '02/'03, '03/'04 and '04/'05 financial years?---That's the latest little bit other than the affidavit you're talking about?

Yes?---Yes.

25

What is the source of that information?---The source of that information is simply internal figures once again of what the actual - and they are actual figures - what the actual production figures were in those three years.

30 Well, you say internal figures what is the form of those figures that you had access to?---They are harvesting out of our sales system within FT, they are harvesting figures that you know - volumes that came off those coupes in the Wielangta Forest in that three year period.

35 And what do those numbers represent?---They represent the production or cubic metres yielded of wood in each of those three years.

40 Well, it is a dollar figure, so it can't be a cubic metreage?---No, I thought you were specifically talking about the figures that I was referring to, that is cubic metreage. I then used those figures and applied the formula that is set out in my affidavit to get back to a dollar figure.

Right. I call for production of the internal documents which evidence those figures.

45

MR D. GUNSON: Well, we note the call, your Honour, but we don't have the documents of course.

MR MITCHELL: In your role at Forestry Tasmania you say in your affidavit that you undertake analysis on a project and on a business-entity basis?---Yes.

5 Could you explain to his Honour the difference between the two, please?---A project may be a particular prospective project that, you know, has a finite, sort of, start and then it might be - I am just thinking of, say, Southwood, something where we're looking at a project and then go through and determine how it might unfold. An entity is where we have actually got an entity within the business such our Tahune Airwalk or our prospective Maydena hauler tourism project or Hollybank project or whatever, they're little entities within Forestry Tasmania's bigger entity.

10 Yes. And so it is your role to assess either at a project level or at an entity level to see whether that project or that entity is feasible from a financial prospective?---Yes.

15 You undertake cost-benefit analyses in order to do that?---I have done so, yes.

20 When you are doing a cost-benefit analysis of a particular project what are the type of costs that you might take into account?---The normal operating costs and establishment costs - in other words, capital costs - of any business anywhere - any commercial business.

25 So financial costs?---Yes.

Costs outside of financial costs, are they considered?---You mean social costs? Not by me per se because I have a business-analytical focus.

30 So your role is strictly to add up the numbers. How much money is this going to cost, how much money is it going to earn for the entity or for Forestry and as a result is it a feasible exercise?---Is it a feasible exercise in commercial terms. Others would obviously look at other aspects of any potential business undertaking.

35 Yes. It is not a cost that you need to consider, is it, the issue of paying land rates?---If rates are applicable they would come into any assessment I do, yes.

40 Are rates applicable to be paid by Forestry Tasmania?---They are in some cases, yes.

How long have you been working for Forestry Tasmania?---Just over five years.

45 Okay. And was your background in similar business analysis before you started working at Forestry?---Yes, yes, similar business analysis and accounting offices.

Yes. Could I ask the witness to be shown exhibit 29, please? Are you familiar with that document?---No.

5 Can I ask you to turn to page 2? Under Part II are you familiar with the principle objectives that are stated there? Take a moment to read them to yourself?---Yes, certainly.

10 You are. And you would agree that it is a principle objective of Forestry Tasmania to maximise the sustainable return to the State in accordance with its corporate plan and having regard to the economic and social objectives of the State?---Yes, I would, and - - -

15 And that is something that you take into consideration?---As I said, I look at the economic side, but others look at the social objectives as well.

Yes. Thank you. I have finished with that document.

20 MR D. GUNSON: It may solve a problem with respect to the call if I ask the witness a question about the source of the documentation, your Honour. You said that the source of the information is an internal production figure; is that right?

HIS HONOUR: Can this wait till re-examination, Mr Gunson?

25 MR D. GUNSON: I am sorry, I thought that was the end of the cross-examination, your Honour, I am sorry.

HIS HONOUR: No.

30 MR D. GUNSON: Oh, I am sorry, it was my error. No, I do apologise.

MR MITCHELL: I had finished with the document not the witness.

35 MR D. GUNSON: When you said that I thought well, it is the end of the cross-examination. I do apologise. Sorry, your Honour.

HIS HONOUR: I think you might have been cut down in your prime.

40 MR D. GUNSON: It has happened to others.

MR MITCHELL: Yes, thank you for referring to it as my prime, your Honour, very generous. If you will just give me a moment to recollect my thoughts?

45 MR D. GUNSON: You were handing back a document before I interrupted, I am sorry.

MR MITCHELL: Now, could this document be handed to the witness, please? Now, Mr Jarick, it is a statutory requirement that Forestry Tasmania produce an annual report each year?---Mm.

5 Please answer yes for the transcript?---Yes, yes.

Yes. And you recognise the document I have just handed you, do you?---I do.

10 You are familiar with it?---I'm familiar with sections of it, I haven't read it from cover to cover.

And you have access to that document in the course of your work?---Well, yes, if I need it, yes.

15 Yes. Now, could I ask you to turn to, to begin with, page 9 of that document?---Page 9?

Which is headed Year At A Glance?---Yes.

20 The fourth bold heading on that page is Wood Production?---Yes.

Under Wood Production we see for the year 2004 to 2005 there is a set of figures listed there?---Yes.

25 For hardwood which is used as saw-log veneer and peeler, 635,803 cubic metres?---Yes.

For hardwood pulpwood, 2 ml units 724,303 tonnes?---Yes.

30 For hardwood used as plantation pulpwood, 118,440 tonnes?---Yes.

Softwood as sawlog, 244,048 cubic metres?---Yes.

35 Pulpwood in tonnes, 235,217 tonnes?---Yes.

If I could ask you then, please, to turn to page 39?---Yes.

There is a similar table at the bottom-left corner of that page?---Yes.

40 That provides figures from native forest in the Derwent district?---Yes.

It categorises them, I think, in a little more detail than the Year At A Glance page?---Yes.

45 Some of those are in cubic metres, some of those are in tonnes?---Yes.

And nevertheless there is a total at the bottom for native forest which adds up both tonnes and cubic metres?---Yes.

And that is done because the factor of difference between tonnes and cubic metres is largely irrelevant?---Yes.

5 Yes. So it is fair to say that if were to return to the Year at a Glance page, the total units, whether that be a close approximation in cubic metres or in tonnes, is gained by adding those five figures?---Yes.

10 I will ask you to assume that my calculation is correct and those figures add to \$3,957,811?---Yes.

Now, of those categories there, if we just look at the Year at a Glance page, each of those has a different value per cubic metre or per tonne?---Yes.

15 Sawlogs are of much higher value than soft pulpwood for example?---Yes.

Do you have an idea in rough terms what the price per tonne in royalties attributable to Forestry Tasmania is for each of those categories?---No, I wouldn't have that here or - - -

20 No idea at all? Would the difference be a factor of say one to two on pulp to sawlogs or would it be some other factor?---No, it's much more complex than that. There's distances to mark it. There's various products. You know, there is markets just themselves so it's not as easy as saying one to two or one to eight or one to 50.

HIS HONOUR: And there is differentials in size of saw logs which affect their price?---Yes, that would affect the price as well. Yes.

30 MR MITCHELL: Thank you, your Honour.

35 You would accept though that saw logs are more valuable, and the royalties that are earned by Forestry in relation to saw logs is significantly higher per cubic metre than the royalties occurring from pulpwood per tonne?---Certainly that has been the case.

Yes?---But once again sawmillers could go through some difficult times.

40 But you would agree that at the present time, and in the recent path, that has been the case?---Certainly in the recent past. I am not privy to what is happening today or just in the last few weeks.

Yes. Now, can I ask you please to turn to page 50 of that document?---Yes.

45 And probably about the eleventh line down there is an entry, "Net Profit or Loss"?---Yes.

That is provided for the 2005 financial year in thousands of dollars as 1556 so \$1,556,000 was the net profit?---Mm.

5 To look for the dividend to be paid to the State if I could ask you to turn to page 69?---Yes.

At item 22 there we see "Retained Profits"?---Yes.

10 Notwithstanding the fact that there was a profit of \$1,556,000 for that financial year ending June 2005, dividends of \$5,232,000 were paid and that was largely out of retained profits from previous years?---Yes.

15 Would you agree that the timber which - or the type of timber which is sourced from the Wielangta area is largely obliqua timber?---I do not know the species from Wielangta.

If I can ask you to return to page 9 again, the Year at a Glance?---Yes.

20 The proportion of wood production which is in the form of either saw log, veneer or peeler, is roughly - and just speaking in general terms here - if we add up the first entry and the fourth entry we get a figure of roughly \$880,000; is that correct?---\$870,000, yes.

25 \$870,000, of a total of - and I ask you to assume this is correct, \$3.9 million?---Yes, that looks about right. Yes.

30 So you can see that for Forestry Tasmania's wood production across the State we have a figure something slightly in excess of 20 per cent is saw log veneer and peeler and something slightly less than 80 per cent is comprised of pulpwood being the remaining categories?---There is softwood saw log - second bottom.

35 Yes, I have added the 635 to the 244 which gives us approximately \$880,000 by my calculation?---Right. Okay. Yes.

\$880,000 is certainly more than 20 per cent of \$3.95 million?---Yes.

40 If I could hand a copy of this document to the witness please and have the previous document returned to me for the time being.

If I could ask you to turn to page 10 of that document?---Yes.

Are you familiar with the document?---I have seen this document before.

45 And in fact you have cited figures from that document in the preparation of your affidavit although they may have come indirectly from another source I think?---Yes. I referred to the Tasmanian table which had wood and product manufacturing. I can't see - - -

Which is on page 10 I think you will find?---Okay, yes.

Item 23?---Yes, 1.271, yes. Okay, now I am with you.

5

There is a column there headed turnover?---Yes.

The figure in that column is 1271.3?---Yes.

10 The heading provides that that column is calculated in millions?---Yes.

That is the source of your figure in paragraph 3 that the total forest harvest in Tasmania yielded \$1.273 billion?---Yes.

15 Now, there is a column next to that which is headed Industry Value Added isn't there?---Yes.

Was it a decision of yours to use the column from the turnover instead of the column for industry value added?---Yes.

20

The column headed Turnover necessarily double and triple and perhaps even quadruple counts the same wood product, doesn't it?---Well, they are completely things. Turnover is turnover. Industry value added has its own definition which is actually in here which is quite an economic complex definition but yes, no I used, and I have said I used, turnover or sales or manufacturing industry turnover - - -

25

Yes, but by no means could turnover be said to be representative of an input - sorry, a benefit to the economy?---Oh yes it can I think. I mean every dollar of sales goes into the economy and is, you know, goes somewhere, even if it goes into tax.

30

Even though the industry value added calculation is about 30 per cent of that figure which is calculated by the ABS as being the value that has been added?---As I say they are not related. I mean industry value added as per the definition in here is well, I mean I could read it out but it's one of those economic definitions that the ABS use for whatever reason. I use turnover as a representative figure for the benefit to the Tasmanian economy.

35

40 In your calculation which you previously used to estimate the annual value of the forest product industry in Wielangta you used a calculation whereby you used figures which were five or six years out of date?---Yes.

40

45 In using that calculation you looked at the production from Wielangta which was 14,600 cubic metres per annum?---Yes.

45

And you worked out - or it is able to be worked out from that that the total proportion of Tasmania's wood production that comes from Wielangta is 14,600 divided \$5.46 million; is that the case?---That's correct, yes.

5 You have agreed this morning that last year in the 2005 financial year, the net profit generated by Forestry Tasmania was just in excess of \$1.5 million?---As per the annual report, yes.

10 As per the annual report. Now, although it is not possible to show on the figures that you have provided there that the proportion of Forestry Tasmania's revenue which is made up by Wielangta on those figures, it is possible, using the annual report, to determine the total wood production which we have looked at already today?---The total wood production for FT is there today, yes.

15 Yes, which we agreed was just under 4 million units?---Whatever that figure was.

20 So the proportion of that, which is attributable to Wielangta, is 14,600 divided by that figure of just under \$4 million?---No, well I didn't do - I did my figures as I have got in my affidavit which is different to what you are saying - - -

25 I am just asking if we were to work out, as a proportion, because obviously there are costs which are accrued to the whole body which aren't attributed to individual coupes so as an entire business entity of Forestry Tasmania, if we were to attribute the proportion of wood production from Wielangta compared to the wood production of Forestry Tasmania as a whole, the figure is very, very small, isn't it?---Well depending on what you are looking at. If you are looking at net profit it is small but net profit takes into account so many things, like head office salaries and head office expenditure.

30 Well, they are costs of the entity aren't they?---Yes, the entity, yes.

35 They have to be taken into account, don't they?---Yes. No, I looked at this from an economic point of view for Tasmania as you can see by the way I have used the ABS figures. They are economically based.

40 Forestry Tasmania is a statutory body which pays dividends and which is run as a business for the benefit of Tasmania and Tasmanians. Forestry Tasmania itself, as an entire entity, contributed just over \$4 million by way of dividend and had a net profit of \$1.5 million last year?---Yes.

45 That is correct?---And maybe some tax. Did you look at the tax side of it as well - what goes to Treasury.

The proportion of those sums, the \$4 million, the \$1.5 million which is generated from Wielangta is very, very small, isn't it? Are you looking for guidance from the right?---No, not at all. I mean all I am saying is this is what

the sales situation is in terms of Wielangta's contribution to the total forestry sales for the State.

5 Which, as we have discussed, include multiple counting of items, a particular log, royalties are earned by Forestry Tasmania. That log is not counted - sorry.
The input cost of that log as it is on-sold is not deducted from turnover is it?
10 The sales costs at each point along the line are added to create that turnover figure?---That turnover figure wouldn't have the multiplier effect that I think you are saying so there would probably be much more than the figure that I show there if you used the proper sort of multiplier effect on it. This is just basically the sales value of the product. For instance if fibre goes off shore it is the value that it goes off shore at before any shipping costs.

15 Yes, but if there is multiple sales within the State they are all counted at their full sales value without deducting any input cost?---It's the gross sales turnover figure which is the - - -

20 That is right, isn't it?---That's what I am saying it is. It's the turnover sales figure which is the popular accounting definition of turnover sales.

Yes?---Yes.

No further questions.

25 HIS HONOUR: Thank you, Mr Mitchell.

MR MITCHELL: Sorry, before I sit down, your Honour, I tender the Bureau of Statistics report 8221.6, Manufacturing Industry Tasmania.

30 HIS HONOUR: Exhibit AH.

**EXHIBIT #AH BUREAU OF STATISTICS REPORT 8221.6
MANUFACTURING INDUSTRY TASMANIA**

35

HIS HONOUR: Mr Gunson?

40 <RE-EXAMINATION BY MR D. GUNSON [12.38pm]

45 MR D. GUNSON: I just wanted to make sure that that is the document the witness had is it? Is that the document you had in front of you, the ABS report?---8221.6 Manufacturing Industry Tasmania.

Thank you. Now, I come back to the question I prematurely directed to you, you said that there were internal production figures that you looked at earlier on for the purpose of answering my friend's question as to where you obtained the information from?---Yes.

5

Are those internal production figures in a standard form document or are they on a computer database?---They're on a computer database which has been extracted out of what FT calls its sales system.

10 And you consulted the computer database to obtain that information?---I didn't personally but I had someone who was familiar with it to pull out the relevant stuff for Wielangta.

All right. Thank you. No further questions of the witness, your Honour.

15

HIS HONOUR: Is it likely that the witness will be needed in respect of the call?

MR MITCHELL: Fairly unlikely but I wouldn't like to give up the right.

20

HIS HONOUR: All right.

MR D. GUNSON: All right. Well, the best course might be for the witness to return at 2.15, your Honour and we will see whether we can produce that document.

25

HIS HONOUR: Yes.

MR D. GUNSON: If it can be produced in a documentary form.

30

HIS HONOUR: Yes. If there is no need for the witness to go back into the box I can presumably excuse him now.

MR D. GUNSON: Thank you, your Honour.

35

HIS HONOUR: Yes, and I will do so. Thank you Mr Jarick.

<THE WITNESS WITHDREW

[12.40pm]

40

HIS HONOUR: The Court will now adjourn until 2.15.

ADJOURNED

[12.40pm]

45

RESUMED

[2.18pm]

<STEPHEN ARTHUR JARICK, ON FORMER OATH

[2.18pm]

5

<RE-EXAMINATION BY MR D. GUNSON

10 HIS HONOUR: Yes, Mr Gunson?

MR D. GUNSON: Thank you, your Honour.

15 Mr Jarick, before lunch we discussed the possibility of you obtaining the internal production figures by accessing a computer database. Were you able to do that during the luncheon adjournment?---Yes, I was able to.

Could you have a look at this document please. Do you recognise that document?---Yes, that is part of the document. There is other years as well.

20

Sorry?---There are other years as well.

Yes, but in respect of the years that you were asked for, that is the relevant information that you extracted and printed; is that right?---Yes, that is 2003/2004.

25

Well, I produce that to my learned friend in accordance with the call. He might like to have a look at it.

30 MR MITCHELL: I thank my learned friend. Your Honour, it would appear from the face of the documents that the call hasn't entirely been met. The information that appears to be provided in this document relates only to 2003/2004. Is that correct, Mr Jarick?---Yes.

35 And it was my understanding of the evidence that was given that three years of harvest information was averaged to provide a figure?---I have those with me.

40 I would ask that those documents also be produced then. Your Honour, we request a short adjournment of perhaps 10 minutes but it might be useful if the other call on Mr Neyland's documents was answered before that adjournment.

45 MR D. GUNSON: I think that is sensible, your Honour. I will need to ask Mr Neyland some questions about the documents given the nature of handwriting on them and the adjournment which no doubt will be necessary because of those documents could serve the purpose of both. I imagine I will be about three minutes with Mr Neyland.

HIS HONOUR: All right. Do you only need 10 minutes?

MR MITCHELL: Ten minutes on these documents, your Honour. Perhaps that estimate might change depending on what is produced pursuant to the call to Mr Neyland.

5

HIS HONOUR: Well, rather than nominating a particular time why don't you let the Court officer know when you are ready and I will come back then.

MR D. GUNSON: What was intended, your Honour, perhaps was we put Mr Neyland in the box now, produce documents through him and then use the adjournment for both witnesses rather than break again. That was your intention - - -

10

HIS HONOUR: I see. We might need Mr Jarick to return to the box though.

15

MR D. GUNSON: Mr Jarick, yes. If Mr Jarick just goes to the back of the Court for a moment and we will call Mr Neyland to deal with the call on him and then your Honour adjourn.

HIS HONOUR: Yes. All right. Thanks, Mr Jarick, if you wouldn't mind doing that.

20

<THE WITNESS WITHDREW

[2.23pm]

25

MR D. GUNSON: Mr Neyland, if you would come forward please.

<RE-EXAMINATION BY MR D. GUNSON

5

MR D. GUNSON: Mr Neyland, during the luncheon adjournment did you return to your office at forestry Tasmania?---I did.

10 And did you look for the documents that you were asked to produce?---I did.

Have a look at these documents for me please. Are they the documents that you located which are drafts of the various documents prepared by you with other persons' comments on them?---They are.

15

If we look at the first document which should be one headed Why Burn and it has then in handwriting Tony Blanks' comments?---Yes.

Are the words "Tony Blanks' comments" your writing?---They are.

20

And is the balance of the writing on that document Mr Blanks?---It is indeed.

If we look at the document which is headed The Silviculture and Ecology of Dry Eucalypt Forest in Tasmania etcetera which bears a handwritten date 17 November 2005, it has "John Hickey's comments" on it?---In my handwriting.

25

And it is your handwriting and the balance of the writing is John Hickey's; is that right?---That's right.

30 And if you look at the third document which is headed Why Burn it has "Stephen Read's comments" at the top. Is that your writing?---It is.

And is the balance of the writing on the document Steve Read's?---It is.

35 Now, if I could take you please to John Hickey's comments first of all?---Yes.

It is not a particularly good copy. If you would just look please at about half way down you will see the passage "Wet forests on the other hand are tall". Do you see that?---Yes.

40

And there is an amount of writing to the right of that?---Yes.

Can you read that?---Yes.

45 All right. Would you read it out please?---

Some of those seedlings may be many years old and have woody basal structures known as ligna tubers which provide starch reserves and

buds that allow the plant to re-shoot after drought, fire browsing or other damaging events.

5 Thank you. Now, is there anything on that document that you cannot read today and could not read at the time?---No, the rest of it is fine.

Thank you. Yes. Well, I produce those three documents in accordance with the call from my learned friend, your Honour.

10 HIS HONOUR: Thank you, Mr Gunson.

<THE WITNESS WITHDREW **[2.27pm]**

15 MR TREE: Is it your Honour's intention to adjourn now.

HIS HONOUR: Yes.

20 MR D. GUNSON: Yes, that would be convenient, your Honour.

HIS HONOUR: Yes, all right. How long do you need do you think?

25 MR TREE: My guess is we will need somewhere in the vicinity of 20 minutes but if we can leave it on the basis that we will let your Court officer know, that would be convenient.

HIS HONOUR: Okay. We will do that.

30 **ADJOURNED** **[2.28pm]**

RESUMED

[3.08pm]

<STEPHEN ARTHUR JARICK, ON FORMER OATH

[3.08pm]

5

<FURTHER CROSS-EXAMINATION BY MR MITCHELL

10 HIS HONOUR: Mr Mitchell?

MR MITCHELL: Mr Jarick, do you have a copy of the three stapled sets of documents that have been provided pursuant to the call?---Yes.

15 If I can identify those documents for your use as such, one being the three year wood production plan document?---Yes.

One being the 2002/03 bundle?---Yes.

20 And one being the 2003/04 bundle?---Yes.

Is it the case that the 2004/05 bundles which are in the same form as those other two bundles haven't been produced because you did not rely on them in creating those figures?---I relied on the 2004/05 actual harvest figures which are on this 2004/05 to 2006/07 bundle.

25

Yes. If we look first at the 2002/03 bundle, to take the top sheet on that bundle, ignoring the first box at the top, if we look to the second box, that provides, does it not, a series of classes of wood?---Yes.

30

And amounts, whether it be in cubic metres or metric tonnes, of that category of wood which were harvested from the coupe?---Yes.

And the coupe is listed in about the middle of the top box on the page?---It is, yes.

35

That data is all entered after harvest has taken place?---Yes, it's the actual data.

It is actual?---Yes.

40

And that actual data is entered on the Forestry Tasmania system in respect of each coupe after it is harvested?---Yes.

The actual harvest data in that form is then relied on to produce the totals such as the one on the three year wood production actual harvest table that you have relied upon; is that correct?---Yes. That is a summary of the two documents you mentioned, yes.

45

Yes, but it relies on the data which has originally been input and is in the form of the 2002/03 and 2003/04 bundles - in the same form as those bundles?---It's extractable in the same forms.

5 Yes?---Yes.

Yes. I call for production of the 2004/05 sheets in the same form as the other two years bundles.

10 MR D. GUNSON: Well, perhaps my friend could explain the basis of his call because as I understand the witness' evidence, he hasn't looked at those documents as the basis of preparing the affidavit.

15 MR MITCHELL: It has just been established through the witness that the data that he has relied upon in the preparation of his evidence is produced based on that data. That is where the totals had arrived from.

HIS HONOUR: Do you have those sheets, Mr Jarick?---I don't have those sheets here, no.

20

Yes. Do you have them elsewhere?---I would have to ask someone else to interrogate the sales assistant to get them out.

25 Did you use them to produce your figures?---I was given a summary of the 2004/05 figures. It is just that I got more detail off the 2003/04 here.

Were you given the 2004/05 sheets to produce your material?---No.

So you never had them?---No.

30

Never had access to them?---No.

35 MR MITCHELL: Your Honour, the documents are called for on the basis that it provides the basis for the information which is summarised in a document that was relied on by the witness.

HIS HONOUR: Mr Gunson?

40 MR D. GUNSON: Just bear with me, your Honour. Yes, we will endeavour to get it by tomorrow, your Honour.

HIS HONOUR: Thank you.

45 MR MITCHELL: I am grateful to my friend.

Mr Jarick, if I can ask you to look at the hardwood three year wood production plan document or the summary document, there is a list of coupes scheduled for harvest in 2004/05. There is four coupes listed there, isn't there?---Yes.

8A, 8E, 8F and 17E?---That's correct.

If I ask you now to turn your attention to the 2003/04 bundle?---Yes.

5

The first coupe referred to there is 8A, is it not?---Yes.

Is it the case that a coupe harvesting in 2003/04 was scheduled for harvest the very next year?---I don't know why that is without going back and seeking further information.

10

I would ask you to do so before next attending Court.

MR D. GUNSON: Your Honour, what my friend is doing is really sending the witness away to go and find documents which he is not in possession of, which he hasn't relied on for the purpose of preparing this document. What my friend is really doing is calling for documents through this witness that have not been the subject of any earlier request at all for production of documents and which aren't shown to be relevant.

15

20

HIS HONOUR: I don't know that the last question related to any document.

MR MITCHELL: It didn't, your Honour. It was purely to test the evidence of the witness.

25

HIS HONOUR: I think the witness has been asked to go away and find out why it seems that two coupes have been scheduled for harvesting in two consecutive years.

MR D. GUNSON: But your Honour with respect this is not his area of expertise, he is there as a financial expert working with Forestry. It could be any number of reasons which he may not be privy to. He is really being asked to go and ask people or look for information which isn't part of his employment. It is nothing to do with him.

30

35

HIS HONOUR: Mr Mitchell?

MR MITCHELL: Your Honour, this witness has given evidence on the total production within the Wielangta Forest over three years. That relies on this evidence being correct and if it is not the case that this evidence is correct then the witness' evidence is fundamentally flawed. If he has counted the wood that has been produced from coupe 8A, both in the '03/'04 year and in '04/'05 year that exposes a problem with the evidence.

40

HIS HONOUR: Well, that is not your problem is it?

45

MR MITCHELL: No, it is not, your Honour.

HIS HONOUR: Do you really want to pursue that?

MR MITCHELL: I am happy to move on, your Honour.

5 If I can ask you to return to the three year wood production plan document, under the scheduled harvest for coupe 17E in 2004/'05 there is a scheduled yield of 8.3 either cubic metres - sorry, thousand cubic metres or metric tonnes; yes?---Yes.

10 When we look below to the actual harvest for coupe 17E it was only 3.2 thousand which was actually derived from that coupe; that is what your evidence indicates isn't it?---Yes.

15 If we look at the pulpwood component of coupe 17E as scheduled, it was 6.9 compared to a total of 8.3?---Yes, okay. Yes.

Being no regrowth pulpwood at all, just other pulpwood?---Yes.

20 So in the order of 82 per cent of the yield from that coupe was pulpwood - I will ask you to assume that my calculations are correct?---Yes, yes.

25 And then if we turn to coupe 19D, the total scheduled 2005/'06 yield is 6.7. Of that it is the case isn't it that 5.5 of that yield is from pulpwood?---Scheduled, yes.

Scheduled. Which amounts to - and I will again ask you to assume it is correct - 83 per cent of that yield?---Mm.

30 Subject to production of the further documents I have no further questions of this witness, your Honour.

35 HIS HONOUR: Yes, thank you. Mr Jarick, that might involve you coming along tomorrow at some stage convenient to Mr Gunson. Thank you?---Okay, thank you.

<THE WITNESS WITHDREW

[3.17pm]

40 HIS HONOUR: Mr Tree?

MR TREE: Yes. I wonder if Mr Neyland could return to this witness box, there are a couple of more questions I have for him.

<FURTHER CROSS-EXAMINATION BY MR TREE

5

MR TREE: Mr Neyland, I had understood your evidence to be that you provided your draft affidavit in its initial form to Mr Hickey and I think you believed you may have sent it also to Mr Read - Dr Read. Am I correct in saying that you have only produced, pursuant to the call, a copy of a draft of your affidavit that provides commentary from Mr Hickey?---With respect to the silvicultural affidavit, my first affidavit?

15

Yes?---That's correct. But - - -

But in relation to your third affidavit which is really the second substantive affidavit, you did obtain comment from Dr Read in relation to that?---I did.

20

Did you obtain comment from anyone else other than Mr Hickey in relation to your first affidavit?---I did.

From whom?---I have received limited notes from Bruce Haywood who is the Assistant District Forest Manager in Derwent District.

25

I didn't clearly understand what you said. Did you say you received notes from him?---Yes, and no I didn't.

And you have not produced those?---No.

30

Why not?---I wasn't asked for them.

35

I see. So that there are notes by way of feedback that you have from somebody other than Mr Hickey or Dr Read which you hadn't given evidence about this morning which you identified that you had over lunch and which you have left behind in your office?---Yes, I made a judgment which was probably presumptive of me that the comments were minor of nature and perhaps not worthy of attention, but I will seek to redress the situation.

40

Are there comments of anyone else that you discovered over lunch when you looked through your desk?---I've got one copy of the affidavit that's got three anonymous squiggles on it that I don't know what it came from. It has a couple of minor marks on it and that's all, but I'm happy to bring that in too if you wish.

45

Thank you. Now, can I then go to your third affidavit. I had understood your evidence to be that you had forwarded drafts of that, or you believed you may

have forwarded drafts of that, or a draft of that to someone. It transpires that you have sent drafts of it to Tony Blanks; correct?---Yes.

5 I want to suggest to you that you sent to him your first draft or perhaps something close to a first draft to him?---Yes.

He then provided you with some comments which you adopted or ignored upon your choice; correct?---Yes.

10 And you then sent to Dr Read another draft of your report which incorporated Tony Blanks' changes that you had decided to adopt?---Yes.

15 So there have been at least three drafts of the second report, that which you sent to Tony Blanks, that is the first draft, I will call it, the second draft is that which you sent to Dr Read, and the third is the document which you ultimately appended to your affidavit?---Correct.

20 Am I correct that there have only been three drafts or have there been more drafts of that which have been provided to others for comment?---No, that's the summation of it.

25 One of the things which you did in that second affidavit - the third affidavit, if I can deal with that first, please, was to annex some photographs, did you not?---Yes.

And today, I think, you tendered a fourth photograph, being a photograph in the eastern highlands coupe, Snowhills, after some years of regeneration?---That's correct.

30 Do I understand therefore that of the four photographs that you have appended or tendered in your evidence not one of them is of Wielangta?---In the fire affidavit?

Yes?---Yes, that's correct.

35 That wasn't your intention at the time that you drafted the first draft of your affidavit, was it?---As I recall, I was asked to provide photographs of both a high intensity and a low-intensity burnt coupe, which I attempted to do.

40 What does the title S\Wielangta\Burning Photos mean to you?---Well, that's a network address.

At which there are photographs stored?---Yes, the photographs that are attached to my affidavit.

45 I see. So have you taken any photographs of burning at Wielangta?---No, to the best of my knowledge, the coupe has not been burnt.

To the best of your knowledge no coupe has been burnt in Wielangta?---No, no, Wielangta 17E.

5 I see. But coupes in the Wielangta area, you are aware if they have been burnt?---Other coupes within the broader Wielangta forest block have been burnt in the past, yes.

10 And so why is it then that we have in your evidence photographs of Snowhills rather than photographs of those coupes?---Because I was asked to - I was looking for a photograph which showed a high-intensity burn while it was burning, a high-intensity burn after the burn, and the same pair for the low-intensity fires, but I couldn't find one of a low-intensity burning action and that was a photograph that I had of a low-intensity burnt coupe.

15 I see. Have you maintained an interest in the burning regime at Wielangta?---A little, I've had more interest in trying to complete my silvicultural systems trial at the Warra.

20 I see. Have you, for instance, this year made any inquiry as to whether there have been burnings at Wielangta?---No.

There would be no point asking you as to whether or not burnings at Wielangta have taken place this year?---No.

25 You wouldn't know?---I wouldn't.

30 Okay. Now, can I continue dealing with your third affidavit, please. The file which I referred to a few moments ago which commenced S\Wielangta\burning photos is that a file which contains photographs of burns at Wielangta?---No, the S drive is a shared network drive within Forestry Tasmania, there's a folder there for the purposes of this case, and I put a folder in there. By putting the photos in there, they were accessible to my colleagues.

35 I see?---So it's just those photos.

So there is a shared file at which Forestry personnel - presumably, with the appropriate authorisation - may access?---Yes.

40 Have you accessed that file?---Not much.

Is that a yes?---Yes.

45 Thank you. What is on that file, please?---Copies of all the FT expert affidavits, a copy of all the other team's affidavits, other material. I'm not intimately familiar with it, I must say, but there was a folder called FT

affidavits, there was Mark Neyland's silviculture affidavit, I put my fire affidavit beside that and the photos.

5 Did you put it there in its final form or in its draft form?---No, I would have maintained the draft form on my own computer until I was happy with it.

So far as you are aware the documents that are contained in that shared file are documents as filed in this Court?---As far as I'm aware.

10 Right, thank you. When did you first get authorisation to access that shared file?---Presumably about the time that I was requested to prepare my first affidavit.

15 And have you accessed resources from that shared file yourself?---No, not much.

That is again, a yes?---No, that was a no.

20 Well, isn't not much, yes, but not much?---No, because I prepared the silviculture affidavit on the strengths of my own knowledge, the literature and consultation with John, so I had no call to pursue other information that was there.

25 Now, can I deal firstly with the Tony Blanks' comments please?---Tony Blanks is the Manager of Fire Management Branch.

30 And these are the blokes in the bush that you were talking about earlier today, are they, the Fire Management Branch, the people who actually do the burn?---No, Fire Management Branch is a branch within head office of Forestry Tasmania, Tony is the manager of that branch. They oversee all our burning operations, fire management generally.

35 And do they have staff who are employed in fire management on the ground?---They're a bit like us they're more a training and guidance and support group to the district staff.

40 Thank you. Now, am I correct in saying that Mr Blanks provided you with two types of advice or feedback. The first was content and the second was ordering of the content?---That's correct.

45 And although I think you said earlier that - in answer to a question from Mr Gunson - that your writing on that page comprises Tony Blanks' comments - your writing at the top of the page. Am I correct in saying that the ticks are also in your writing?---Yes.

So that on the document which contains his suggestions we can identify those which you have adopted because there is a tick next to them?---You can

identify those which I considered, so that is a standard procedure for keeping track of an edited document.

5 I see. Would it follow then that those that you haven't put a tick next to you did not consider? I am just trying to understand the significance of a tick rather than no tick, you see?---It's an aide memoire, yes, to look at the page and think that I've thought about those. If I haven't ticked them there's a fair chance that I've got to the end of the document and I have considered them, I haven't bothered to go back and tick them.

10

If I look at page 2696 of your third affidavit which is in Court book 9?---Thank you.

15

We can see under the heading, What Types of Burn Are Used, the sentence that says:

Planned burning conducted by Forestry Tasmania is described as either high intensity or low intensity burning.

20

Now, am I correct in saying that that is a sentence which is taken from a combination of your original draft and Mr Blanks' suggestions on it?---Yes.

25

Thank you. Similarly, when I look at the next heading, Which Type of Burn is Applied and Where, can you or do you have a recollection of where the contents of that paragraph came from?---No.

Well, particularly can I direct your attention to this please, the first two sentences read:

30

Clear felling in Tasmania is usually applied only to wet eucalypt forests. Wet eucalypt forests have dense understoreys. The fuel loads that arise at the end of harvesting are very high. In Marsden, Spreadley -

35

And a gentleman's or perhaps lady whose name I shall not attempt to pronounce, there is a reference to their paper. Are you able to assist, please, as to where those sentences came from?---I don't have a copy of the marked affidavit in my hand, but they are very similar to the comments I make in my silvicultural affidavit.

40

Well, could you just look at this document for a moment please which I understand to be the Tony Blanks' comments page. Firstly, would you agree with me that those three sentences did not appear in the draft that you sent to Tony Blanks?---That's correct, Mr Tree.

45

Nor were they part of the material which he suggested you should change or insert in your affidavit - in your report; yes?---Yes.

Could you then look at this document, please, which is a copy of the comments or the draft as sent to Dr Read. You will see that those three sentences appear in that draft?---Yes.

5

So do I understand this: those three sentences weren't in the draft that you sent to Mr Blanks, nor were they suggested by him, but they appear in the draft which was subsequently sent to Dr Read?---That's correct.

10 Was there a draft in between?---No. They are actually lifted straight from the silvicultural affidavit I suspect. I was trying to avoid that circularity because my silvicultural affidavit and this affidavit actually have quite a lot in common. I was trying to avoid that repetition but you are always trying to get a clear and coherent story to tell and this is basically trying to tell a clear and coherent
15 story and I have gone back and looked at that other affidavit I suspect in order to try and tell a better story.

I see. Perhaps I might have both of those back. Would you agree with me that you adopted probably the vast majority of Tony Blanks' suggestions?---Yes.

20

And would you agree with me that without exception you adopted all of Dr Read's suggestions?---I haven't read Dr Read's suggestions as recently as yourself but I suspect you are right.

25 For instance, Mr Blank suggested that in relation to a draft that you forwarded him, or the draft which you forwarded him, he suggested that the words at page 2699 about point 5 down that page, he suggested that you should use the word "sparks" rather than "burning material" on the basis he said, "that makes it sound too large!"?---Which is a fair enough assumption.

30

Sure. But you didn't adopt a comment in similar emphatic terms which he made in relation to the paragraph that appears on page 2698 did you?---Which was?

35 Just familiarise yourself with what is on page 2698 please?---Yes.

HIS HONOUR: Which part, Mr Tree?

40 MR TREE: It is the final paragraph on that page, your Honour. See the heading What Type of Burn is Prescribed at 17E and 19D?

In relation to that, particularly the line which says:

45

A top disposal burn is a low intensity burn designed, as the name suggests, to burn only the tops, also known as heads or crowns, of the harvested trees that are left on the ground that are removable of the saleable logs.

?---Yes.

To that do you remember what Mr Blanks said?---No.

5

Did he not say, "Is this what really happens"?---Well, this refers to your discussion earlier about whether or not you can do a top disposal burn given the level of fuels that are on the site.

10 And you answered my question earlier that it could be done, didn't you?---I said that I acknowledged that the fuels on this site - I said it could be done and I acknowledged that the fuels on this site are perhaps heavier than they are - than on some sites.

15 And although - correct me if I am wrong - you conceded this morning that this was an area outside of your expertise you chose not to adopt the questioning of a statement by Mr Blanks, didn't you?---Yes.

20 In respect of an area that was far more within his expertise than yours?---Indeed.

I also asked you some questions this morning about the material you dealt with in your first affidavit and particularly the aggregated retention method of selective harvesting?---Yes.

25

I wonder if the witness might have Court book 4 before him please. I want to ask you some questions again about aggregated retention please. Do I understand aggregated retention is a system, where in paragraph 37 of this affidavit, you say:

30

Unharvested patches of between half and one hectare -

for people who work in the old language that is about an acre to about two and a half acres, isn't it?---Correct.

35

Are left so that - and I am interpolating here - about two tree lengths separate them?---Yes.

40 Now, as you correctly identified this morning it is not a mandatory requirement but the majority of the coupe should conform to that description, shouldn't it? However, as I read paragraph 37 - and please correct me if I am wrong - - -?---Sorry, what page number are you on?

45

Page 1570?---Yes.

You only speak about aggregated retention as being developed in relation to wet old-growth forests, don't you?---That's correct.

That isn't how you dealt with it in relation to your first draft of this affidavit that you forwarded to Mr Hickey, was it?---I can't recall.

5 Did you not say this in that draft:

Aggregated retention could be applied to areas of dry forests that provide habitat for localised threatened species if this were to be recommended by regulatory authorities.

10

Do you want me to read it again?---No, no, I heard what you said, yes, it was a thought.

15

Well, let me explore that a little more, please. Although aggregated retention is being developed for wet, old-growth forests, you, as the senior - let me get your proper title, the principal research officer for the native forests branch of Forestry Tasmania, were, at the time that you drafted the first draft of this affidavit, of the view that it could also be applied to dry forests?---Yes.

20

And one of the purposes of its application in dry forest was to provide habitat for localised, threatened species?---Yes.

25

In the context of this case you understood that to be the broad-toothed stag beetle and the swift parrot, didn't you?---Yes.

That sentence does not appear in the affidavit as filed, does it?---No.

30

It was not one of the deletions that was suggested by Mr Hickey either, was it?---No.

35

Did you not think it important in the context of a case involving the threatened extinctions of the two threatened species that that statement of opinion may be important to the Court?---I guess I look at it from a different angle, I look at what has happened in a coupe like Wielangta 17E as in a way a similar approach to what we're trying to do in the wet eucalypt forests and if you look at the final outcomes in Wielangta 17E, well, they only harvested 40 of the provisional hundred hectares. The final pattern of the harvesting is very similar to what we're trying to achieve with aggregated retention in wet eucalypt forest, but we have a range of techniques that we apply in dry forests that we use there.

40

And you particularly identified one of the purposes of aggregated retention in dry forests as being the provision of habitat for localised, threatened species, didn't you?---Yes.

45

And that remains your view?---Yes.

However, that system is not the system that has been used in relation to 17E, it simply isn't, is it?---Well, as I just said, when you look at the original prov coupe for 17E was 100 hectares - roughly 100 hectares. The final harvest was about 40 hectares. Now, aggregated retention aims to retain 20 per cent within the coupe, yet here we only harvested 40 per cent. There are reserves set aside throughout the landscape of Wielangta 17E. The aims of aggregated retention is to maintain forest influence. We have maintained forest influence throughout Wielangta 17E.

10 What is forest influence, I am sorry, I don't understand?---Forest influence means that for the benefit of everybody who lives in the forest, you never - clear-fell burns, so you can be quite a long way from a retained forest edge, if that is important to you as a creature, but by retaining the clumps it means you're always proximate, you put your wildlife habitat clumps, your skylines, your reserves for particular management aspects throughout that landscape means there's always trees and retained clumps within approximately a tree length of any point of the coupe.

20 Am I correct in saying that an aggregated retention coupe, or a coupe that had been subject of harvesting under an aggregated retention scheme would effectively present a mottled appearance if one were looking at it from the sky?---Polka dots.

25 Polka dots. That is not the impression one gets in relation to 17E?---Because it's in a landscape of unharvested forest, so a lot of the set-asides there are immediately adjacent to reserves for other purposes, particularly to the North and South. So were they to be harvested then the retained sections of the coupe would be more obvious but because they're contiguous with standing forest they're not.

30 So why then did you delete that sentence, or at least the substance of that sentence, notwithstanding that Mr Hickey didn't make any comment in relation to it?---Presumably because their current systems are - - -

35 Presumably, or because you know?---Well, because I can't remember, Peter.

Thank you. If you can't remember, please, say so?---Okay.

40 Might it be that that was a suggestion that was made to you by somebody else?---It could have been.

And who might that have been?---I can't remember.

45 Might it have been Dr Read? Might it?---I can't remember.

You see, one of the benefits of aggregated retention in dry forest would be that it would provide greater opportunity for dispersal of remnant populations wouldn't it?---It would.

5 An opportunity for dispersal which the larger aggregations, as in 17E, do not provide?---That's a judgment I'm not equipped to make.

10 Can I suggest to you that aggregated retention is more like the older forms of selective logging, which you describe I think in your affidavit, where people have taken if you like the best of the timber out of the bush and left their marks of their tree boards and the stumps behind. Where individual trees are removed, but there is still inter-connectivity between the residual forest?---I don't know. I didn't - haven't assessed the coupe to see what extent they harvested back in the 1900s, early 1900s whenever, we presume that that coupe may have been cut over, I don't know what it looked like then.

15 However, there is one thing his Honour can be certain of, isn't it, and that is that in your opinion if regulatory authorities were to require aggregated retention in some form of dry forest, it could be achieved?---I think what's happened at Wielangta 17E is as akin to - - -

20 Please listen to my question, you are not answering it. Do you remember my question or do you require me to repeat it?---I'll require you to repeat it.

25 It is your opinion that if it were required by regulatory authorities aggregated retention in some form could be applied to dry forests; could it not?---It could.

30 And that would provide habitat for localised threatened species wouldn't it?---It would.

Can the witness please be shown these three documents?

35 Those are the documents which you produced pursuant to the call, are they not?---Yes.

And they bear on the top of them - I am sorry I don't have them in front of me - the words - I forget his name, I think it is Paul Blacks?---Tony Blanks.

40 Tony Blanks Comments?---Steve Read, John Hickey.

And again I can't remember Mr Hickey's Christian name?---John Hickey.

John Hickey's comments?---Yes.

45 And they are in respect of your first and third affidavits?---That's correct.

Yes, I tender those, your Honour.

HIS HONOUR: Do you want them tendered as a bundle?

MR TREE: Yes, it may be convenient, your Honour.

5

HIS HONOUR: Right. Exhibit AJ.

10 **EXHIBIT #AJ BUNDLE OF DOCUMENTS PRODUCED PURSUANT
TO A CALL, BY MARK NEYLAND IN RESPECT OF HIS FIRST AND
THIRD AFFIDAVITS**

MR TREE: AJ?

15

HIS HONOUR: AJ, we don't have AI because it looks too much like A1.

MR TREE: Yes.

20 Apart from those documents have you received feedback on drafts of your
affidavit or report by email?---No.

And I think this morning I asked you about whether you had been asked to
provide comments in relation to other folk's work?---Mm.

25

And have you provided any commentary by email?---I wrote some early stuff
on some of the other affidavits.

30 Right. So this is a matter that you have considered since you gave your
evidence this morning?---I can't remember what I did, Peter, I think there was
some - it might have been on Peter McQuillan's affidavit I wrote some thoughts
down and then I read Simon Grove's response to Peter McQuillan's affidavit
and thought, oh he has done a much more thorough and comprehensive task
than me. The three dot points that I got up to he's covered, my time is fairly
35 thinly spread, I won't pursue that, I can't do a better job than Simon's done.

And that to your recollection is the only person upon whose work you had been
asked to comment or were there others?---That's my recollection is as far as I
got, but I can check my records.

40

That, again, what I anticipate to be my cross-examination of this witness
subject to the further documents that he has agreed to look for this evening,
being the comments that were provided by another gentleman.

45 HIS HONOUR: All right. Now, I am conscious that we have a witness at 10
o'clock tomorrow. Should we commence her at 10 o'clock and defer these
issues until 2.15?

5

MR TREE: I suspect those calling her would prefer a firm start for her, yes.

MR D. GUNSON: Yes, I think that is a very sensible idea, your Honour.

10 HIS HONOUR: Yes, well all right. Should that apply to Mr Jarick as well for his materials?

MR D. GUNSON: Yes, I think so, your Honour.

15 HIS HONOUR: You may be required to come back tomorrow afternoon into the witness box, but doubtless you are required to speak to Mr Gunson tomorrow, Mr Neyland. Thank you. Yes, there is no difficulty about keeping the witnesses under cross-examination given the circumstances?

20 MR D. GUNSON: No, your Honour.

MS MORTIMER: Your Honour, before your Honour rises there is one matter that I would like to raise with your Honour and I mentioned to my learned friend, Mr Gunson, yesterday. My client, Senator Brown has purchased a copy
25 of the transcript of these proceedings and wishes to put that on a website and we have made inquiries of Auscript and Auscript have confirmed to us that they have no objection to that with your Honour's leave. Now, that is the way that Auscript has responded to us. Your Honour, we can find nothing in the rules or anywhere else which gives your Honour a role in that, but that is
30 Auscript's position and we accordingly seek your Honour's leave.

HIS HONOUR: As I understand the Commonwealth, through the Court, has copyright in the matter but it is a matter of discretion for me. I should invite
35 any views from any other parties on this issue, or interveners.

MS MORTIMER: If your Honour pleases.

MR D. GUNSON: We don't have any submissions, your Honour.

40 HIS HONOUR: Mr O'Bryan?

MR O'BRYAN: Your Honour, we represent the Commonwealth and we will take any opportunity to be involved in the case. I have prepared written and oral submissions on it.

45

HIS HONOUR: It is your copyright.

MR O'BRYAN: I think that is right, your Honour. I think it is the Commonwealth, not the Court strictly speaking but - - -

HIS HONOUR: Do you want to take some instructions on this?

5

MR O'BRYAN: Could we, your Honour. One thing that does occur to us, your Honour is that the transcript - and I say this with all due respect to those who take it - is often wrong and I want to know what the purpose of the proposed publication was to be, whether to draw attention to particular parts of it, highlight parts of it, cut and paste parts of simply republish all of it in which case the copyright issue is the only issue.

10

MS MORTIMER: It is the latter, your Honour. No selection.

MR O'BRYAN: Perhaps it might be desirable to take some instructions over night.

15

HIS HONOUR: I think it is a matter upon which I should seek your assistance.

20

MR O'BRYAN: I would be most pleased to afford a good call. The witnesses will be here tomorrow.

HIS HONOUR: My research associate who is busy putting the final touches to the judgments - or at least will have one of them to give to you in a moment but another, to revise from what I said yesterday, is an expert in intellectual property so no doubt - - -

25

MR O'BRYAN: We need all the intellectual assistance we can have, your Honour.

30

HIS HONOUR: - - - we will get her in to listen what you have to say in the morning. Ms Buxton, I take it the State has no interest in this?

MS BUXTON: No, your Honour.

35

HIS HONOUR: Thank you. The Court will adjourn until 10 o'clock tomorrow.

40

MATTER ADJOURNED at 3.57 pm UNTIL WEDNESDAY, 3 MAY 2006

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NONE REQUESTED