MAGISTRATES COURT OF QUEENSLAND

PARTIES:	CAMERON JAMES SARGENT (Complainant) and TRENTON ALEXANDER HINDMAN (Defendant)
FILE NO:	CHAR-MAG-279/11
PROCEEDING:	Sentence for summary offences
DELIVERED ON:	2 December 2011
DELIVERED AT:	CHARLEVILLE
MAGISTRATE:	MICHAEL HOGAN
ORDERS:	I impose one fine for both offences. I fine the defendant $110,000. I order the defendant to pay investigation costs of $10,000 and legal costs of $3,770. I refer the fine and costs orders to SPER. Convictions are not recorded for either offence.

Trenton Alexander Hindman has pleaded guilty to two charges that he carried out assessable development without a permit contrary to s.4.3.1 of the *Integrated Planning Act 1997*. He did this by clearing native vegetation on leasehold land. He cleared land on Alpha Station, a grazing property at Wyandra which he was leasing from the Crown.

Between 26 February 2007 and 2 June 2007 he cleared 676 hectares. This is charge 1. Between 14 January 2009 and 27 September 2009, he cleared 1,003 hectares but he had previously cleared 365 hectares of this in 2007. The new area cleared in 2009 was 638 hectares. This is charge 2.

In each case, the native vegetation cleared was "not of concern" regional ecosystem as classified under the *Vegetation Management Act 1999*. "Not of concern" regional ecosystem means that the vegetation cleared was still of concern, but the vegetation was not as sensitive as some other types of ecosystems.

Jeremy Anderson, a senior scientist at the Remote Sensing Centre of the Department of Environment and Resource Management (DERM) looked at a number of satellite images of the land. He described the clearing carried out by the defendant in 2007 and 2009 as follows[1]:

> In both clearing events, clearing was largely restricted to the understorey; most upper stratum canopy trees were left intact. However, the second clearing event [2009] was different to the first clearing event [2007] in several ways. The areas subject to the [2007 clearing] and not including the area of overlap between the events, appears to have been less actively managed. The areas subject to the [2009 clearing] appear to have been actively managed after the clearing event...Western and southern parts of the area subject to the [2007 clearing] appear, for the most part, to have returned to a condition comparable with the pre-clearing condition by the time [of] the [2009 clearing]...[T]he area cleared in [2009] is subject to a different land management practice, possibly pasture improvement using grasses or other forage species."

When DERM investigators went to the property on 11 November 2009, the defendant said:

> I pushed dead vegetation with small equipment and burnt it. Then I disc ploughed it and planted oats, to assist in getting pasture grass more established.

Mr Hindman gave evidence. He said he had been on the land all his life. (He is 41 years old.) He has a degree in applied science and is a qualified agronomist. Before he bought the property, it had been badly degraded because of bad management practices, and one of the purposes for which he bought the property was to improve it. At great expense, he capped an

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[1] Report of Jeremy Robert Anderson in exhibit 1.

artesian bore which attracted native animals onto the land, thereby degrading it. He implemented other measures designed to improve the land. He conducted research, and he relied on a publication entitled "Best Practice Native Shrub Management Manual for South West Queensland" by Andrea Bull (the Best Practice Manual) and published in 2003 by the Department of Natural Resources and Mines.[2] He said the land was badly infested with turkey bush, a native woody shrub with deep roots which cattle and other animals do not eat. This shrub had taken over areas where native grasses had previously grown. Before European settlement, it was not dominant on his property – native grasses were dominant. There is a substantial seed bank of native grasses in the ground, and by removing the turkey bush, he would enable the native grasses to return. This was his aim.

He said he pursued this aim by firstly stick raking the land using a light tractor, leaving the mature trees untouched. He placed the material raked into piles and burnt them. Then he disc ploughed the cleared land and planted a crop of oats. This crop would cover the land and prevent the turkey bush from returning. This was suggested by the Best Practice Manual. The oats were not for harvest. They would die by October or November. Then with rain, the native grasses grew on the cleared land.

He said he believed he did not need a permit to restore native pastures. He also said: "I didn't clear trees."

In cross examination, Mr Hindman agreed that he did plant buffel grass which is not a native grass. He agreed that the Best Practice Manual said:

> Before treating thickening native species it is best to contact the Department of Natural Resources and Mines ... to determine if a vegetation management permit is required under the *Vegetation Management Act of 1999*...

He also agreed in cross examination that he had received "fodder permits" in 2006 and in December 2007 to clear trees to feed cattle.

Andrew Franks, a senior botanist from the Queensland Herbarium (operated by DERM) also gave evidence. He went to the property on 11 and 12 October 2011 and examined satellite images and photographs taken by other DERM officers. He rejected the suggestion that only turkey bush had been cleared. He said that smaller trees and shrubs had indeed been cleared, though not the larger trees.

In the light of prosecution challenges, two issues arise from Mr Hindman's evidence for me to determine.

Firstly, did Mr Hindman clear only turkey bush without clearing any trees?

Mr Hindman says he first stick raked the land. The Best Practice Manual says:

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[2] Exhibit 5

> Stick raking: This involves using a clawed instrument attached to a tractor or bulldozer to break off and push/rake young shrubs into piles. This method is often combined with ploughing to prevent sucker regeneration.

If Mr Hindman did employ this method solely, he would not have cleared any trees.

But I accept the evidence of Mr Franks that smaller trees were cleared. When Mr Franks went to the property, he observed the type of vegetation growing in the areas which had not been cleared and compared that with the areas which had been cleared. He also looked at satellite images before and after the clearing. I too have examined the satellite images, and my impression of what I see is consistent with that of Mr Franks. I also rely upon the video taken by a DERM inspector[3] and some of the photographs[4] which show piles of cleared vegetation containing trees.

I am prepared to accept that Mr Hindman may have used stick raking to clear turkey bush as part of the clearing he carried out. But he employed other methods and cleared smaller trees across the area which is the subject matter of these two charges.

There is a second issue arising from Mr Hindman's evidence. Did he honestly believe he did not need a permit to conduct the clearing?

I do not accept Mr Hindman honestly believed he did not need a permit to clear his land.

Firstly, the clearing he says he conducted is not the clearing which was carried out – smaller trees were removed. He said he didn't need a permit because he wasn't clearing any trees. As I have said above, I do not accept that.

Secondly, Mr Hindman was an experienced man of the land who had sought and been granted permits on previous occasions. He should have known he was obliged to investigate whether he needed a permit on this occasion. Indeed, Mr Hindman did his research relying on the Best Practice Manual, and that publication told him he should check to see if he needed a permit.

There are a number of other factors which are relevant to sentence.

The clearing in this case was not broad scale clearing. Mature trees were left in position. This is sometimes referred to as "park land clearing".

The clearing of native vegetation tends towards "landscape fragmentation, habitat loss, weed invasion, soil loss, loss of nutrient cycling, increased

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[3] Exhibit 8
[4] For example, exhibit 2.9

greenhouse gases and a range of other effect."[5] In one of his reports, Mr Franks said:

> "Although the park-land clearing...left mature trees, it removed the majority of the understorey and shrub-layer native vegetation and as a result has simplified the structure of the vegetation community. Understorey vegetation plays an important role in the functioning of natural ecosystems by providing essential habitat resources of food and shelter to a range of native vertebrate and invertebrate fauna species. Removal of the understorey vegetation may also have impacts related to nutrient and water cycling and changes to micro-habitats that were present in the understorey."[6]

Mr Hindman co-operated to some extent with the investigation.

He has pleaded guilty, although he has contested some of the facts. By his attitude before the court, I have formed the view that Mr Hindman shows some remorse but not a lot.

Mr Hindman's attitude to these offences seems to be that what he did was good. He has improved the land which was in a degraded condition before he cleared it. In doing so, the land is more suitable for grazing of cattle. He says he has done this by bringing back native grasses which were there before European settlement.

This is not entirely correct. Mr Hindman planted buffel grass which is an introduced species. And his clearing of the land has had an adverse ecological impact which I have referred to above.

This hearing commenced on 2 November 2011. On that day, Mr Hindman applied for a permit to clear about 700 hectares of native vegetation on a different area of his property. On 16 November 2011, DERM issued a permit for this clearing.[7] The permit has a number of conditions requiring various immature trees to be retained in the area cleared. As I have already said, that did not occur in 2009 when Mr Hindman cleared the land.

The significance of this evidence is that a permit might have been issued for some of the areas cleared by Mr Hindman in 2007 and 2009. There is no evidence to say whether it would or would not have been granted. But he would not have received a permit for clearing the land in the way he did. Also, if a permit could have been obtained so easily, why didn't Mr Hindman obtain one?

The maximum penalty for charge one is $124,875 while the maximum for charge 2 is $166,500. The difference is because the value of a penalty unit increased in the time between the two offences.

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[5] Report of Andrew Franks, page 6, part of exhibit 1.
[6] Ibid, page 17
[7] Exhibit 15

Section 60B of the *Vegetation Management Act 1999* provides a guide for sentencing offenders for offences of this nature. According to this guide, the penalty for the first offence should be $912,600 and for the second offence $1,148,400.

It is hard to understand the logic of the guide when the maximum penalty is a mere fraction of the suggested penalty. Despite that, I take notice of the guide in assessing penalty. In practical terms, I am obliged to impose a higher penalty than might otherwise be the case.

I take into account the sentencing guidelines in section 9 of the *Penalties and Sentences Act 1992* (the P&S Act).

Also, I have had regard to "the financial circumstances of the offender; and the nature of the burden that payment of the fine will be on the offender."[8] Mr Hindman is not in the best financial position,[9] but I am satisfied he has the ability to pay a substantial fine.

Valuation evidence tendered by the prosecution suggests the property has increased in value by $30,000 as a result of the clearing. This evidence is challenged by the defence, but Mr Hindman has said that he improved his land when he cleared it. I am satisfied there has been some increase in the value of the land. I take this into account, but I do not think that this is a particularly significant factor in determining sentence in this case.

I have also had regard to the comparative decisions referred to in the submissions by both the prosecution and the defence. I do not propose to analyse these in any detail. In general, they support the proposition that for clearing several hundred hectares of "not of concern" regional ecosystem, a fine approaching $100,000 is within range, subject to the particular circumstances of each case.[10]

The case of *Scriven*[11] involved an area much larger than several hundred hectares, and the fine was higher than $100,000, namely $118,000. Scriven was a worse case than this case involving Mr Hindman.

- The defendant cleared a larger area than Mr Hindman (1,819 hectares compared with 1,314 hectares).
- His offending occurred over a longer period (about 2 years 9 months compared with about 11 months).

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[8] Section 48 of the P&S Act

[9] Exhibits 10 and 13.

[10] *Black v Petts,* Acting Magistrate Muirhead, Mackay Industrial Magistrates Court, 13 May 2010, *DERM v Cocks,* Magistrate Press, Brisbane Industrial Magistrates Court, 6 June 2011, *Patterson v Cooper,* Magistrate C. Callaghan, Brisbane Industrial Magistrates Court, 1 August 2011. Prosection submissions also give details of a case of Prentice, but the text of the decision was not supplied. The older case of *The Crown v Firth and Sorrento Pastoral Company Pty Ltd* (Acting Magistrate Stjernqvist, Charleville Industrial Magistrates Court, 11 April 2006) seems to be out of step with more recent decisions. The learned acting magistrate in that case was referred to a number of comparative decisions arising before the introduction of the sentencing guide in s.60B of the *Vegetation Management Act 1999.*

[11] *Sargent v Scriven,* Magistrate Hogan, Roma Magistrates Court, 6 October 2011

- He used broad scale clearing whereas Mr Hindman performed park-land clearing.
- He showed no remorse and ran a trial, whereas Mr Hindman has pleaded guilty and shown some remorse.

In sentencing Mr Hindman, I am applying the totality principle and I am imposing one fine for both offences. He faces 2 charges rather than one because he ceased offending for about 2 years. And because of this, he is exposed to a higher penalty.

Despite this, I am imposing a sentence which reflects the total criminality reflected in both charges. Both charges involved the same sort of activity on the same land. The prosecution of both charges commenced at the same time. It seems to me that they form one course of conduct.

The prosecution submits the fine for both offences should be at least $150,000. However, taking into account all relevant circumstances, I am imposing a single fine of $110,000 for both offences.

The prosecution is seeking investigation costs of $10,000 and legal costs of $3,770. The defence does not challenge these proposed orders.

Mr Hindman is a person of good character with no previous convictions. I am asked not record convictions, and the prosecution does not oppose such orders.

My orders are therefore as follows:

I impose one fine for both offences. I fine the defendant $110,000. I order the defendant to pay investigation costs of $10,000 and legal costs of $3,770. I refer the fine and costs orders to SPER. Convictions are not recorded for either offence.