

# DISTRICT COURT OF QUEENSLAND

CITATION: *Harris v Lagerroth; Lagerroth v Harris Operations Pty Ltd*  
[2020] QDC 111

PARTIES: **SCOTT HARRIS**  
(appellant)

v

**LAGERROTH**  
(respondent)

FILE NO: 67 of 19

PARTIES: **LAGERROTH**  
(appellant)

v

**HARRIS OPERATIONS PTY LTD**  
(respondent)

FILE NO: 71 of 19

DIVISION: Crime

PROCEEDING: s 222 Appeal

ORIGINATING COURT: Magistrates Court at Brisbane

DELIVERED ON: 15 May 2020 (ex tempore)

DELIVERED AT: Brisbane

HEARING DATE: 14 and 15 May 2020

JUDGE: Porter QC DCJ

ORDERS: **In appeal 67/19:**  
The appeal against conviction of the appellant is dismissed.

**In appeal 71/19:**  
The appeal against acquittal of the respondent is dismissed.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – NATURE OF RIGHT – where appeal is brought under s. 222 *Justices Act* 1886 (Qld).

CRIMINAL LAW – APPEAL – CONVICTION – where development permits were granted to the appellant authorising clearing of native vegetation on a large leasehold property – where areas were cleared outside the permitted area – where the appellant was convicted of directing clearing of native vegetation without a development permit – where the appellant responded to a show cause notice from the department referring to the unlawful clearing – whether the appellant’s response to the show cause notice amounted to admissions by the appellant of directing the unlawful clearing – whether the alleged admissions in the response to the show cause notice comprise sufficient evidence to establish the offences beyond reasonable doubt

CRIMINAL LAW – APPEAL – ACQUITTAL – where a director was the controlling mind of a company – where the company was responsible for some operations of the cattle station – where it is alleged that if the director directed unlawful clearing of native vegetation, so must the company – where it is alleged the company retained a contractor to carry out the land clearing – whether there was another reasonable inference other than the company was directing the unlawful clearing

### **Legislation**

*Criminal Code Act 1899* (Qld) ss. 7(1)(a), 7(1)(b), 7(1)(c), 7(1)(d)

*Sustainable Planning Act 2009* (Qld) ss. 578(1), 611, 624

*Vegetation Management Act 1999* (Qld)

### **Cases**

*Baker v Smith (No. 1)* [2019] QDC 76

COUNSEL: J R Hunter QC and J R Jones (appellant/respondent)

B J Power and G M Elmore (respondent/appellant)

SOLICITORS: Preston Law (appellant/respondent)

Department of Natural Resources, Mining and Energy  
(respondent/appellant)

### **Factual background**

- [1] Mr Scott Harris is the owner of a large leasehold property called Strathmore Station in the Gulf country. He is the sole director of the company Harris Operations Pty Ltd, which is a service company which runs aspects of the business carried on at Strathmore (**Harris Operations**). The name Strathmore is derived from the Scottish Gaelic words meaning “a broad river valley” and is the name associated with one

such valley in Angus, Scotland. Strathmore Station could not be more different from the Scottish Strathmore, though it does have numerous channels which presumably run in the wet season.

- [2] Strathmore is a huge property, the largest leasehold in Queensland I am told. It is some 200 kilometres long and between 50 and 100 kilometres wide at places, oriented generally north to south.
- [3] I was not taken to any evidence specifically, but I infer much of the business is cattle grazing. Cattle need to eat. The vegetation on Strathmore includes many areas of native vegetation regulated by the *Sustainable Planning Act 2009* (Qld) (SPA) and the *Vegetation Management Act 1999* (Qld). Relevantly to this case, that native vegetation is protected from clearing by s. 578(1) SPA which, in deceptively simple terms, provides that a person “must not carry out assessable development unless there is an effective development permit for the development”. The statutory schemes, and there is more than one, which lie behind that simple offence-creating provision are complex. Mercifully, I do not have to analyse them in this case. The relevant provisions are set out, more or less as they apply in this case, in *Baker v Smith (No. 1)* [2019] QDC 76 at [35] to [71].
- [4] Mr Harris decided, in about 2013, to seek permission to clear native vegetation in a very large area to grow crops, largely for cattle feed, as I understand it. He was assisted in that process by, amongst others, Mr Spies, a consultant who provided land and agricultural advice, and a Mr Peter Anderson, who is described on his email signature blocks variously as “Peter J Anderson Business and Finance Manager”<sup>1</sup>, or as “Peter J Anderson, Harris Operations Pty Ltd”.<sup>2</sup>
- [5] There was an application process for a permit to clear native vegetation in that area (the **application**), which occurred most actively from September to November 2013. There were a number of meetings in which the proposal was discussed with departmental officers, including Mr Kev Allan, who gave evidence. The gravamen of his evidence and the documents he exhibited was to show that Mr Harris was directly involved in an active way in the application process as well as being, as a matter of formality, the applicant, as the leaseholder.<sup>3</sup>
- [6] Mr Spies was accepted by the department as a person who had the expertise to provide a detailed report on the proposal. His work produced a series of maps and reports, which were provided, together with the formal application, to the department by Mr Peter Anderson on 6 November 2013.<sup>4</sup> It is not open to dispute that this application was provided on behalf of Mr Harris as the applicant. Although the signed application form is undated, I assume it was also lodged around the 6th of November.
- [7] The following is relevant about the application and the maps in exhibit 41.
- [8] **First**, they identify areas of high-value agricultural land, which were in the vicinity of watercourses working their way through an area some 60 kilometres long and about five kilometres wide in the southern section of the property in a north-west to south-east orientation. They also identified areas of high-value agricultural land in

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<sup>1</sup> See exhibit 39

<sup>2</sup> See exhibit 41

<sup>3</sup> See exhibit 33

<sup>4</sup> See exhibit 41

an area some 20 kilometres long and six kilometres wide, proceeding east-west perpendicular to the longer, more north-south area.

- [9] The general orientation and the area is shown, inter alia, in map 1 in exhibit 35. It included some, but not all, of the identified high-value agricultural land in the applied for area, along with some class B cropland. It omitted some other areas of high-value land and class B land, as shown on the maps.
- [10] **Second**, mapped areas were, given the size of the areas, very specific. The application areas were divided in the application maps into blocks 1 to 3, from the south to the north for the north-south area, and block 4, being the east-west area. The maps included very detailed exclusions, such as the battle-axe-shaped area in block 1, which was to be a water reserve. It left quite distinctly shaped exclusions to the west of block 2. The same can be said of the maps for block 3 and block 4.
- [11] **Third**, the blocks identified in the application maps lodged with the application correlate, in broad terms, with the five areas identified by name in Mr Harris' response to the show cause notice provided in June 2015 which is discussed from paragraphs [17] and [18] below.<sup>5</sup> Block 1 is largely the areas designated as "the top paddock. Block 2 largely covers the "Tucker's paddock" and "Gilbert Crossing" areas. Block 3 largely correlates with "Bobby Towns paddock", and the east-west block 4 is called, somewhat ominously, "Dismal Creek".
- [12] **Fourth**, the application maps were prepared with considerable attention to principles articulated by the department as to areas which would be excluded or included, consistent with their policies and so on. Perhaps as a consequence, they have very distinctive inclusion and exclusion areas. Further, as I said, bearing in mind their scale, they are reasonably detailed as to what is included and excluded.
- [13] **Fifth**, the maps involved application to clear native vegetation on a very large scale: some 28,000 hectares, roughly, for the first application and 21,000 for the second. A massive area, on any view, except when compared to the massive size of the station itself. Nonetheless, a very large area of clearing.
- [14] The application was granted. The approval was in the form of two development plans which authorised clearing in accordance with those plans. Most of the clearing and all of the contentious clearing relates to areas in DPP1, which totals some 28,000 hectares of approved clearing.<sup>6</sup> DPP2 involved an area of 21,000 hectares, but the clearing under that permit is not contentious in this appeal.
- [15] DPP1 was granted on the 6th of January 2014. It largely granted permission to do the clearing sought in the application, which I think reflected the care and detail of the application itself. It reduced some of the areas sought, in minor respects, to make them more consistent, in the view of the department, with the policies and principles that guided their decision-making in respect of native vegetation clearing. The permit was granted to Mr Harris, not surprisingly, because he was the applicant and it related to land of which he was leaseholder.
- [16] The clearing work commenced sometime in early to mid-2014 and continued until at least mid-2015. In May 2015, the department gave Mr Harris a show cause notice as to why it should not take enforcement action against him for unlawful clearing. The show cause notice was not in evidence; however, its key provisions appear in exhibit

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<sup>5</sup> Exhibit 35

<sup>6</sup> Exhibit 8, Annexure A

35 quoted below. Mr Harris responded by his letter with attachments dated 19 June 2015 (**Exhibit 35**).<sup>7</sup> It is a central, if not the central, document to this appeal.

[17] The covering letter relevantly provided:

Dear Sir

**RE Scott Harris Strathmore Station  
Decision Notice for development approval SDA-1213-006588  
Show Cause Notice pursuant to s588 Sustainable Planning Act 2009 dated 15<sup>th</sup> May 2015.**

I refer to your letter of 15<sup>th</sup> May 2015 when you requested me to show cause as to why an enforcement notice should not be given in relation to continuing to clear native vegetation on Strathmore Station.

I enclose my response to the “show cause notice” dated the 15<sup>th</sup> May 2015. The annexures contained in the table are numerous and contain mapsets, photos and reports. I am arranging hard and electronic copies to be delivered to you separate from this email.

I am hopeful that upon considering this response and the comprehensive compliance action outlined no enforcement notice will be necessary.

It is alleged

*“A site visit conducted by DNRM officers on the 18 and 19 December 2014 confirmed mechanical clearing of vegetation had occurred:*

- 1. in areas within the development permit footprint boundaries that are specifically excluded, such as within buffers around mapped watercourses, wetlands and road tenures; and*
- 2. in areas outside the existing development permit footprint area, including unexplained clearing near the homestead, unexplained clearing for irrigation dam and fire management line clearing which appears to be beyond the allowable clearing width.*

I wish to advise that I embarked upon the process of clearing vegetation in accordance with the Development approval in good faith and ultimately employed and independent expert and utilized the best technology to assist with ongoing compliance.

I am confident that when adjustments are made for areas that were included and excluded depending upon high value land suitability and areas are properly defined and mapped no more area of vegetation was cleared in respect of the development application than the area permitted.

I am ready to remedy any areas that remain unaccounted for in this process at my cost.

In the event the Department decides to issue an enforcement notice or take other action contrary to the compliance process set out in this document the I (sic) seek, prior to the issue of such notice, and at my cost if need be:

- a formal meeting with the Acting Regional Manager and the relevant decision maker, and
- a formal inspection of the relevant permit area by the Acting Regional Manager and the relevant decision maker

I enclose an authority for you to seek and provide information to my manager Peter Anderson in the event I am uncontactable as we are about to commence mustering.

I thank you for your assistance

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<sup>7</sup> Exhibit 35

Yours sincerely

*[Handwritten signature]*

Scott Harris  
Owner, Strathmore Station

[18] The detailed attachment included written submissions, a number of maps and a report from Mr Spies. The submissions relevantly stated:

...

**Approach to Show Cause Notice**

- 1) Engage I.L.A. Consulting, an independent expert, to assess and map all vegetation cleared in and around Permit area 1. (see Maps 1-8)
- 2) Engage Pinnacle Pocket Consulting to undertake a preliminary high value agriculture land suitability assessment in respect of all substantial areas cleared in and around Permit area 1. (with the exception of roads watercourses and wetlands) (see Table A)
- 3) Provide the Department with a map of all areas in respect of, and contiguous with, Permit area 1 in respect of which clearing has been completed including:
  - permitted areas cleared
  - permitted areas not cleared
  - Unauthorized areas cleared
- 4) Show cause in respect of all unauthorized clearing in respect of, and contiguous with, Permit area 1.
- 5) Provide to the Department with preliminary submissions prepared by Pinnacle Pocket Consulting in relation to the PMAV issued on the 13<sup>th</sup> May 2015 (under cover separate letter)
- 6) Seek an extension of time until the 31<sup>st</sup> July 2015 to finalize PMAV submission pending soil tests and further site inspections and perusal of historical satellite and vegetation data.
- 7) Provide information in respect of all clearing including firebreak, dam site hardstand and other areas not included in 3 above.
- 8) Prepare a compliance program in respect of Permit area 1 (see Table B) including:
  - Identify and map actual watercourses and wetlands whether cleared or not
  - Identify and map roads and stock routes on proper alignment
  - Identify and map areas cleared outside permit area of high value agriculture
  - Identify and map authorized areas not cleared
  - Identify and map unauthorized areas not suitable for high value agriculture
- 9) Submit watercourse and wetland map to Department for approval.
- 10) Implement vegetation regeneration program to buffers for water courses and wetlands as necessary in respect of approved map. (9 above)
- 11) Submit roads and stock routes map to Department for approval.
- 12) Seek approval from State or other relevant instrumentalities (depending upon ownership of roads and stock routes) to clear vegetation on roads or stock route.
- 13) Prepare and submit an application to amend development approval SDA-1213-006588 to give effect to compliance plan and obtain development approval for any unauthorized clearing of high value agricultural land.
- 14) Prepare and lodge applications for Development approval in respect of dam site, fire break and hard stand area.
- 15) Regenerate as necessary all vegetation in residual area (ie not dealt with in 12, 13, 14 above)

- 16) Prepare a compliance program to be supervised by an independent expert in respect of SDA-0714-012975 Permit area 2 to minimize risk of unauthorized clearing and to ensure legislative compliance and to validate data and protect watercourses and wetlands (see Table C)
- 17) Meet with Department representatives seek advice and information and on site as necessary to implement compliance plans.

### General Considerations

...

### Watercourses

- The *VMA* defines as watercourse as:  
...
- The application mapped suitable agricultural land lands and did not distinguish all watercourses and wetlands due to inaccuracy of base data and lack of ground truthing.
- The mapping attached to the development approval attempted to define watercourses and wetlands.  
...
- The mapping attached to the application did not include watercourses or wetlands. This was partly due to the inadequacy of the base data available, the scale of the project and the features of water movement in the catchment ie overland flow and drainage features that are not watercourses as defined by the *VMA* or the *WA*.
- The Development approval included watercourses and wetlands based on interpretation of spatial data which was not ground truthed.
- This became problematic for the applicant from the outset as watercourses that were marked on the approval map were only drainage features and hollows at best in many cases.
- There were water courses on the ground with banks and beds that were not marked on the approval map.
- Of the 329 ha of watercourse identified 64 ha are not within the alleged area of breach indicating further inaccuracy of the mapping.
- It was considered that when the application was made that the applicant and operators would visually distinguish watercourses and wetlands during the clearing process and apply the relevant buffers.
- This posed an immediate issue for the applicant as the only method of locating a watercourse with any certainty was by a visual approach.
- Features that might be more accurately described as drainage feature or follows were not evidence on the ground which added to the confusion (see photos 41,46,51,55 in attachments)
- The maps were guides only and shifted the onus on the applicant to determine where the buffers applied around a watercourse or wetland adding to the complexity.
- The applicant is now aware that even though watercourses may not have been properly aligned or described in strict terms the Development approval did not permit clearing in those areas.

### Data and mapping

- The co-ordinate data provided with the Development approval by the Department was not decipherable, referable to landmarks or able to be utilized by standard GPS equipment.
- There were some 32,000 points contained in sheets 8 to 23 of the Development approval of indecipherable data.
- An example can be seen with the stock route and water reserve in Top Paddock:

Harris was advised by the Departmental staff in May 2014 to take care when clearing adjacent to the stock route and water reserve in the top paddock area as this tenure did not form any part of Strathmore tenure.

Harris explained to the officers the co-ordinates accompanying the Development application were indecipherable and not able to be used in a standard GPS process.

Harris requested and was given additional data from the Department in Cairns.

Harris marked out the area of the stock route and the water reserve on the ground based on the data provided however was concerned it did not accord with the description on the map accompanying the Development approval.

Harris went back to the Department and was given further data in a different format.

Harris checked this information with his GPS and again was concerned that it contained the same errors as the original data.

Harris was given 3 types of data

- Digital data
- Degrees and decimal minutes which were not able to be fed into GPS
- Degrees minutes and seconds

Harris was given further co-ordinates in the form of degrees, minutes and seconds which could be used by a standard GPS and again depicted the incorrect area.

Harris engaged and (sic) independent expert ILA Consulting to identify map and provide data to ensure the stock route and water reserve were on the proper alignment as described in the map accompanying the Development application.

The data provided by ILA Consulting depicted the proper alignment to be at considerable variance from the data provided by the Department and assisted Harris to clear the stock route and water reserve area in the top paddock on the proper alignment.

Harris ceased clearing works in the area for 6 weeks whilst attempting to resolve this issue.

- The maps provided with the Development approval were not of a scale easily decipherable and contain the caveat:

*“Derived Reference Points are provided to assist in the location of permitted clearing boundaries. Responsibility for locating these boundaries lies solely with the landholder and delegated contractors”*

- Harris and his manager spent many hours flying around the areas to be cleared trying to reconcile the data provided with the physical features vegetation types and landforms on the ground.
- It was evident that there were areas of high agriculture that were contiguous with areas permitted to be cleared and areas that were included that were clearly unsuitable. This also led to confusion due to the scale of the area to be reconciled to maps and being unable to decipher the data and coordinates provided.

...

**Show cause schedule and proposed remedy.**

Permit Area 1

Area	Activity	Show cause	Notes Code	HVA site	Remedial Action
1 Top Paddock Mapped	Inside permit area Water courses and wetlands Unauthorized	Mistake of fact	1 Photos 44,46, 51,55		Prepare watercourse plan submit to Department Regenerate to buffers as necessary Amend development approval
2 Top Paddock mapped	Outside permit area Unauthorized	Mistake of fact	2 Blue	A B	Preliminary Assessment HVA-suitable Amended development approval Regenerate vegetation as necessary
3 Top Paddock Mapped	Outside permit area	Mistake of fact	3 Blue	C D	Preliminary Assessment HVA-suitable Amend development approval Regenerate vegetation as necessary
3a Top Paddock Mapped	Outside permit area	Essential Infrastructure Machinery there	3a Pink	C D	Preliminary Assessment HVA-unsuitable Essential infrastructure Make development application
4 Tuckers Paddock Mapped	Outside permit area Unauthorized  Inside permitted Area not cleared	Mistake of fact	4 Blue	G H	Preliminary Assessment HVA-suitable Give and take area based on suitability Amend Development Application Regenerate vegetation as necessary
5 Gilbert Crossing Paddock Mapped	Inside permit area Water courses and wetlands Unauthorized	Mistake of fact	1		Prepare watercourse plan submit to Department Regenerate vegetation to buffers as necessary Amend development approval
6 Bobby Towns Paddock Mapped	Inside permit area Water courses and wetlands Unauthorized Inside Permitted area not cleared	Mistake of fact	1		Prepare watercourse plan submit to Department Revegetate vegetation to buffers Amend development approval Give and take area based on suitability
7 Dismal Creek Area Mapped	Inside permit area Water courses and wetlands Unauthorized	Mistake of fact	1		Prepare watercourse plan Amend development approval Revegetate vegetation to buffers
8 Dismal Creek Area Mapped	Outside permit area Unauthorized	Mistake of fact	5 Blue		Give and take area based on suitability Amend Development

	Inside permit area Not cleared				approval Regenerate vegetation as necessary
9 Homestead Paddock Mapped	Outside permit area Unauthorized	Mistake of fact	4 Blue	F	Preliminary Assessment HVA-suitable Amend development approval Regenerate vegetation as necessary
9a Homestead Paddock Mapped	Outside permit area Historic, Cat X, exempt Clearing	As of right	6 Green	E	Submission re PMAV Amend PMAV Amend Development application and regenerate vegetation if necessary
...					

## Note 1

**Watercourses:**

Due to the scale of the project and the nature of the data provided the applicant was continually attempting to reconcile the data based approval with the natural features on the ground

This was very much the case with water courses and wetlands.

For example in the top paddock area between the Gilbert River and the stock route there were several watercourses marked on the approval map.

In reality when the applicant was clearing those areas there was no discernible natural feature that would indicate the existence of a watercourse. The attached photographs depict the hollows and drainage features which are not watercourses.

In other cases the applicant often confronted an obvious water course with banks and bed which were not depicted on the approval map.

This became a constant issue throughout the clearing of Permit area 1.

Often the watercourses were choked with Chinese apple and rubber vine which restricted visual reconciliation with the map and physical features.

The owner and manager flew many hours in an effort to clearly define and control clearing around water courses.

See remedial action proposed.

## Note 2

In attempting to reconcile the boundary of the approval area and the map description the applicant relied upon the watercourse as the defining feature.

The watercourse as depicted did not exist as the actual watercourse wound around the area that was ultimately cleared and there was no discernible change in the land form or vegetation type to assist the applicant to identify the boundary other than a “watercourse” marked on the map.

Pinnacle Pocket Consulting has determined from site inspection that area if of high value agriculture suitability see report. Soil test have been undertaken and sent for analysis final report will determine suitability.

See remedial action proposed.

## Note 3

In attempting to reconcile the boundary of the approval area and the map description the applicant relied upon the watercourse as the defining feature.

See remedial action proposed.

Note 3a

The applicant cleared a further area whilst the machinery was in the vicinity on an ironstone ridge as a future hardstand for truck turnaround large machinery workshop, grain silos and bunkers, silage, transport and stock loading facility and heavy machinery park area due to the stability of the ridge and proximity to the road.

See remedial action proposed.

Note 4

In the absence of any other feature such as a watercourse or fence line the applicant cleared to the most obvious boundary based upon landform and vegetation type. This is the area described a "G" in the attached map.

The applicant relied upon the watercourse depicted in the area described as 'H' in the attached map and the landform and vegetation type as a guide to clearing the balance of the area. The applicant did not clear a substantial area which was permitted by the Development approval as it was obviously unsuitable and was a completely different vegetation type and land form to the surrounding area.

See remedial action proposed.

Note 5

The applicant attempted to apply common sense and consistency in clearing this area and followed vegetation types and land form features within the boundaries depicted in the Development approval map. There was a degree of give and take and the applicant is confident he cleared less area than was permitted within this area.

See remedial action proposed.

Note 6

Subject to further assessment the area shaded green on the map is either grassland or cat x or historic clearing.

The applicant will provide further advice/action when this is determined by PMAV process.

...

[Underlining added]

- [19] Exhibit 35 also had a series of attached maps, numbered 1 to 18, which were plainly to be read together with the show cause schedule and could readily be reconciled with that schedule. Those maps largely identified the areas of clearing which were ultimately the subject of the prosecutions which led to these appeals. Exhibit 35 also attached a sophisticated expert report, apparently prepared by Mr Spies, directed at sustaining the proposition that the large-scale areas cleared outside the approved areas under DPP1 were high-value agricultural land.
- [20] The show cause notice was provided in mid-May, and Exhibit 35 was received a month later. It was suggested I should infer that the work that led to exhibit 35 was already underway at the time of the show cause notice because of its complexity and detail. And, it seems, that I should thereby infer consciousness in Mr Harris from an early stage that clearing occurred outside approved areas. Frankly, I cannot infer when the work was commenced (a lot can be done in a month if there is enough urgency and effort) much less anything about consciousness of unlawful clearing.

- [21] At the time Exhibit 35 was provided, work under DPP 2 was not completed. It was completed soon afterwards. Mr Harris provided a further letter when that work was done, dated 9 July 2015.<sup>8</sup> It provided:

Dear Sir

**RE Scott Harris Strathmore Station  
Decision Notice for Development Approval SDA-1213-006588  
Application to amend Development Approval**

I refer to my letter of the 19<sup>th</sup> June 2015 and confirm that I intend to apply to the Department of Planning and State Development to amend SDA-1213-006588 in respect of those areas of vegetation clearing that were not included in the development approval including:

- 1) Excluded water courses and wetlands within the development approval area which are not in fact water courses or wetlands.
- 2) Permitted areas within the development approval area described as high value agriculture which are not in fact high value agriculture areas which for practical, logistical, environmental and financial reasons have not been cleared.
- 3) Unauthorized cleared areas of high value agriculture contiguous with or adjacent to the development approval area which ought to have been included in the development approval and for practical, logistical, environmental and financial reasons and have been cleared. These include historical clearing omitted from the original application.
- 4) Excluded roads and stock routes within the development approval area that are not aligned with the formed or made road or stock route in respect of which clearing has occurred. An application will be made for temporary closure of these roads and stock routes contemporaneously with the application to amend the development approval.

I provided you with details of these areas in my response of the 19<sup>th</sup> June 2015.

The purpose of this letter is to provide you with an opportunity to advise whether or not you will object to the proposed change to the Development Approval.

I await your response.

Yours sincerely

*[Handwritten signature]*

Scott Harris  
Owner, Strathmore Station

[Underlining and italics added]

- [22] That letter refers to the application for variation to the DPPs to regularise the clearing done outside the area of the DPPs sought in exhibit 35. It was never suggested by Mr Harris from the start of the show cause process that the areas he identified as cleared outside the DPP were other than clearing outside its scope.

**The complaints and pleas of guilty**

- [23] The department was not persuaded to regularise the areas prima facie unlawfully cleared. Rather, on 29 March 2016, the complainant, Mr Lagerroth (who was an investigator for the department) swore two complaints. One complaint charged Mr Harris with 16 offences in contravention of the SPA. Of those 16 charges, 14 were brought under s. 578(1) of the SPA, and two were brought under s. 611 SPA. The other complaint charged Harris Operations with 14 contraventions of s. 578(1) SPA

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<sup>8</sup> Exhibit 36

in materially the same terms as the 14 charges under that provision against Mr Harris. The complaints were in a form which was not contentious in these appeals. The particulars, however, are contentious. The particulars in respect of Mr Harris provide<sup>9</sup>:

**Particulars for Scott Harris**

1. In relation to each charge Scott Harris carried out the clearing of vegetation alleged within the meaning of s 7(1)(b), (c) or (d) of the *Criminal Code*.
2. The prosecution relies on inferences that are established by the totality of evidence that Scott Harris committed the offences:
  - a. by doing acts for the purpose of enabling others to do the unlawful clearing; and/or
  - b. as an aider or procurer of those who did the unlawful clearing.
3. The acts of Scott Harris relied upon are:
  - a. the direction by Scott Harris to Harris Operations Pty Ltd to engage, to continue to employ and pay the employees agents or contractor of Harris Operations Pty Ltd who did the vegetation clearing in each charge area, and to engage, to continue to engage and pay Glen and Amanda Blinco (G & N Dozers) and other persons associated with that business who did the vegetation clearing of each charge area, and to engage, to continue to engage and pay Peter Spies in relation to the vegetation clearing of each charge area; and/or
  - b. planning and directing the clearing work done by the employees of Harris Operations Pty Ltd, Glen and Amanda Blinco (G & N Dozers) and other persons associated with that business, Peter Spies, and any other person who conducted clearing work on the relevant property.
4. That directions were given by Scott Harris to Harris Operations Pty Ltd in the manner set out above is a matter of inference from the totality of the evidence. No specific identified direction by Scott Harris is relied upon. This is a matter of evidence rather than particulars.
5. That the persons set out in paragraph 3(b) carried out the clearing of vegetation alleged in the charges is a matter of inference from the totality of the evidence. It is not possible to particularise what clearing was done by which person or persons.

[24] They provide, in respect of Harris Operations:

**Particulars for Harris Operations Pty Ltd**

1. In relation to each charge, Harris Operations Pty Ltd carried out the clearing of the vegetation alleged within the meaning of s 7(1)(b), (c) or (d) of the *Criminal Code*.
2. The prosecution relies on inferences that are established by the totality of evidence that Harris Operations Pty Ltd committed the offences:
  - a. by doing acts for the purpose of enabling others to do the unlawful clearing; and/or
  - b. as an aider or procurer of those who did the unlawful clearing.
3. The acts of Harris Operations Pty Ltd relied upon are:
  - a. the engagement, continued employment and payment of employees, agents or contractors of the Harris Operations Pty Ltd who did the vegetation clearing in each charge area; and/or
  - b. the engagement, continued engagement and payment of Glen and Amanda Blinco (G & N Dozers) and other persons associated with that business who did the vegetation clearing of each charge area; and/or

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<sup>9</sup> Exhibit 6

- c. the engagement, continued engagement and payment of Peter Spies in relation to the vegetation clearing of each charge area.

- [25] Those particulars were sought and provided after an application to compel their production.
- [26] Mr Harris pleaded guilty to counts 2 to 6 of the complaints and not guilty to the balance. The counts to which Mr Harris pleaded guilty related to the clearing of firebreaks (three charges), clearing of an area that included a hardstand area (one charge) and a large area of adjacent clearing, and areas near the homestead which were cleared to expand a dam (one charge). The two charges under section 611 SPA concerning Mr Harris do not figure in this appeal. Harris Operations also pleaded guilty to counts 2 and 6. Count 11 was ultimately merged, for want of a better word, into count 10 in both complaints.
- [27] Ultimately, then, at the time of the trial the contested charges comprised counts 1 and 7 to 10 and 12 to 14. Importantly, the evidence in respect of the counts to which there was a guilty plea remained evidence in the trial but on the narrow basis that the pleas of guilty would not be relied upon as admissions and that no propensity case could be advanced. Although it was somewhat contentious, ultimately I understood that the evidence about this clearing remained relevant only on the narrow basis of, in broad terms, showing the continuity of the clearing. On that limited basis, the evidence provides almost no assistance in resolving these appeals.
- [28] Just to be clear, Mr Harris was not charged jointly with Harris Operations. Harris Operations was charged by separate complaint; however, charges 1 to 14 against Mr Harris and 1 to 14 against Harris Operations related to the same activity. In other words, charge 1 against Mr Harris and charge 1 against Harris Operations both allege that Mr Harris and Harris Operations carried out assessable development in relation to the same area; in that case, 278.2 hectares of vegetation. The other charges followed a similar pattern.

### **The trial**

- [29] The learned Magistrate found Mr Harris guilty on the remaining charges, that is, charges 1 and 8 to 10 and 12 to 14. The learned Magistrate acquitted Harris Operations.
- [30] It can be seen from the particulars that the case against Mr Harris was that he was a party to the offending not because he is said to have driven any bulldozers but because he is said to, in effect, have directed them to clear the unlawfully cleared areas.
- [31] His Honour took the view there was no reasonable inference other than that Mr Harris directed the unlawful work. His Honour relevantly held:

EXHIBITS 35 and 36

I accept that those letters are replies to a show cause notice by DMNR to Mr. Harris about the unauthorised clearing.

Exhibits 35 and 36 cannot be regarded as direct admissions by Mr Harris of doing any particular act of acts which have aided, enabled, procured the machine operators to do the unauthorised clearing.

Both exhibits purport to be authored by Mr Harris, however may have been authored by someone else when the style of writing, changing from first to third person, is considered.

However, whoever authority or contributed to the content of the letters had a detailed knowledge of the operations of Strathmore Station and the clearing operation, both authorised and unauthorised.

There is in my view, bearing in mind that Mr Harris is the sole lessee of this substantial farming property, the sole permit holder for the substantial clearing operation and sole director of a company that does business on Strathmore Station and that he was a major negotiator in obtaining the permit, a reasonable inference to be drawn that Mr Harris has been a significant contributor to Ex 35 and 36 and that they were produced with his authority as a reply to the show cause notice to him as sole permit holder.

Those letters, Ex 35 and 36, are part of the factual framework of the clearing operation, both authorised and unauthorised.

## CONCLUSIONS

This unauthorised clearing could not have occurred by accident or mistake.

This was a complex clearing operation with heavy machinery and must have involved a team of people, including consultants, a station manager, dozer owners and operators.

Notwithstanding the involvement of others in this enterprise, there is a reasonable inference to be drawn upon a consideration of all the evidence that Mr Harris, who is the sole lessee of this substantial farming property, the sole permit holder for this substantial clearing operation, a major negotiator in obtaining the clearing permit and in dealings with DNRM from the outset through to the show cause process, and sole director of a company that does business on Strathmore Station (and is able to pay \$400,000.00 for land improvements to one business), is the person who has selected or caused to be selected the land to be cleared outside the permit and has instructed the machine operators to clear that land or caused them to be so instructed.

That is in fact the only rational inference to be drawn as it would be fanciful in these circumstances to think that someone other than Mr Harris had the power to plan and authorise such a significant clearing operation on his property.

I am satisfied beyond a reasonable doubt that Mr. Harris has by selecting or causing to be selected the land to be cleared outside the permit and authorising the clearing of that land by machine operators or causing that to be done has aided and procured those operators to do the unauthorised clearing.

- [32] His Honour also took the view that while there was evidence that Harris Operations *might* have been involved in directing the work, that was not a view sustained to the criminal standard because the evidence admitted of other reasonable inferences. His Honour held:

There is no direct evidence in respect to the clearing operation (both authorised and unauthorised) that Mr Harris has done any act or acts for Harris Operations.

There is no direct evidence of how Harris Operations might have been involved in the clearing operation except for payment to a consultant, Mr Spies, for work done in lead up to obtaining the permit.

Without further evidence of how Harris Operations actually does business on Strathmore Station or how it was involved in the clearing operation, it would be mere speculation to say that Mr Harris' involvement in the clearing operation was for Harris Operations or as sole director of Harris Operations.

The only other evidence of the involvement of Harris Operations in the business of Strathmore Station is the payment of some \$400,000.00 to G and N Dozer Hire for "land developments" in 2015, around the time of this clearing operation.

It is reasonable to think that payment could have been for some of the unauthorised clearing in the charge areas in 2014 and 2015 as it's for a substantial sum of money and there was substantial unauthorised clearing done.

However that is not the only possible rational explanation for the payment, as it's a matter of common knowledge that such machines are used on properties of this size for many other reasons such as dams, roads and authorised clearing.

Accordingly, I am not satisfied beyond a reasonable doubt that Harris Operations has done any act for the purpose of enabling or aiding the machine operator or operators to do the unauthorised clearing or has "aided" the machine operator or operators to do the unauthorised clearing or "counselled or procured" the machine operator or operators to do the unauthorised clearing.

Nor am I satisfied beyond a reasonable doubt that any acts that the Court has attributed to Mr Harris in these findings have been done "for" Harris Operations in terms of S 624(3) of the Act.

Mr Lagerroth appealed the acquittal of Harris Operations by appeal 71/19. Mr Harris appealed his conviction by appeal 67/19. Mr Harris and Harris Operations also appealed their sentences. I directed that the sentence appeals be adjourned until the resolution of the conviction and acquittal appeals. As will soon become clear, those appeals can proceed on the submissions as currently filed.

[33] The evidence at trial extended over some 14 days. Much of the evidence concerned proof of the clearing, both as to location and timing, given by a geographical information systems expert and derived from aerial photographs, satellite imagery and cadastral data. Mr Jeremy Anderson gave that evidence. It was supported by images extracted from an ArcReader database dealing with each charge area. The admissibility of that evidence was not disputed. It identified clearing in the contested charge areas in broadly the following terms.

- (a) Charge 1 was two large areas in block 1, or the so-called top paddock;
- (b) Charge 8, was a smaller area in block 2.
- (c) Charge 9 was the so-called salamander-shaped area in block 2, probably in the Tucker's Crossing part of it.
- (d) Charges 10 related to a large charge polygon of charge 10 between the two large "islands" in block 2.
- (e) Charge 12 was some relatively large areas around watercourses and elsewhere in the block 4, that is, the Dismal Creek block.
- (f) Charges 13 and 14 were areas around watercourses in block 3.

[34] Each of these areas are identified in map A1 from exhibit 9, Mr Anderson's GIS evidence. There is a number of charge area maps extracted from the ArcReader database which provide more detail of each charge area: see the complainant maps in Exhibit 3.

[35] The evidence which was opened to link Mr Harris to the unlawful work was, in general terms, his position as the guiding mind and will of Harris Operations, his position as applicant with detailed knowledge of the application process in the approved areas, evidence to be given by Mr Anderson of Strathmore/Harris Operations and evidence of another employee, and admissions said to arise from exhibits 35 and 36.

[36] Ultimately, no evidence was led from Mr Anderson or the other employee. Thus, the case for Mr Harris directing the clearing in the charged areas depended on his detailed knowledge of what was approved in the approval process, his position as owner of the leasehold and the person who should be expected to know the details of

the work as such and be responsible for compliance with the DPP and as guiding mind of Harris Operations, which it was alleged retained the contractors or agents who did the work.

- [37] It might be thought that would not be sufficient on its own. However, the department also relied on exhibits 35 and 36 as evidence containing admissions by Mr Harris that he directed those who did the unlawful clearing.

**Mr Harris' appeal**

- [38] The appellant's case is, in effect, that without the admissions in exhibits 35 and 36 the evidence is inadequate to make out beyond reasonable doubt that Mr Harris directed the clearing in the charged areas with actual knowledge that clearing was occurring in unlawful areas. This last requirement was said to be unnecessary by the Prosecution if liability arose under s. 624 SPA, which makes Mr Harris liable for the acts of his agents within the actual or apparent authority. As will be seen, it is unnecessary to consider this point on either appeal, though I will deal with it at the end.
- [39] There is merit in the appellant's proposition that without the admissions alleged in paragraphs 35 and 36 by the Prosecution there was an insufficient case to sustain the conviction of Mr Harris. What the appeal comes down to is this: taken with the general evidence of Mr Harris' involvement in the application process and in the operations on the land, does exhibit 35 and 36 comprise sufficient evidence by way of admission to establish the offences by Mr Harris as particularised beyond reasonable doubt?
- [40] Mr Harris' written submissions advanced a number of arguments to the effect that I could not be satisfied that any admissions which could be extracted from a reasonable construction of exhibit 35 were admissions *by Mr Harris*. The main arguments can be briefly listed. If I do not list them all, I have read them all and was unpersuaded by any.
- [41] **First**, it was submitted that it was not proved the documents were signed by Mr Harris. Objection could have been taken to the tender of the documents as documents signed by Mr Harris on the basis it was not proved that the signature was Mr Harris' signature but no such objection was taken. However, that point was not taken at trial and it would not be a point which could now be taken on the appeal, in my view, on the objective forensic purpose test. There was the most experienced of trial counsel, and the document and its attachments were provided by a solicitor of this Court to the department while purporting to act for Mr Harris. It is likely any objection would have been met by calling the solicitor. I did not understand this point to be pressed on the appeal in any event.
- [42] **Second**, it was submitted, perhaps faintly in oral argument, that the document was not reasonably intelligible as to what it was referring to in the absence of the tender of the show cause notice and perhaps, as an add-on, that it was not established that any confession or admissions were voluntary. The latter point is another point of objection not taken at trial and has all the same problems as the point I just mentioned. As to the former point, one stand-out quality of the Response was its detail and clarity. It was completely clear, even to me, what the Response was referring to without reference to the show cause notice. It was self-contained and, indeed, compelling and professionally articulated.

- [43] **Third**, it was submitted that I could not be satisfied the statements in the attachment reflected Mr Harris' own actual, intentional statements. This is the most persuasive of the arguments advanced. In this respect, as I apprehended it, it was said that the attachment (which contains almost all of the statements of a potentially confessional nature or which might comprise admissions) was clearly not written personally by Mr Harris. I do not think that is necessarily clear, although it might be more likely than not. Further, emphasis was placed on the use of the third person in the attachment. There is reference to "the applicant" and to "Harris" rather than "I" and "me" as in the covering letter.
- [44] All of this was taken together to suggest that I could not be satisfied to the necessary standard that Mr Harris wrote the attachment, nor could I be satisfied to the necessary standard the matters stated in the attachment actually represented Mr Harris' admissions rather than statements by others contained in an attachment which he had merely adopted by signature in his letter.
- [45] I have reflected on that submission a great deal, and though it is not without merit, I am not persuaded by it.
- [46] **First**, the covering letter is absolutely unequivocal. Mr Harris says everything in the first person, including: "I enclose my response", which is the most significant. It seems to me to be an unequivocal adoption of the attachments as his response. It does not matter, then, whether he wrote it or not.
- [47] **Second**, Mr Harris adopts the response for the plain purpose, stated in the letter, to persuade the department not to take enforcement action. The tenor of the attachment and the way it is introduced in the letter is that Mr Harris asserts it is accurate and truthful and meant to be treated as such.
- [48] **Third**, the attachment speaks continually of actions by Mr Harris personally, that is, things said to Mr Harris and things done by Mr Harris. True it is that the most compelling admissions involve statements in the form "the applicant" rather than "Harris". However, of course, Mr Harris was the applicant, and Mr Harris' covering letter drew no distinction as to the matters which were his explanation or his response as opposed to some kind of formal articulation of the applicant as a formal entity rather than him personally.
- [49] **Fourth**, another characteristic of the language is that the applicant is sometimes described as taking actions in a manner not consistent with the use of the word in a formal sense to identify the entity responsible under the DPP. See, for example, note 5: *the applicant attempted to apply common sense and consistency*. A phrase like that seems to me to be only reasonably applicable, in the context of this matter at least, to a statement about what the specific person who was the applicant (i.e. Mr Harris) was actually thinking and doing.
- [50] **Fifth**, (and this point was not stated in my ex tempore reasons), the argument advanced by Mr Harris would be more compelling if the Response including its submissions had been provided in a context where Mr Harris had not had direct on-going and personal involvement in the application process. However, the evidence made clear that that was not the case.
- [51] Although the argument gave me cause for considerable thought, ultimately I am satisfied that the admissions in exhibit 35 and its attachment (that is, the attached document and maps, not the report of Mr Spies) are statements by or of Mr Harris himself or at least statements unequivocally adopted as true by him.

- [52] But are those statements relevant admissions? Mr Hunter QC, who appeared with Mr Jones for Mr Harris and Harris Operations, sought to persuade me that it was not sufficiently clear the statements in the attachment (even if statements of Mr Harris) were admissions of the offending in charges 1 and 8 to 14.
- [53] True it is that some of the admissions clearly relate to areas which were the subject of the pleas of guilty in charges 2 to 6. However, the exquisite detail in the submissions, the size of the areas involved and the shape of them, and their direct correlation to charge areas 1 and 8 to 14 (see the maps linked to the table especially) make it quite plain to me that the statements in the show cause table at pages 7 to 9, read with the notes to that table, relate to the areas in the charged areas 1 and 8 to 14.
- [54] It is not really possible in an ex tempore judgment to explain the basis for that conclusion in every case, but I have reviewed the whole of the attachment and the charge areas and am satisfied that it is so. I will give just one example in this judgment. The examples can be multiplied.
- [55] Let us consider Item 2, top paddock area at page 7 of Exhibit 35 in the Show cause schedule. That Item states:

Area	Activity	Show cause	Notes Code	HVA site	Remedial Action
2 Top Paddock mapped	Outside permit area Unauthorized	Mistake of fact	2 Blue	A B	Preliminary Assessment HVA-suitable Amended development approval Regenerate vegetation as necessary

- [56] That Item refers to note 2, which is set out at page 11 above. If one looks at map 16, it can be seen that this is an admission of clearing in the charge 1 area. The same analysis, in my opinion, works for all of the other areas which are the subject of the conviction appeals by Mr Harris.
- [57] Added to that is the frequent admission by Mr Harris of direct involvement with the work, albeit I accept there is some ambiguity as to the timing of that involvement.
- [58] I find the inference that the admissions relate to the unlawful charge areas compelling. It might be argued that the direct links between unlawful clearing shown by analysis of the maps and the show cause schedule and the admissions of involvement in the works by Mr Harris in the covering letter and the attachment is not exact. That is probably correct. However, I am unpersuaded of that. Each of the relevant notes refers to acts by the applicant. I see no good reason to read down any of those references given my findings as to the tenor of the attachment as a whole and the text of each such reference.
- [59] It was sensibly not disputed by the appellant that bulldozers did a large amount of work clearing this huge area from about mid to late 2014 to mid-2015. The only question was whether the complainant made out on the evidence that Mr Harris, in effect, directed the work and, in particular, that he directed the work in the charge areas.

- [60] The Magistrate, in effect, as I perceived it, posed the question, “If not Mr Harris, then who?” I do not think that approach sufficient to justify the conviction. And if I have done his Honour a disservice, I apologise. However, exhibit 35 makes clear to me that Mr Harris was the person directing the decision-making in the clearing works and in the areas of the contested charges. Along with all the other evidence of the fact of clearing outside the approved areas and Mr Harris’ involvement from the beginning in the detail, which also adds to the conclusion that he understood perfectly well what he was admitting to when writing exhibit 35, I am satisfied that the complainant made out its case as particularised beyond reasonable doubt.
- [61] I should make one other point. Mr Lagerroth relied on exhibit 36 as, in effect, an admission that Mr Harris cleared areas of high-value agricultural land where they were not included deliberately because that was the convenient thing for him to do. There is an unfortunate ambiguity in the drafting of exhibit 36 which has, as highlighted in the quote set out above, two “ands”, and one of them must be wrongly placed. If one omits the first “and”, it favours Mr Harris. The tenor of the letter is that some areas of high-value agricultural land should have been included in the development approval for practical purposes, but had been cleared. That contains no admission that he directed that clearing, much less deliberately directed it. If the second “and” is omitted, it communicates the admission contended for by the complainant.
- [62] I cannot read the ambiguity against Mr Harris on the question of criminal liability for offending. Further, there is no suggestion that I could extract from exhibit 35 that the clearing at the applicant’s direction in the charged areas was a process of deliberately including high-value agricultural land by choice with the intention of arguing about it later.
- [63] In the end, I do not think exhibit 36 helps the Prosecution, but I do think exhibit 35 is by itself enough, taken with all the other evidence I have spoken about.
- [64] There was also an appeal ground relating to a failure to prove clearing of native vegetation in two of the charged areas. That ground was answered compellingly in Mr Power’s outline and abandoned formally by the appellant.
- [65] This leaves the s. 624 SPA point. It is not required for success on this appeal by the complainant, and I will deal with it at the end.

### **Mr Lagerroth’s appeal**

- [66] I now turn to Mr Lagerroth’s appeal of the Harris Operations acquittal. The learned Magistrates’ reasoning in this regard is set out at paragraph [32] above. Looking at the evidence afresh, I agree with his Honour.
- [67] Basically, there seemed to be five primary grounds for the argument that Harris Operations directed unlawful clearing. And when I just say “directed unlawful clearing”, I do have the detail of the particulars as articulated in my mind.
- (a) First, it was said that Harris Operations was responsible for operations at the cattle station.
  - (b) Second, it was said someone must have done the work and Harris Operations must have paid for it since it was the only entity that did paying in the operations of the station.

- (c) Third, it was said Harris Operations paid the Blincos<sup>10</sup>, who are said to have done the work, including unlawful clearing.
- (d) Fourth, it was said that if Mr Harris directed the work in the charge areas, so must Harris Operations, because it was that company that carried out operations on the site.
- (e) Fifth, it was said that it was clear Harris Operations paid for Mr Spies, who was involved in the pre-operational works and was later involved in the Response, though there was no evidence Harris Operations paid him then.
- (f) Sixth, Mr Peter Anderson was an officer of Harris Operations and he was involved, as such, in the pre-operational works.

[68] His Honour, in his decision and, again, I apologise if I have not done him justice in this, might not fully have identified all those considerations. However, this was the full argument put on this appeal, as far as I can summarise it. My own view is that his Honour was correct to dismiss the complaints against Harris Operations.

[69] Again, it must be kept in mind, as I have kept in mind all along in Mr Harris' appeal, that this is a circumstantial case against both Mr Harris and Harris Operations with the consequence that the only reasonable inference on all the evidence must be guilt. For Harris Operations, there's any number of other inferences on the evidence.

[70] I want to first deal with the Blincos. There is no evidence they actually did clearing, much less unlawful clearing. The tax invoices do not say that. They refer to "land improvements". Some might think clearing the land was not an improvement of it.

[71] In any event, one might think that that must be the work done here, except for the fact that Strathmore is huge. There is any number of large earth working jobs that would be called improvements which could be done. Some could be being done over 100 kilometres away from the area the subject of this appeal.

[72] Further, the argument that the Blincos' work must surely relate to this area because Mr Harris could not manage this work and other earthwork is utterly unpersuasive. There is no evidence of the number of contractors and employees and agents working on this station but one could easily assume that, even if there was not many permanent employees, Mr Harris, Harris Operations and, indeed, as we will see, the other entities that seem to be involved in this business, would have access to any number of agents, contractors, consultants and so on.

[73] It is highly unlikely that Mr Harris couldn't rub his head and tap his tummy at the same time.

[74] Further, the amounts paid to the Blincos on a monthly basis are minor amounts in the scheme of the activities of Harris Operations, as the bank statements make clear. Even the total of some \$400,000 is unremarkable. Even if it was all taken out at once, it would be a noticeable but not significant day in the bank balances of this company.

[75] There was otherwise no evidence about the Blincos. I am not persuaded that they were doing the unlawful clearing work, even though Harris Operations probably retained them and certainly paid them for something.

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<sup>10</sup> Glen and Amanda Blinco, collectively referred to as "the Blincos" at the appeal hearing, ran a bulldozing operation named G and N Dozers. They will herein be referred to as "the Blincos".

- [76] Once that is recognised Mr Power, who appeared with Mr Elmore for the Department, was left saying that Harris Operations must have directed the acts by directing a person or persons unknown. The problem with that is that there's no proper basis to assume that Harris Operations was directly responsible as the legal entity retaining or directing the bulldozers which were, undoubtedly, doing the work.
- [77] Harris Operations' involvement in the operational stage is consistent with that kind of preparation work being done and paid for by Harris Operations. However, there's nothing odd about some other entity or person doing the work when it reaches an operational stage. There might be insurance reasons or any number of reasons why that might be so for some or all of the work.
- [78] There are other entities or business names shown in the bank statements which indicate that there were other entities being funded by or through Harris Operations or related to them: there's Harris Equipment, Harris Beef. It is not clear if they are companies or, indeed, business names of Harris Operations or even, as Mr Hunter credibly suggested, Mr Harris himself.
- [79] Further, it is by no means plain that if Harris Operations lent money or paid bills for some other person or entity in the group to do the work or to get somebody else to do the work, that that other entity would be an agent of Harris Operations in doing that work. Mr Hunter pointed out, for example, that if funding was provided after work was done, it would be hard to infer, without more, that the other entity was Harris Operations' agent for the work.
- [80] As to the reliance on Mr Harris' admissions, while I dismissed his appeal, there is nothing in exhibit 35 which compels a conclusion he was acting for Harris Operations when doing the acts to which he admits in that document. The prosecution cannot have it both ways. They cannot hold him strictly to the text of his admissions of his conduct while asking me to infer, without more, that he was also acting for Harris Operations.
- [81] It would have been possible to identify by evidence a great deal more about Harris Operations, about its role in this business, about how this work was funded, and so on by obtaining the accounting documents of Harris Operations such as the MYOB files (or other accounting package), the management accounts, the annual accounts and so on. None of that material was put before the learned Magistrate.
- [82] Ultimately, if there was no other reasonable inference other than Harris Operations was directing the work or retained the contractor or agents who did the unlawful work, then liability could follow. But for the reasons I have given, it does not. Accordingly, I dismiss the appeal against Harris Operations' acquittal on charges 1 and 7 to 14.

### **Section 624 SPA**

- [83] That leaves the vexed question of section 624. It is unnecessary to deal with the arguments about that section in either appeal, given the way I have determined them. However, I should say something about it.
- [84] Section 624 SPA provides:

#### **624 Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

**representative** means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

**state of mind**, of a person, includes the person's—

- (a) knowledge, intention, opinion, belief or purpose; and
- (b) reasons for the intention, opinion, belief or purpose.

[85] As to Mr Harris' appeal, as I understood it, it was ultimately relied upon by the prosecution as a way it could sustain the convictions, even if it was concluded that Mr Harris had not, in fact, directed the unlawful work but just directed that the lawful work be done. The argument was that if his agents did the lawful and unlawful work and if they could be shown to have had actual or apparent authority to do work generally (including the unlawful work), then the onus moved to Mr Harris to prove he took reasonable steps to prevent the acts of unlawful work. As the Department have succeeded in defending the appeal of the convictions, it does not need that argument.

[86] In the Harris Operations appeal, Mr Power relied upon s. 624 if it could not be shown that Harris Operations retained its own contractors or agents to do the work. As I understood it, the argument would be that if Harris Operations funded some other company or person who, in turn, retained the contractor or agents, then it could be caught by the section because that other entity would be their agent.

[87] My findings on Harris Operations' role, on the evidence, excludes that section applying because I do not consider the evidence makes out, to the relevant standard, that Harris Operations did fund some other person or entity to do the unlawful work so as to make them an agent of Harris Operations.

[88] The primary arm wrestle, however, was over whether it was open to the prosecution to rely on section 624 at all. In my opinion, it was not. The purpose of the complaint, read with the particulars, is as set out in paragraph 77 of Mr Hunter and Mr Jones' submissions in Mr Harris' conviction appeal where they write:

Particulars inform a defendant of both *the legal nature of the offence* [and] *of the particular act, matter or thing alleged as the foundation of the charge*. Particulars are binding upon the prosecution until amended. Amending particulars is akin to amending the indictment or charge itself. In *S v The Queen* the High Court said:

Such an amendment may only be allowed if it does not cause injustice or prejudice to the accused and that generally means that it cannot be made during the course of a trial. The power of a court to impose the appropriate requirement in order to secure a fair trial and protect its process from abuse will ordinarily be either implied or inherent; see *Tucker v Noblet*; *Johnson v Miller*; *Grassby v The Queen*. [Citations omitted]

[Citations omitted]

- [89] The battle was joined, both in the no case argument at trial and on appeal, as to whether it was open to Mr Lagerroth to rely on s. 624 if s. 7(1)(a) of the Code was not pleaded.
- [90] In my view, the battleground was too narrow. The real question was whether the particulars provided properly identified the legal basis of liability alleged and the manner in which the offence was said to be committed, in a way which alerted the defendant to the prospect of the complainant relying on s. 624 to attribute liability to the defendant.
- [91] If there was no reference at all to any matter which would alert an informed reader to the potential application of s. 624 by, for example, identifying key material facts unique to that section (such as the actual or apparent authority of an agent), then I do not think that it is open to the complainant to raise it at the trial. This is particularly so where the effect of s. 624 is to place the onus on the defendant to disprove a fact, where its factual preconditions be met. Reliance on s. 7(1)(a) of the Code might have been a sufficient condition to appraise the defendants of the intention to rely on s. 624 (though I am not entirely certain it would be). However, I do not think it was a necessary condition. The prospect of application of s. 624 might have been notified in other ways.
- [92] In my respectful opinion, particular care is required to give proper notice and to properly articulate the basis of legal liability where the complainant wishes to rely on such a provision. I do not think s. 624 properly arose on the complaints as particularised and this conclusion is reached regardless of the forensic shape of the battles about why s. 624 was not available in the no case argument or on this appeal.