

**IN THE SUPREME COURT OF WESTERN AUSTRALIA
COMMERCIAL AND MANAGED CASES LIST**

No. CIV 1561 of 2012

B E T W E E N

STEPHEN WILLIAM MARSH

First Plaintiff

SUSAN GENEVIEVE MARSH

Second Plaintiff

and

MICHAEL OWEN BAXTER

Defendant

STEPHEN MARSH WITNESS STATEMENT

April 2012 Affidavit

1. I swore an affidavit in this proceeding on 12 April 2012 (**my affidavit**). The evidence that I wish to give in this proceeding is set out in my affidavit, and in this statement.

Canola on Eagle Rest

2. At paragraph [63] of my affidavit I describe finding canola swaths on Eagle Rest in late 2010, that were too numerous to count. Some of the swaths that I saw appeared to have been partly eaten by sheep (with heads missing and only stalks remaining). I also saw cracked canola heads and seeds on the ground in paddocks 7 – 13.
3. During December 2010 I noticed on at least one occasion, canola swaths being blown across the farm by the southerly wind.
4. The furthest point at which I detected canola was in the eastern part of paddock 13 (GPS coordinates S33°41'167 E16°47'593). This point is about 1.4 kilometres from the Range paddock on Sevenoaks where GM canola was swathed. I measured this using my GPS. It think it was about 150-250 meters from the nearest boundary of Sevenoaks.
5. I have never farmed canola and did not have available to me any guidelines or protocols about what to do to remove the canola from Eagle Rest.
6. I telephoned the Department of Agriculture Western Australia (**DAFWA**) office at Katanning on 1 December 2010 and was referred to Rosalie McCauley. I sent a fax to

Ms McCauley that same day informing her of the contamination on Eagle Rest. I refer to *Fax from Stephen Marsh to Department of Agriculture and Food* [Not tendered].

7. The same day I received a telephone call from Richard Wheater of DAFWA. He told me to put my sheep on the affected land so that they could clean it up. Otherwise, DAFWA was not able to provide me with any advice. I refer to *Handwritten Telephone Records* [Not tendered].
8. As stated at paragraph [80] of my affidavit, a small number of GM canola plants germinated (self-sowed) in paddocks 10, 12 and 13, in 2011.
9. It is very difficult to find self-sown canola plants during the growing season in pasture and cropped paddocks until the canola flowers. Sue and I have searched by walking the paddocks approximately 10m apart. There is only a short window within which we can find any canola which has grown, before yellow capeweed starts flowering. After that it is virtually impossible to distinguish between flowering canola and capeweed.
10. In 2011 I “topped” the pasture in paddocks 9 and 10 with a pasture topper. Topping is used to remove unwanted plants by destroying the plant – breaking the stem and essentially smashing and bashing the seed out of the plant. The stress the plant and seeds undergo during this process usually kills them. Topping is used in natural and organic farming as an alternative to destroying plant and seed with chemicals. I did not have any protocol to follow, and reasoned that topping paddocks 9 and 10 (because they had been the most exposed) was the best means of which I was aware to eradicate the canola from my land. In 2011 I had sheep on paddocks 7 and 8, and ploughed paddocks 11, 12 and 13 and put in other crops.
11. I also rolled paddocks 5, 11 and 12 with a canola roller to encourage germination. As I understand it, canola is a small seed and is more likely to germinate on even ground.
12. I topped paddock 2 in 2012.

Loss

13. At paragraphs [1-29] of my affidavit sworn 12 April 2012 I describe my farm (**Eagle Rest**), my organic certification and my practice of organic farming on Eagle Rest. At paragraphs 82 to 103 of my affidavit I describe the impact of the loss of my organic certification following the contamination of Eagle Rest on my business. I elaborate on the impact of the contamination on my business in this part of my statement.
14. I run Eagle Rest in partnership with my wife Sue. The partnership is known as “SW and SG Marsh” trading as Eagle Rest Farm (ABN 75 554 875 321).

15. As I state at paragraph [82] of my affidavit, in operating Eagle Rest I have aimed to obtain good yields of certified organic produce that will attract premium prices (meaning better income than if sold as conventional produce) from the available land.
16. This part of my statement is organised in the following way:

Part A: Background

Overview of our Farming Business

Growing Grain on Eagle Rest

Livestock

Part B: Projected Cycles – Past and Future Production and Impact of Contamination

Land Use

Financial Projections for Eagle Rest

Part A: Background

Overview of our Farming Business

17. Eagle Rest was historically a mixed farming enterprise consisting of grain (barley and oats), sheep meat and wool, with an emphasis on producing Merino wool.
18. By mid-2000 I began to move out of farming wool as a major means of production on Eagle Rest and moved increasingly to farming grain.
19. Since obtaining my organic certification in 2004, I have tried to run Eagle Rest with approximately one third of the property growing oats and assorted grains, and two thirds of the property as pasture for livestock, focusing on Dorper lambs (with perhaps a little bit of income from wool). The last part of my business structure (moving from wool to meat) was evolving when the contamination occurred in 2010.
20. I grow both grain and raise livestock on Eagle Rest because sheep provide natural weed control and diversify my income. It would be imprudent of me to grow a single crop, such as oats, as it would be too much exposure in the event of an unforeseen weather event such as drought, fire, hail or disease. The principles of good agriculture, especially organic agriculture, as reflected in the National Association for Sustainable Agriculture, Australia (**NASAA**) Standards, also prohibit growing crops of the same family on the land every year. I refer to *NASAA Standards* [TB 1293-1407](**The NASAA Standards**).

21. Prior to the contamination I purchased 3 small flour mills with a view to making and selling flour from the grains that we produced on Eagle Rest.
22. At paragraphs 82-85 of my affidavit I describe how the use of my land for certified organic production means I must accommodate three important requirements, namely
 - a. Crop rotation. Crop rotation is a fundamental principle of sustainable agriculture which means that diverse crops must be regularly rotated through each production area. The NASAA Standards require:
 - i. Annual crops of the same family not be planted more than 2 years out of 5 in a given field; and
 - ii. In any 3 year period at least 1 year is to be used for pasture, a green manure crop or an annual legume in a given field.
 - b. Seed propagation. Organic crops must be grown from organic seed. It is more economical for me to grow the seed on Eagle Rest than to buy it.
 - c. Certified stock must be fed certified feed, and therefore it is necessary that part of my organic land be dedicated to feeding my sheep.
23. Another consideration concerning sheep feeding is that sheep excrete and spread the seeds they consume on the land on which they are kept. Seed spread on organic land must be organic.
24. These requirements govern the way that I divide and use the land on Eagle Rest. Because of the way the property is shaped, I have divided Eagle Rest into three large blocks. Each block is subdivided into paddocks. Each block is about the same area of arable land.
25. The North Eastern block of Eagle Rest is called the Homestead Block and comprises paddocks 1-6 (**Block 1**). The second block is called the Southern Block and comprises paddocks 7-10 (**Block 2**). The third block is called the Western Block and comprises paddocks 11, 12 and 13 (**Block 3**).
26. I have used this system most of the time I have been farming organically, since about 2005. I have implemented the crop rotation principles required by the NASAA Standards by cropping two years out of six because it is much more manageable to allocate cropping or pasture patterns amongst 3 blocks of land this way.
27. The GM canola that I found on Eagle Rest in late November 2010 was found in the Block 2 and Block 3.

Growing Grain on Eagle Rest

28. The general crop cycle (weather and seasons permitting) is as follows.
29. In summer we prepare ourselves for cropping. In February we start getting organised with fertiliser. We also clean our seed. Seed cleaning takes out most weeds and small, pinched or damaged seed so that we get seeds in a uniform shape and size. Consistent grain for seeding is important. We make sure the impurities are taken out of the seed and the straw is taken off so we have clean seed for cropping and so it doesn't block the seeding equipment.
30. In April and May we clean up the paddocks and make sure that they are ready to be sown. We pick up stones, clean up around trees and generally get the paddocks ready for cropping.
31. In May we get ready to seed. The season normally would break from May onwards, which is known as a "season break". This is when we get enough rain (the amount of rain varies each season) to germinate the pasture. I refer to *Monthly Rainfall Statistics* for Kojonup [Not tendered].
32. In May and June we will plough the paddocks and then seed after cultivation. The seeding is usually done between the end of May and the middle of June but this can often be seasonal. When we sow the cultivated paddock, we place the seed and fertiliser together in the ground with an airseeder or a combine.
33. From July to August the crop will grow. During that time we monitor crops, pull radish, watch for disease and pests, control vermin if required, and apply any top-up fertilisers that are needed.
34. We continue to monitor crops for weeds through September to November. Once November comes around we start getting ready for harvesting.
35. The second and third weeks of December are usually when we start harvesting and we try to finish harvesting on or around Christmas time and certainly finish harvesting by January.
36. Grains are sold from December onwards.
37. I have mainly grown oats on Eagle Rest because of the reliability of the crop but I have also tried some spelt. Spelt has a long season so I won't plant spelt if we have a late season break. It is important to try and match the grain to the soil type and spelt does not do as well in gravel country, which makes up a good portion of the land at Eagle Rest.

38. I have also grown some lupins, wheat, rye and barley but I predominantly grow oats.
39. Generally speaking, I use the oats I harvest in the following way: I retain about 10-15 tonne as seed for next season (this is cleaned in the early part of the year to prepare it for seeding after the first break). I also keep about 15-50 tonne for sheep feed (as organic feed allows me to ensure my livestock are reared organically). I sell the remaining oats.
40. If I did not use my oats for seed and feed I would have to buy an equivalent amount, which I would not necessarily be able to do readily as usually the demand for certified organic oats for export outstrips supply.
41. If I do not have enough seed for the next season, I have to buy the seed. This may occur if I am planting a variety that I have not previously grown, or if I am planting a greater area than I had planned for. Sometimes the cost of buying seed is equivalent to the sale price of my seeds (as opposed to the cost to me to grow the oats), but often it is more expensive because the seeds available for me to buy will have been cleaned or processed in other ways.
42. For each year that the seed is not used, its viability reduces. When that occurs, more seed needs to be planted. It is necessary to keep a critical mass of seed available as I cannot always buy the varieties of seed that I need for use in our system. They are hard to obtain commercially and it is important to keep the seed stock going.

Oats Yields

43. In general, if I only get 1.5 tonnes of oats per hectare (**tonnes/ha**), I consider that to be at the lower end of the scale.
44. I would consider an average oat yield on Eagle Rest to be 2 tonnes/ha, and this is consistent with what we have achieved in the past. This is the figure I use in making future crop projections, such as those contained in Tables 2 – 5 explained below.
45. A really good season produces between 2.5 – 3 tonnes/ha of oats.
46. A general rule of thumb for me before contamination was to try and produce about 2 – 2.5 tonnes/ha of oats and to achieve a sale price of about \$450 per tonne.

Oats Sales

47. I have been able to sell more certified organic oats that I can produce, consistently since 2004.

48. I have supplied certified organic oats to Morton's Seed and Grain Pty Ltd (**Morton's**) since 2004. Every year since then Morton's has bought the majority of my organic oats. Morton's take all of the oats I will supply and would take substantially greater quantities from me, if I were able to supply. I refer to *Grower Details* [not tendered] and *Grower Details* [not tendered].
49. The volume and percentage sold to Morton's varies with the season and the crop yield, which is influenced by environmental conditions. For example, during a drought, yields are reduced and more of the crop needs to be used for livestock feed.
50. It took some years to develop this market, which I did by cooperating with a number of other growers so we could supply a sufficient quantity for Morton's to be interested. As a group we initially provided about 450 tonnes of oats and increased that each year, depending on the season.
51. In respect of the arrangement with Morton's, I receive a storage payment of \$4 per tonne per month from February until delivery, which is added onto the sale price for any oats sold and delivered after that time.
- 52.
53. I also sell a small portion of my oats to regular private buyers. Where I sell to private buyers, I am able to sell it at a higher price than the prices at which I sell to Morton's (usually about \$50 per tonne more).

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55.

Bodhi's

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57. I had purchased flour mills in preparation for supplying flour to Bodhi's. I bought them from certified organic farmers Peter and Sarah Smith of Watheroo, who were supplying Bodhi's with organic rye and rye flour.
58. We aim for yields of 1-1.5 tonnes/ha for organic rye and 1.5-2 tonnes/ha for organic wheat because this is consistent with what we have achieved in the past.

59.

Livestock

60. The property is fairly small. To keep it viable I have to achieve the maximum income possible, without compromising organic farming methods. The oat market is a very good market for us. Once that is locked in I then have the choice to grow other crops or grow sheep. The benefit of growing sheep is that I can sell them into both the conventional market and the organic market.
61. I prefer to sell to the organic market, however sometimes if I need to sell a number of lambs quickly because their teeth are coming in (resulting in a lower price in both markets) I can readily sell to the conventional market.
62. Sheep have been part of our business since we first commenced farming. Before we gained certification we raised sheep mostly for wool. We continued this practice until 2009 when we commenced moving into raising sheep mostly for meat (rather than wool).
63. Sheep terms to which I refer are as follows:
- ewe: female sheep
 - lamb: has its full set of lamb's teeth – usually under 12 months
 - wether: male castrated sheep
 - sheep: usually older than 2 years
 - ram: male sheep
64. Before 2006, I used livestock primarily for organic wool, and I maintained about 2,000-2,500 merino sheep. I used to cut 65-75 bales of wool from that number of Merinos. However I found the wool industry to be is not as cost effective for me as it used to be. I used to lose about 25-30% of my wool price from the costs of shearing, transport and selling the wool. It became increasingly unviable.
65. I have found that organic meat attracts better premiums than organic wool because there is greater demand for organic food. In preparation for moving into meat we started changing our flock from Merinos to Dorpers, in order to supply organic lambs for meat. Dorpers have a high lambing percentage, high meat yield and a robust constitution. We completed that changeover in 2011.
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74. Of the lambs produced:
- a. All the wether lambs are sold (on average 50% are ewe lambs and 50% are wether lambs).
 - b. About 10-20% of the ewe lambs are sold as they are often not worth being kept for breeding.
 - c. The remainder of the ewe lambs are kept for breeding and replace the older ewes. The older ewes that are replaced are sold.
75. Organic meat is usually sold by reference to 'dressed weight'. In order to achieve a dressed weight, I need to arrange for the lambs to be slaughtered and the carcass to be sold.
76. Conventional meat is usually sold on Eagle Rest or at the sale yards and is by reference to 'per head', which means I sell sheep as a live product without having to do the same worth of work I would normally have to do for organic meat.
77. The prices for both organic and conventional lamb fluctuate from season to season.
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- 83.
84. The market for sheep is more complex than the market for grains. It is smaller and more fragmented.
85. At the time of contamination, some organic farmers and I were trying to develop a market together like we did with Morton's. The challenge relates to the supply chain. It

is difficult to get killing space and certified organic abattoirs. The product has more health issues and must be handled more carefully than grain.

Part B Projected Cycles- Past and Future Production and impact of Contamination

Land Use

86. I have attached five tables to my statement which set out my growing patterns for Eagle Rest.
87. **Table 1** sets out how I farmed the three blocks on Eagle Rest for the three years before the contamination, 2007-2009, together with the year of the contamination, 2010.
88. **Table 2** sets out what I would have produced on Eagle Rest if the land had not been decertified, from 2011 to 2018.
89. **Table 3** sets out what I would produce on Eagle Rest in the event that I am recertified in 2013 and maintain certification until 2018.
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- 91.
92. I elaborate on the major events that have occurred and to which the tables refer, below.

Factors affecting land use

93. Both my management of my land since the contamination, and the projections I have made about the future, reflect the following factors.
94. On 29 December 2010 paddocks 7-13 (Blocks 2 and 3) were decertified.
95. The effect of loss of certification for paddocks 7 to 13 is that there is significantly less arable land on which I can grow or raise certified organic produce.
96. Produce or livestock grown or grazed on decertified land cannot be sold as certified organic.
97. The remaining certified land (Block 1) must accommodate the maintenance of organic seed stock and growing livestock feed for livestock fed on certified land.
98. The challenge is not only the amount of land available for the cultivation of crops (and therefore the volume of crops that can be sold) but the need to grow some crops for seed and for feed.

99. I can still sell produce that I have grown, the only difference is that I cannot sell it as certified organic produce. It is best described as 'decertified.'
- 100.
101. Since the contamination I have done whatever I can to have Eagle Rest and resources ready to re-commence certified organic production on the presently de-certified land, as soon as certification is re-instated. My intention has been to be ready to go back into production as soon as I am allowed to, when NASAA reinstates my certification.
102. Apart from the fact that I prefer to farm in an organic manner, by operating in this way, if and when I am eventually re-certified as an organic producer, it means I can market my produce (both livestock and grain) as organic straight away. This is a little more complicated with livestock, as I can only market livestock as organic the cycle after being re-certified, but by choosing to continue to farm in an organic manner it means I will lose as little time as possible when I regain my organic certification.
103. In 2011 I was granted an exemption from NASAA for the application of organic standard 4.1.2 (crop rotation) for paddock 5. The exemption is valid for 12 months, subject to NASAA's annual inspection for renewal of my licence. On 4 April 2012 I was granted an exemption to standard 4.1.2 for paddocks 1,2,3,4 and 6. I refer to [not tendered].
104. I sought the exemption so that the land could be used to grow feed for my sheep, as I continue to feed them organically so that I am prepared when my certification is reinstated. I also needed to grow barley and wheat seed because the seed I had was aging and become less and less fertile. Because I am using the exemption to grow feed for my sheep and seed, it has not really affected the amount of grain I am able to sell.
105. I will seek an exemption for paddocks 5 and 6 when my current exemption expires because I will need to adjust my crop rotation if I sell my flock. I would prefer not to seek these exemptions because it will make it more difficult to transition back to a proper rotation when my certification is reinstated.
106. The amount of certified land I have to work with is significantly smaller than before and is more difficult and less cost-effective to operate as an organic unit.
107. I want to keep producing organic crops but it gets harder and harder when I have less and less land.

108. The further this goes on the harder it is to manage. I could go back to chemical farming but do not want to, although it may be I am financially unable to continue trying to run the 6 unaffected paddocks as an organic unit.
109. I will sell my sheep to try to finance Eagle Rest this year. This is a devastating loss for me as it has taken me several years to build up my organic flock. If I am in a position to buy in more sheep in the future it is likely that it will take several years to get to where I am now because it can be both difficult to source and costly to buy organic sheep.
110. I will try and crop as many paddocks on the organic part of our property to create an income for 2014.

Summary of Events: 2007

111. As set out in Table 1, in 2007 I grew organic oats in all the paddocks in Block 1. The table also sets out in approximate terms, the yields per tonne for each paddock of oats.
112. Our total average yield per tonne for organic oats in 2007 was 2.02 tonnes/ha. We sold 159.12 tonnes to Morton's and 6.5 tonnes to private clients, taking our total amount of oats sold to 165.62 tonnes. We allocated/retained 9.507 tonnes of seed, plus about 2 tonnes of seconds and used about 15 tonnes of oats for sheep feed.
113. In 2007 I kept both Blocks 2 and 3 in pasture.

Summary of Events: 2008

114. In 2008, I rotated the blocks so that Block 1 was kept as pasture.
115. Of Block 2, I kept paddocks 7 – 9 as pasture, and grew mixed grains in paddock 10. In paddock 10, I grew approximately 16 ha of organic wheat, 13 ha of organic barley and 6 ha of organic spelt.
116. In Block 3, I grew organic oats in each paddock. That yielded approximately 33 tonnes in paddock 11, 26 tonnes in paddock 12 and 37 tonnes in paddock 13.
117. For 2008 we produced an average yield of 0.96 tonnes/ha of organic oats, of which we sold 63.12 tonnes to Morton's, 2.35 tonnes to private clients, for a total of 65.47 tonnes. We retained just over 13 tonnes for seed purposes (plus 3 tonnes of seconds) and allocated approximately 15 tonnes for sheep, taking a total yield in 2008 to approximately 97 tonnes.
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Summary of Events: 2009

119. In 2009, I kept Block 1 as pasture. In Block 2 I farmed all paddocks with organic oats and kept Block 3 in pasture, however in paddock 13 I grew some organic barley and oats but cut them for Hay.
120. The yield for 2009 resulted in a sale of approximately 146 tonnes of organic oats to Morton's, 0.7 tonnes of organic oats to private clients, taking a total of organic oats sold to 147.34 tonnes. We retained approximately 10 tonnes for seed (plus seconds of 2 tonnes). With our average allocation of about 15 tonnes for sheep feed, our yield for 2009 was about 1.26 tonnes/ha, with about 174 tonnes of grain in the form of oats produced.
121. In early 2010 I sold 132 wethers that were born in 2009.

Summary of Event: 2010

122. 2010 was a drought year as well as the contamination year. In 2010 I was growing organic oats in all paddocks in Block 1 (with the exception of 6 ha of organic hay being grown in paddock 2). The yield in Block 1 was approximately 80 tonnes.
123. In June 2010 I sold 156 lambs born in 2009 as well as 11 older ewes.
124. Block 2 was used for pasture and Block 3 had wheat grown in paddock 11 (which yielded 5 tonnes, although it contained an approximate 6.42 ha buffer between paddock 10, which was used as pasture), rye and spelt grown in paddock 12 (which yielded 2 tonnes and 1 tonne respectively) and pasture in paddock 13.
125. Due to all the interruptions during harvest we only kept a total yield of all paddocks.
126. Our wheat and rye program was complicated and impacted on in 2010 when Baxter informed us that he intended to grow GM canola opposite paddocks 9 and 10. There was very little information available to us as an organic farmer to know how best to deal with this situation. In a normal rotation you try and plant your lupins, wheat and rye first then the oats. In 2010 we decided to sow the oats first as we believed there would be little chance that it was going to be affected by the GM canola.
127. We were originally going to seed paddock 10 with wheat and rye to supply Bodhi's, also we were going to grow a small area of spelt to maintain our seed supply. We then changed our program to seed paddock 12 to rye and spelt for seed and paddock 11 to wheat and rye to supply Bodhi's but we could not secure enough organic rye seed for our requirements so we planted wheat in this paddock only.
- 128.

129. As a result of the contamination, Block 2 and 3 were decertified along with all the crops and the livestock that had been in those paddocks.
130. The decertified wheat from 2010 was not sold right away; we fed some to the sheep. On 26 April 2012, the remaining 2.28 tonne of decertified wheat was sold to Morton's.
131. The decertified rye and spelt grown in paddock 12 was retained for seed. In 2010 I could not buy enough organic rye seed. Because I was anticipating working with Bodhi's I needed to bulk up the rye seed. I was always going to use it for seed.
132. In 2010 the mated ewe numbers were 943 ewes and 716 lambs which equals 75.9%. Of these, we had 301 lambs from 440 Merino ewes (68% lambing) and 415 ewes from 496 Dorper cross ewes (84% lambing).

133.

Summary of Events: 2011

134. Effectively what I had to do in order to keep my organic status over Block 1 was to divide it up into a further 3 subsections so I could rotate my crop and livestock
135. In Block 1, paddocks 1 – 4 and 6 were pasture.
136. In paddock 5 we grew organic oats, wheat and barley. Usually I would not grow in the paddock because it had been planted the previous year. I obtained an exemption from NASAA so that I could feed my sheep and try and get some organic seed back. The seed is difficult to obtain and it is important to save the old varieties of seed.
137. I sold 125kg of the organic wheat to The Woodfired Baker and 500kg to Bodhi's.
138. The yield for that year was a yield of 7 tonnes of organic oats at a yield of 2.8 tonnes/ha, 8 tonnes of organic wheat at 0.98 tonnes/ha and 1.5 – 2 tonnes of organic barley, which was kept as seed.
139. In Block 2 all paddocks were used as decertified pasture. I topped the pasture in paddocks 9 and 10 to deal with the contamination. Topped land isn't useless; it can be used as dry sheep feed. The alternative to topping the land is to plough it in for a green manure, however, if I do that, I can't use the land for grazing sheep on that year.
140. Block 3 was used to grow decertified oats. Paddock 11 in Block 3 yielded 70 tonnes at a rate of 2.03 tonnes/ha, paddock 12 yielded 48 tonnes at 1.75 tonnes/ha, and in paddock 3, 17 tonnes of oats were taken from the 'old' ground at a yield of 1.16 tonnes/ha, and 5.22 tonnes of oats were taken from the 'new' ground, at a much poorer yield of 0.214 tonnes/ha.

141. The reference to 'old' and 'new' pasture in paddock 13 (the only paddock containing new pasture) is to pasture that has been in cropping for 40-50 years and to new pasture which was cleared when we took over Eagle Rest. The older soil is more fertile. If I had funds I would put in extra fertiliser which may not bring the land up to exactly the same standard but which would definitely improve its productivity. I cannot put on fertiliser presently because I do not have the funds.
142. We normally sell all the whether lambs each year (296 in 2011 were to be sold) and have a choice to sell them as organic lamb direct to the butchers or to the organic meat co-op or conventionally.
143. The lambs would have been sold as organic in 2011 onwards but due to the contamination they have been decertified and all future lambs will be decertified until we get our organic certification back on the decertified land.

144.

Summary of Events: 2012

145. I used Block 1 for organic pasture with the exception of paddock 4 where I grew organic oats for sheep feed and organic wheat. I have to feed my sheep all organic feed if I have them on organic land. The sheep themselves are decertified but because the seed is spread on the ground or excreted, the seed needs to be certified organic.
146. The result is that I must use this paddock to grow organic feed for my sheep, whereas otherwise I could sell the oats and make a profit.
147. In Block 2 I grew decertified oats (i.e. I grew them organically, but they were not certified as organic). Sowing occurred in late May.
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- 149.
150. I sold two tonnes of organic wheat to Morton's.
151. I used Block 3 as decertified pasture.
152. I previously only mated the ewes once per year as the breeding cycle occurs in 5 month intervals. I mated the ewes twice in 2012 to try to increase the lambing percentage to offset the lower number of rams I had.
153. In 2012 we had 472 lambs from 772 ewes or 61% lambing. We sold all the whether lambs and any ewe lambs unsuitable for breeding.

Future Use: 2013 and Beyond

154. In the attached table marked Table 3 I have allocated uses to each paddock for the years 2013 – 2018, based on the prospect that I will get my certification back in 2013.

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156. Even though I can still farm off the other paddocks without my certification and sell the produce (both with grain and with sheep) my preference will always be to do so with certified organic accreditations.

157. For 2013 and beyond we intended to mate 1,000 to 1,100 ewes per year. Now that my financial situation may require the sale of my flock it is likely that this will not be achieved.

158.

Financial Projections for Eagle Rest

159. As can be seen from the table below, income from the sale of livestock, wool and oats have made up most of the income from farming on Eagle Rest since 2004. These figures reflect income on a financial year, not growing year, basis.

Income from Primary Production – 2004 - 2011

Year	Livestock	Barley	Oats	Wool	Milling income	Contract income	TOTAL
	\$	\$	\$	\$	\$	\$	\$
2004	31,807	619	0	56,965	1,320	0	92,715
2005	14,360	0	20,095	35,318	0	0	71,778
2006	5,346	0	51,164	32,032	0	0	90,548
2007	12,452	0	25,879	39,185	0	3,178	82,701
2008	5,822	0	62,075	26,834	0	2,737	99,476
2009	20,055	0	31,295	20,181	0	534	74,074
2010	20,159	0	26,786	10,387	0	0	59,342
2011	63,977	0	78,191	13,247	0	432	157,858

160. The above table is based on data extracted from our financial statements. I refer to *SW & SG Financial Statements 2005-2012* [2005 – 2009 not tendered; TB 0115-0124; TB 0126-0141; TB 0149-0173; TB 0174-0207].

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Conclusion

166. On the basis of what I have said above, I believe that for as long as Eagle Rest remains decertified, there will be a negative impact on the profitability of Eagle Rest, as a result of the fact I will be deprived of being able to earn a higher income from my produce and livestock than what I would otherwise have been able to earn if it was sold as a certified organic product.

167. The contamination occurred at a time at which I had developed a strong, stable market for my organic oats, was developing and expanding the market for organic lamb, and had obtained a new opportunity to supply grain and flour to a commercial bakery. I believe that each of those opportunities has been compromised by the contamination.

I have read the contents of this my witness statement and the documents referred to in it and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

Stephen Marsh

Dated: 13 February 2013

Amended: 11 February 2013

TABLE 1 – FARMING CYCLES 2007 – 2010 (ACTUAL)

[Crop Yield – Rounded to Nearest Tonne]

	Paddock Arable Area Hectares	Land Use 2007	Land Use 2008	Land Use 2009	Land Use 2010 (Contamination Year)
BLOCK 1	1 7.16HA	Organic Oats [15t]	Pasture	Pasture	Organic Oats [4t]
	2 13.9HA	Organic Oats [28t]	Pasture	Pasture	Organic Oats (6ha)[4t] and Organic Hay (6.9ha)
	3 17.45HA	Organic Oats [35t]	Pasture	Pasture	Organic Oats [18t]
	4 26.53HA	Organic Oats [54t]	Pasture	Pasture	Organic Oats [27t]
	5 14.66HA	Organic Oats [30t]	Pasture	Pasture	Organic Oats [12t]
	6 15.37HA	Organic Oats [31t]	Pasture	Pasture	Organic Oats [12t]
BLOCK 2	7 43.56HA	Pasture	Pasture	Organic Oats [55t]	Pasture
	8 18.7HA	Pasture	Pasture	Organic Oats [24t]	Pasture
	9 40.93HA	Pasture	Pasture	Organic Oats [52t]	Pasture
	10 35.09HA	Pasture	Organic Wheat (16ha)[9t], Barley (13ha)[4t] and Spelt (6ha)[1t]	Organic Oats [44t]	Pasture (This paddock was to be cropped to Organic Wheat, Rye and Spelt in 2010 but could not be used)
BLOCK 3	11 34.42HA	Pasture	Organic Oats [33t]	Pasture	Decertified Wheat (28ha)[5t] and Pasture
	12 27.37HA	Pasture	Organic Oats [26t]	Pasture	Decertified Rye [2t], Spelt [1t] (Paddock in Quarantine in 2010)
	13 39.3HA Old Ground 14.69 HA New ground 24.43 HA	Pasture	Organic Oats [38t]	Pasture, Organic Barley and Oats cut for hay	Pasture

TABLE 2 – FARMING CYCLES HAD NO CONTAMINATION/DECERTIFICATION OCCURRED 2011 – 2018

[Crop Yield – Rounded to Nearest Tonne]

	Paddock Arable Area Hectares	Land Use 2011	Land Use 2012	Land Use 2013	Land Use 2014	Land Use 2015	Land Use 2016	Land Use 2017	Land Use 2018
BLOCK 1	1 7.16HA	Pasture	Organic Rye (3.58ha)[5t] & Organic Wheat (3.58ha)[7t]	Pasture	Pasture	Organic Rye (3.58ha)[5t] & Organic Wheat (3.58ha)[7t]	Pasture	Pasture	Organic Rye (3.58ha)[5t] & Organic Wheat (3.58ha)[7t]
	2 13.9HA	Pasture	Pasture	Organic Wheat (6.95ha)[14t] & Organic Rye (6.95ha)[10t]	Pasture	Pasture	Organic Wheat (6.35ha)[14t] & Organic Rye (6.35ha)[10t]	Pasture	Pasture
	3 17.45HA	Pasture	Pasture	Organic Oats [35t]	Pasture	Pasture	Organic Oats [35t]	Pasture	Pasture
	4 26.53HA	Pasture	Pasture	Organic Oats [53t]	Pasture	Pasture	Organic Oats [53t]	Pasture	Pasture
	5 14.66HA	Pasture	Pasture	Organic Oats [29t]	Pasture	Pasture	Organic Oats [29t]	Pasture	Pasture
	6 15.37HA	Pasture	Pasture	Organic Oats [31t]	Pasture	Pasture	Organic Oats [31t]	Pasture	Pasture
BLOCK 2	7 43.56HA	Organic Oats [87t]	Pasture	Pasture	Pasture	Organic Oats [87t]	Pasture	Pasture	Organic Oats [87t]
	8 18.7HA	Organic Oats [37t]	Pasture	Pasture	Pasture	Organic Oats [37t]	Pasture	Pasture	Organic Oats [37t]
	9 40.93HA	Organic Oats [82t]	Pasture	Pasture	Pasture	Organic Oats [82t]	Pasture	Pasture	Organic Oats [82t]
	10 35.09HA	Organic Oats (18.5ha)[37t], Organic Wheat (11ha)[22t] & Organic Rye (5.5ha)[8t]	Pasture	Pasture	Pasture	Organic Oats [70t]	Pasture	Pasture	Organic Oats [70t]
BLOCK 3	11 34.42HA	Pasture	Organic Oats [69t]	Pasture	Organic Oats [69t]	Pasture	Pasture	Organic Oats [69t]	Pasture
	12 27.37HA	Pasture	Organic Oats [55t]	Pasture	Organic Oats [55t]	Pasture	Pasture	Organic Oats [55t]	Pasture
	13 39.3HA	Organic Lupins [20t]	Organic Oats [55t]	Pasture	Organic Oats [79t]	Pasture	Pasture or Green Manure	Organic Oats [79t]	Pasture

TABLE 3 – FARMING CYCLES PROJECTED IF RECERTIFIED IN 2013 BEFORE SELLING FLOCK

[Crop Yield – Rounded to Nearest Tonne]

	Paddock Arable Area Hectares	Land Use 2013	Land Use 2014	Land Use 2015	Land Use 2016	Land Use 2017	Land Use 2018
BLOCK 1	1 7.16HA	Organic Oats [14t]	Pasture	Pasture	Organic Oats [14t]	Pasture	Pasture
	2 13.9HA	Organic Oats (6.95ha)[14t] and Organic Rye (6.395ha)[10t]	Pasture	Pasture	Organic Oats (6.95ha)[14t] and Organic Rye (6.95ha)[10t]	Pasture	Pasture
	3 17.45HA	Organic Oats [35t]	Pasture	Pasture	Organic Oats [35t]	Pasture	Pasture
	4 26.53HA	Pasture	Pasture	Pasture	Organic Oats [53t]	Pasture	Pasture
	5 14.66HA	Pasture (Organic Oats [29t] if exemption granted)	Pasture	Pasture	Organic Oats [29t]	Pasture	Pasture
	6 15.37HA	Organic Oats(7.68ha)[15t] and Organic Wheat (7.68ha)[12t]	Pasture	Pasture	Organic Oats(7.68ha)[15t] and Organic Wheat (7.68ha)[12t]	Pasture	Pasture
BLOCK 2	7 43.56HA	Pasture	Pasture	Organic Oats [87t]	Pasture	Pasture	Organic Oats [87t]
	8 18.7HA	Pasture	Pasture	Organic Oats [37t]	Pasture	Pasture	Organic Oats [37t]
	9 40.93HA	Pasture	Pasture	Organic Oats [82t]	Pasture	Pasture	Organic Oats [82t]
	10 35.09HA	Pasture	Pasture	Organic Oats [70t]	Pasture	Pasture	Organic Oats [70t]
BLOCK 3	11 34.42HA	Pasture	Organic Oats [69t]	Pasture	Pasture	Organic Oats [69t]	Pasture
	12 27.37HA	Pasture	Organic Oats [55t]	Pasture	Pasture	Organic Oats [55t]	Pasture
	13 39.3HA	Pasture and /or Green manure	Organic Oats [79t]	Pasture	Pasture	Organic Oats [79t]	Pasture